

STATE OF MICHIGAN
COURT OF APPEALS

In re BEL, Minor.

UNPUBLISHED
December 19, 2019

No. 348783
Wayne Circuit Court
Family Division
LC No. 17-002175-NA

Before: MURRAY, C.J., and SAWYER and GLEICHER, JJ.

PER CURIAM.

The circuit court entered an order terminating the parental rights of young BEL’s mother and “unknown biological father.” REL was the child’s putative father, had notice of the proceedings and attended many hearings, but repeatedly rejected offers to sign an acknowledgment of parentage or to take a DNA test. REL now complains that the circuit court never appointed counsel to represent him in the child protective proceedings. As REL was not a legal parent, he was not entitled to counsel. We affirm.

I. BACKGROUND

The Department of Health and Human Services (DHHS) took eight-month old BEL into care because she was diagnosed with severe failure to thrive caused by chronic underfeeding. For the first eight months of her life, BEL lived with her mother and REL. REL and the child’s mother were in a romantic relationship and REL believed he was BEL’s father. REL was not named on BEL’s birth certificate, however, and had not signed an acknowledgment of paternity.

The DHHS served notice of the child protective proceedings on REL as a putative father. At a December 8, 2017 family team meeting, REL requested a paternity test to determine if he was BEL’s biological father. REL did not follow through with that test. At a December 12 preliminary hearing, the court inquired why REL had not established paternity over BEL and he indicated that although he loved the child, the child’s mother was “wavering” and was not certain whether he was the father. The court ordered REL to establish paternity within 14 days or the court would declare the child’s father “unknown and unascertainable.”

At a January 12, 2018 hearing, the child's mother indicated on the record that REL was BEL's biological father. The court asked REL whether he was willing to sign an acknowledgment of parentage in court that day, but he responded, "I am uninformed as to the medical records." Mother's attorney interjected that she had spoken to REL in the hallway and he had stated his desire to acknowledge paternity. Counsel also tried to assist REL during the hearing. The court then advised REL that he would not be entitled to review BEL's medical records until he was declared the child's legal parent. Absent a parent-child relationship, the court advised, it would violate HIPAA laws to allow REL access to the subject records. REL indicated that he was "very understanding" and "fully aware of HIPAA confidentiality" but still refused to acknowledge parentage until he was able to review the child's medical records. REL expressed his displeasure at being cut off from BEL's medical information when Child Protective Services entered the picture and deemed him a "putative" father. Ultimately, however, as REL had not met the 14-day deadline, the court then determined that BEL's father was unknown and unascertainable and ordered that REL, as putative father, had waived his rights to further notice and to appointed counsel.

At a dispositional review hearing on February 14, 2018, the court again offered REL the opportunity to take a DNA test or to sign an acknowledgment of parentage, and he again refused. The caseworker indicated that she had offered REL a DNA test at the pretrial hearing, but "he did not want to take the DNA test until he received the hospital records because he wanted to be clear of what was going on." The caseworker "encouraged" REL to complete an affidavit of parentage, but "[h]e stated that he was not involved and he does not want to become involved with the court proceedings." At the conclusion of the hearing, the court found that REL "essentially is a nobody to [BEL] because he has refused to establish paternity."

The proceedings continued while BEL's mother participated in services. When mother did not demonstrate benefit, the DHHS filed a supplemental petition seeking termination. REL reappeared at the termination hearing on January 29, 2019. REL took the stand and testified, "I think I'm [BEL's] Father. I was there at her birth, she look just like me." The attorneys questioned REL:

Q. Have you taken any steps or any action in order to establish a legal relationship to [BEL]?

A. Yes, I have.

Q. Tell me what you've done?

A. Um, I just kept following up with the court dates trying to see when I going to be able to begin being in her life for visits and, you know, stuff like that. Just to begin the process of being reunited with her. . . .

Q. Okay. Did anyone ever advise you that you should sign an Affidavit of Parentage or undergo a DNA Test?

A. Yes.

Q. And was that in 2017 or at least 2018?

A. All the way through.

Q. All the way through. Have you done either of those things?

A. No, ma'am.

Q. Why not?

A. I wanted to - - well the birth certificate thing, I wanted her to stop to say it's okay for me to sign as in being a good Father when she turn 18. . . .

* * *

Q. Why didn't you sign an Affidavit of Parentage?

A. Because I wanted her - - I want to be able to sign it when she turn 18. That's just a symbol between me and my daughter - - her, me being a good Father to her.

Q. You wanted to wait until she turns 18?

A. Hmm-hmm. And I'll go ahead and take a blood test. I don't mind.

Q. Okay. Is there a reason why you haven't taken a blood test up until now?

A. Afraid.

Q. Okay. So you've been afraid to establish paternity?

A. Hmm-hmm.

Q. Why did you come today?

A. Well I'm hoping that she is my daughter and I would like to be a responsible Father. I would like to begin my family with her, you know, me being her Father. You know, if the court can help me, you know, with the process of a - - normal steps in being reunited.

REL "remember[ed]" telling the court that he would not establish paternity until he was allowed to review BEL's medical records. He further indicated that he understood that under HIPAA, he had no legal right to look at the records until he was declared BEL's legal father. REL conceded that the court allowed him additional opportunities to take a DNA test, but claimed that he did not do so because he was "afraid." When asked what he was afraid of, REL replied, "This, the normal response. Normal response of a Father, that's all."

At the termination hearing, the circuit court considered REL's past actions and his current testimony and reaffirmed its earlier ruling that "the identity of [BEL's] Father is unknown and cannot be ascertained." The court described that REL "really has no logical or reasonable

explanation for his failure to establish a relationship up until now.” Accordingly, the court advised REL that he was welcome to remain in the courtroom but that he was not considered BEL’s father for purposes of the proceedings and was “essentially a stranger to” the child. At the close of the hearing, the court terminated the parental rights of BEL’s mother and her unknown father.

II. DISCUSSION

REL asserts that he was confused by the proceedings and that the parental rights of BEL’s “unknown” father should not have been terminated until he was provided counsel to properly advise him of his duties and rights. We will consider REL’s appellate challenge despite that he never requested counsel below “[b]ecause we cannot ignore a process that casts serious doubt on the integrity of the proceedings and would risk substantial injustice if allowed to stand unexamined.” *In re Williams*, 286 Mich App 253, 273-274; 779 NW2d 286 (2009).

A respondent’s right to counsel in parental rights termination proceedings are governed by constitution, statute, and court rule. *Id.* at 274. MCL 712A.17c(4) provides that the circuit court must advise a respondent at his or her first court appearance of the right to counsel, the right to court-appointed counsel if indigent, and the right to request and receive a court-appointed attorney at any later hearing. MCR 3.915(B)(1) additionally requires the court to advise a respondent of his or her right to counsel and to appoint counsel when necessary. “The constitutional concepts of due process and equal protection also grant respondents in termination proceedings the right to counsel.” *In re Powers*, 244 Mich App 111, 121; 624 NW2d 472 (2000).

The right to counsel attaches only to *respondents* and respondents are *parents*. A “father” is defined in the court rules as

- (a) A man married to the mother at any time from a minor’s conception to the minor’s birth, unless a court has determined, after notice and a hearing, that the minor was conceived or born during the marriage, but is not the issue of the marriage;
- (b) A man who legally adopts the minor;
- (c) A man who by order of filiation or by judgment of paternity is judicially determined to be the father of the minor;
- (d) A man judicially determined to have parental rights; or
- (e) A man whose paternity is established by the completion and filing of an acknowledgment of parentage. . . . [MCR 3.903(A)(7).]

A “parent” for purposes of a child protective proceeding includes “the mother, the father as defined in MCR 3.903(A)(7), or both, of the minor.” MCR 3.903(A)(18). A “putative father” is “a man who is alleged to be the biological father of a child who has no father as defined in MCR 3.903(A)(7).” MCR 3.903(A)(24).

A “putative father” is not considered a “parent” in child protective proceedings under the court rules. “[T]he mere existence of a biological link does not necessarily merit constitutional protection.” *Bay Co Prosecutor v Nugent*, 276 Mich App 183, 193; 740 NW2d 678 (2007) (quotation marks and citation omitted). “[A] putative father ordinarily has no rights regarding his biological child . . . until he legally establishes that he is the child’s father.” *In re AMB*, 248 Mich App 144, 174; 640 NW2d 262 (2001). And the burden to establish paternity is on the putative father, not the court.

[O]nce a putative father is identified in accordance with the court rules, the impetus is clearly placed on the putative father to secure his legal relationship with the child as provided by law. If the legal relationship is not established, a biological father may not be named as a respondent on a termination petition, the genetic relationship notwithstanding. [*In re KH*, 469 Mich 621, 634; 677 NW2d 800 (2004).]

REL does not meet the definition of a “father” in MCR 3.903(A)(7) and therefore is not a “parent” under MCR 3.903(A)(18). As a “putative father,” REL received notice of the proceedings. See MCR 3.921(D). Although REL appeared in court on several occasions, he rejected the court’s invitation to establish his paternity over REL and the court determined he waived his rights to notice and counsel as permitted by MCR 3.921(D)(3). REL also ignored the advice of the caseworker and mother’s attorney that he needed to establish paternity to participate in the proceedings. As a legal stranger to BEL, REL was not actually a respondent in the proceedings. See *In re KH*, 469 Mich 621, 634; 677 NW2d 800 (2004). This meant he was not entitled to reunification services. See *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). And a nonrespondent, nonparent certainly could have no right to appointed counsel in the proceedings.

Ultimately, the court and the DHHS followed the procedures outlined in the court rules and statutes and provided REL the opportunity to secure his legal relationship with BEL. A DHHS representative encouraged REL to complete an affidavit of parentage or take a DNA test before termination proceedings began. The court offered REL a paternity test at the DHHS’s expense. The court offered REL the opportunity to sign an affidavit of parentage in the courtroom, and temporarily stopped the hearing to allow him to do so. The court even renewed these offers of assistance after the cut-off date for establishing paternity. REL repeatedly declined to take the steps necessary to be named BEL’s legal father. His excuses suggest that he did not want to be held criminally liable for child abuse (refusing to acknowledge parentage until he could review the child’s medical records) or that he wanted to avoid financial responsibility for his child (claiming he would acknowledge parentage when his child turned 18). REL is not entitled to relief.

We affirm.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Elizabeth L. Gleicher