STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED March 15, 2012
In the Matter of THOMPSON, Minors.	No. 304970 Wayne Circuit Court Family Division LC No. 10-492370
In the Matter of THOMPSON, Minors.	No. 304971 Wayne Circuit Court Family Division LC No. 10-492370

Before: MURPHY, C.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

In these consolidated appeals, respondents B. Sled and K. Thompson appeal the trial court's order terminating their parental rights to XT pursuant to MCL 712A.19b(3)(g), (i), and (j), and respondent B. Sled also appeals a separate order terminating her parental rights to KT pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.[1]

I. RESPONDENT SLED'S APPEAL IN DOCKET NO. 304970

[1] Both respondents filed a claim of appeal on July 6, 2011. Petitioner asserts that this Court lacks jurisdiction to consider respondents' appeals with respect to XT because respondents did not timely request the appointment of appellate counsel or timely file their claims of appeal from the order terminating their parental rights to XT. Petitioner raised this issue in a motion to dismiss that was filed in both appeals. This Court denied the motion and stated that that "[t]o the extent that respondent-appellants' request for the appointment of counsel to appeal the termination of their parental rights with respect to [XT] may be considered untimely, the claims of appeal are considered as applications for leave to appeal and leave to appeal is GRANTED." *In re Thompson,* unpublished order of the Court of Appeals, entered January 13, 2012 (Docket Nos. 304970 and 304971).

With respect to respondent Sled, the trial court did not clearly err in finding §§ 19b(3)(g) and (j) were each proven by clear and convincing legally admissible evidence in the case of XT, *In re Utrera,* 281 Mich App 1, 15-17; 761 NW2d 253 (2008); MCR 3.977(E)(3) and (K), or in finding that §§ 19b(3)(c)(*i*), (g), and (j) were each proven by clear and convincing evidence in the case of KT, *In re Trejo Minors,* 462 Mich 341, 355-357; 612 NW2d 407 (2000); MCR 3.977(H)(3)(a) and (K). KT was removed from respondent's custody in February 2010 when he was two months old. A parent/agency agreement was established for respondent Sled, but she disappeared and could not be located until XT was born in February 2011. Both respondent Sled and XT tested positive for marijuana when XT was born. Respondent Sled never made herself available for reunification services, never met with the caseworker, missed a scheduled home study, and did not appear for any court hearings until May 2011. This evidence supports the trial court's determination that termination was warranted under §§ 19b(3)(g) and (j) with respect to XT, and under §§ 19b(3)(c)(*i*), (g), and (j) with respect to KT.

We agree that the trial court erred in relying on § 19b(3)(i) as an additional statutory basis for terminating respondent Sled's parental rights to XT, where there was no evidence that respondent Sled's parental rights to another child had previously been terminated at the time the trial court terminated her parental rights to XT. However, because the court properly found that other statutory grounds for termination were established, the error was harmless. *In re Powers Minors,* 244 Mich App 111, 118; 624 NW2d 472 (2000).

Petitioner was not required to prove that respondent Sled would neglect the children for the long-term future as held in *Fritts v Krugh,* 354 Mich 97, 114; 92 NW2d 604 (1958), overruled on other grounds by *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). That case predates the enactment of § 19b(3), which now sets forth the criteria for termination.

Further, we reject respondent Sled's suggestion that termination of her parental rights was improper because she was not provided with reunification services. If a respondent is available and willing and able to accept services designed to rectify the problems that led to the child becoming a temporary court ward, the petitioner's failure or refusal to provide such services can preclude a finding that the respondent was unlikely to rectify the conditions that led to the adjudication or to be able to provide proper care and custody within a reasonable time. *In re Newman,* 189 Mich App 61, 66-68; 472 NW2d 38 (1991). In this case, however, petitioner attempted to provide reunification services for respondent Sled, but she could not be located until February 2011 and even then failed to meet with the caseworker or attend court hearings so that necessary information could be obtained to complete referrals for services. Petitioner attempted to assess respondent's home, but respondent did not appear on the scheduled date. A failure to engage in available services on respondent Sled's part does not constitute a failure to provide services on petitioner's part.

Lastly, considering respondent Sled's unwillingness to participate in reunification services, her lack of contact with the children, and her admission that she was sharing a home with people who smoked marijuana daily, the trial court did not clearly err in finding that termination of respondent Sled's parental rights was in the children's best interests. MCL 712A.19b(5); *Trejo Minors,* 462 Mich at 356-357.

II. RESPONDENT THOMPSON'S APPEAL IN DOCKET NO. 304971

Respondent Thompson appeals the termination of his parental rights to XT only. We note initially that respondent Thompson was only a putative father to the child. MCR 3.903(A)(24). He was never determined to be a legal father as defined in MCR 3.903(A)(7). As such, we question whether he even has standing to appeal. See *In re AMB*, 248 Mich App 144, 174; 640 NW2d 262 (2001) (putative father ordinarily has no rights regarding a child, "including the right to notice of child protective proceedings, until he legally establishes that he is the child's father"). Regardless, even considering the merits of the appeal, the trial court did not clearly err in finding that § 19b(3)(g) was proven by clear and convincing legally admissible evidence. *Utrera*, 281 Mich App at 15-17; MCR 3.977(E)(3) and (K). Termination of any assumed parental rights was proper under this ground because respondent Thompson never appeared in this action until after his parental rights to XT had been terminated, he had no known relationship with the child, he did not establish paternity of the child, he did not offer to plan for or support the child, he did not appear for any court hearings concerning the child, he did not contact the agency to inquire about the child, and he did not request visits with the child.[2] In addition, considering respondent Thompson's lack of interest in the child, the trial court did not clearly err in finding that termination of his parental rights was in the child's best interests. MCL 712A.19b(5); *Trejo Minors*, 462 Mich at 356-357.

Affirmed.

/s/ William B. Murphy
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray

[2] Because termination was proper under § 19b(3)(g), any error in relying on §§ 19b(3)(i) and (j) as additional statutory grounds for termination was harmless. *Powers Minors*, 244 Mich App at 118.