

STATE OF MICHIGAN
COURT OF APPEALS

In re S.M. GARCIA, Minor.

UNPUBLISHED
February 16, 2016

No. 327936
Wayne Circuit Court
Family Division
LC No. 13-515111-NA

Before: SERVITTO, P.J., and SAAD and O'BRIEN, JJ.

PER CURIAM.

Appellant appeals as of right the circuit court's May 11, 2015 order terminating the parental rights to the minor child, SMG, pursuant to MCL 712A.19b(3)(a)(i), (a)(ii), (c)(i), (g), and (j). We affirm.

SMG was born on November 22, 2013, and removed from the care of her mother while still a newborn in the hospital. SMG tested positive for cocaine, opiates, methadone, and benzodiazepines at birth. SMG's mother admitted to using heroin throughout her pregnancy, admitted that she lacked stable housing and income, and admitted that she did not have any necessary supplies to care for a child only days after the child was born. Aside from attending a family team meeting on December 2, 2013, SMG's mother has not participated in any services, has not visited the child, and has not made any contact with the Department of Health and Human Services (DHHS) throughout the entirety of this case. SMG was placed in the care of relatives upon removal, specifically with SMG's mother's parents, and testimony presented throughout the proceedings indicated that she was doing well in that environment. In light of these facts, the circuit court eventually entered an order terminating SMG's mother's parental rights pursuant to MCL 712A.19b(3)(a)(i), (a)(ii), (c)(i), (g), and (j) on May 11, 2015. The order also terminated the parental rights of SMG's "unknown unidentifiable father." From birth until the entry of the termination order, no male had established paternity to SMG.

On May 21, 2015, the circuit court received a letter from the appellant in this case, Austin Johnson. According to his letter, he received the circuit court's May 11, 2015 order from SMG's mother's attorney. Ultimately, Johnson requested a "DNA test so I will be recognized as the child's legal father." Johnson included his claim of appeal and request for appellate counsel with his letter. Appellate counsel was appointed, and this appeal followed. On appeal, Johnson's sole argument is that he has a constitutional right to parent SMG as his child. We disagree.

While it is true, as Johnson suggests, that parents have a constitutional right to parent their children, see, e.g., *Troxel v Granville*, 530 US 57, 65; 120 S Ct 2054; 147 L Ed 2d (2000),

there is nothing in the record demonstrating that Johnson is SMG's parent. See MCR 3.903(A)(7) (defining "father" in several ways, all of which were not satisfied by Johnson); see also MCR 3.903(A)(18) (defining "parent," in pertinent part, as "the mother, the father as defined in MCR 3.903(A)(7), or both, of the minor."). Johnson was only "alleged to be the biological father of" SMG; thus, he is a putative father. MCR 3.903(24). "[A] putative father ordinarily has no rights regarding his biological child, including the right to notice of child protective proceedings, until he legally establishes that he is the child's father." *In re AMB*, 248 Mich App 144, 174; 640 NW2d 262 (2001). Johnson never established that he was SMG's father. Thus, he "has no rights regarding his biological child[.]" *Id.*

Furthermore, while not specifically argued by Johnson on appeal, the record reflects that he was afforded more than adequate notice as a putative father. See *In re Gillespie*, 197 Mich App 440, 445-446; 496 NW2d 309 (1992) (indicating that a putative father is *not* entitled to the same notice as a legal parent). Notice to putative fathers is governed by MCR 3.921(D), which sets forth the discretionary procedure for a circuit court to provide notice to a putative father. The record supports a conclusion that the circuit court complied with that discretionary procedure. Indeed, Johnson was provided notice of and appeared at a preliminary hearing in December 2013, but he failed to establish paternity to SMG thereafter.

In any event, the circuit court properly concluded that DHHS proved at least one statutory ground by clear and convincing evidence and that termination of SMG's mother's and the unknown, unidentifiable father's parental rights was in SMG's best interests, and Johnson makes no substantive argument to the contrary on appeal. While he cursorily claims on appeal that SMG should be placed with his relatives or with him now that he has been released from prison, there is absolutely nothing in the record to support these claims.

Affirmed.

/s/ Deborah A. Servitto
/s/ Henry William Saad
/s/ Colleen A. O'Brien