

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KAMERON NATHANAEL
COOPER, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JOSEPH GLEN FRAZIER,

Respondent-Appellant,

and

NICOLE KIM COOPER,

Respondent.

UNPUBLISHED
September 1, 2009

No. 291713
Branch Circuit Court
Family Division
LC No. 07-003807-NA

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ

PER CURIAM.

Respondent Joseph Frazier appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g) and (h). We affirm.

Respondent first argues that the trial court erred in failing to take action to ascertain his status as the child's father, as a result of which he was deprived of his right to court-appointed counsel. This issue involves the construction, interpretation, and application of the court rules, which we review de novo as a question of law. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003); *Kernen v Homestead Dev Co*, 252 Mich App 689, 692; 653 NW2d 634 (2002).

A respondent in a child protective proceeding has a due process right to counsel. *In re EP*, 234 Mich App 582, 597-598; 595 NW2d 167 (1999), overruled on other grounds by *In re Trejo*, 462 Mich 341, 353 n 10; 612 NW2d 407 (2000). That right is also guaranteed by statute and court rule. MCL 712A.17c(5); MCR 3.915(B)(1). In child protective proceedings, a putative father, i.e., the alleged biological father of a child who does not have a legal father, is not a respondent. MCR 3.903(A)(7), (17), and (23); MCR 3.903(C)(10). Therefore, until

respondent became a legal father by completing and filing an acknowledgement of parentage, MCR 3.903(A)(7)(e), he was not entitled to the appointment of counsel.

It appears from the record that the trial court failed to comply with MCR 3.921(C) after finding at the preliminary hearing probable cause to believe that respondent was the child's putative father. However, respondent has not shown that he was prejudiced by any error that may have occurred. As noted, respondent was not entitled to counsel until he became a respondent by establishing paternity, and he does not take exception to the trial court's exercise of jurisdiction over the child before paternity was established. After respondent established paternity, counsel was appointed to assist him, the termination hearing was adjourned to permit respondent to confer with counsel, and respondent was represented by counsel at the hearing. Under the circumstances, any error was harmless.

Next, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(G); *In re Trejo*, *supra* at 355. Respondent was incarcerated before the child was born and did not contribute to the child's support. It was undisputed that respondent was serving a prison sentence and would not be released until 2013 at the earliest. Further, nothing in the law precluded the court from ordering termination when the child could alternatively be placed with respondent's relatives, *In re Futch*, 144 Mich App 163, 170; 375 NW2d 375 (1984). The court may terminate parental rights instead of placing the child with relatives if it is within the child's best interests to do so. *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999); *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). Given that respondent had never met his child and that none of his relatives testified to a willingness to raise the child, the trial court did not clearly err in finding that termination was in the child's best interests. MCR 712A.19b(5). Thus, the trial court did not err in terminating respondent's parental rights to the child.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro