

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WILLIAM JAMES FORGAYS,
Minor.

CRYSTAL MICHELLE FORGAYS,

Petitioner-Appellee,

v

RONNIE TREVEL OUTLEY, SR.,

Respondent-Appellant.

UNPUBLISHED
December 19, 2006

No. 271338
Oakland Circuit Court
Family Division
LC No. 2005-714041-AD

Before: Meter, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 710.39(1). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's findings on appeal from the termination order are reviewed for clear error. *In re RFF*, 242 Mich App 188, 201; 617 NW2d 745 (2000). Respondent has not argued that he had established a custodial relationship with the child or provided support for him. MCL 710.39. The trial court's findings to the contrary are amply supported by the record, so the relevant inquiry is limited to whether granting custody to respondent would be in the child's best interests. MCL 710.39(1).

In this regard, a few facts fully illustrate the complete lack of merit in respondent's arguments below and on appeal. Petitioner, the child's mother, learned she was pregnant with the child while she was receiving medical treatment after respondent had physically assaulted her. She soon informed respondent of the impending child, and about a month later respondent broke into her home and attacked her with a hammer. Respondent wore a pair of rubber gloves and brought a large plastic bag with him to the attack. During the attack, he made statements that there was no crime without a body, and that if he could not have petitioner, nobody could. Respondent fractured the bone around petitioner's eye socket and left an imprint with the hammer on her abdomen. Petitioner was 4 ½ months pregnant at the time. Respondent is an alcoholic who drank nearly every day and reportedly often struck petitioner's oldest child.

Respondent has no relationship with the child, has been incarcerated for all of the child's life, and cannot support him or care for him in the foreseeable future. Respondent's stated plan was to place the child with his relatives until he is released, even though his incarceration for the assault is not set to expire for twelve to thirty years. In any event, the court must look to the fitness of the father, not that of alternate third parties. *In re Ballard*, 219 Mich App 329, 336-337; 556 NW2d 196 (1996). Respondent's vicious attack on the mother of the child during her pregnancy, which resulted in his current incarceration, is certainly indicative of his unfitness to care for the child. The trial court did not clearly err by finding that granting custody to respondent was not in the best interests of the child and correctly terminated respondent's parental rights pursuant to MCL 710.39(1).

On appeal, respondent complains that he was never served with a notice of intent to release or consent contrary to MCL 710.34(1). However, no petition was filed during the pregnancy, so MCL 710.34(1) is inapplicable. Respondent also cites MCL 710.37, apparently in support of his argument that he should have been served with a notice of intent to release or consent. However, MCL 710.37 only applies "when the putative father denies interest in custody of the child, denies paternity, or cannot be identified or located." *In re Lang*, 236 Mich App 129, 133 n 6; 600 NW2d 646 (1999). None of the circumstances delineated in MCL 710.37 apply to this case, so the statute is simply irrelevant.

Respondent also claims that he was not served with notice as required by MCL 710.36, but it appears from the record that respondent *was* properly served with notice. In any event, he attended all of the hearings in the lower court, so any failure of notice was harmless and did not run afoul of the statute. "Notice of the hearing shall not be required if the putative father is present at the hearing." MCL 710.36(5).

Affirmed.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis