STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED February 21, 2012
In the Matter of P. M. WILSON, Minor.	Nos. 304680 Branch Circuit Court Family Division LC No. 10-004457-NA
In the Matter of P. M. WILSON, Minor.	No. 304689 Branch Circuit Court Family Division LC No. 10-004457-NA

Before: SAWYER, P.J., and O'CONNELL and RONAYNE KRAUSE, JJ.

PER CURIAM.

In these consolidated appeals, respondents, mother and father, appeal as of right the trial court's order terminating their parental rights. Mother's rights were terminated pursuant to MCL 712A.19b(3)(b)(*i*), (g), (j), and (k)(*iii*); and father's rights were terminated pursuant to MCL 712A.19b(3)(a)(*ii*), (g), and (j). We affirm.

To terminate a parent's parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review for clear error a trial court's factual findings and determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). MCL 712A.19b(3) provides, in relevant part:

> (a) The child has been deserted under any of the following circumstances:
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> (*ii*) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.
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> * * *

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(*i*) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

* * *

(*iii*) Battering, torture, or other severe physical abuse.

"Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights unless it finds from the whole record that termination clearly is not in the child's best interests." *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004), citing MCL 712A.19b(5).

Mother argues that the trial court clearly erred by finding grounds to terminate her rights established by clear and convincing evidence. We disagree. Respondent mother does not contest that the child was physically abused or the severity of the abuse. Mother was the child's only caregiver, and the child showed significant physical and emotional improvement once removed from mother's care. Mother argues that someone else, such as her former boyfriend, must have inflicted the abuse, and the child improved because the former boyfriend no longer had contact with the child. The trial court acknowledged mother's theory, but found her testimony not credible, in contrast to the testimony of the former boyfriend, who testified that he did not hurt the child, and Dr. Bethany Mohr, who testified that the child suffered severe abuse and that her mother was the person who posed a risk of harm to the child. We defer to the trial

court's superior ability to evaluate the credibility of witnesses before it. MCR 2.613(C); *In re BZ*, 264 Mich App at 296-297; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We find no clear error.[1]

Respondent father argues that the trial court clearly erred by finding clear and convincing evidence to terminate his parental rights.[2] Again, we disagree.

We are initially skeptical that respondent father technically "deserted" the child under MCL 712A.19b(3)(a)(*ii*). When the parents ceased contacting each other, father was aware that mother was pregnant, and there was some evidence that he believed he was probably—albeit not certainly—the father of the child. Nothing overtly precluded him from contacting mother thereafter, but he made no attempt to do so. However, he apparently avoided contacting mother pursuant to and out of respect for her request, and we note that attempting to contact someone who has made it clear that doing so is not desired could constitute some form of harassment or stalking. Furthermore, father was not named on the child's birth certificate and apparently had no knowledge of whether mother actually gave birth to the child. Father clearly could have exerted himself more, but "the dictionary definitions of the words 'desert' and 'desertion' indicate that desertion is an intentional or willful act." *In re B*, 279 Mich App 12, 19 n 3; 756 NW2d 234 (2008). We are dubious that father's omissions, under these circumstances, truly rise to the level of intentional desertion of the child.

Nonetheless, only one ground for termination must be established. *In re BZ*, 264 Mich App at 301. The trial court did not clearly err by finding that the ground for termination set forth in MCL 712A.19b(3)(g), regarding proper care and custody, was met by clear and convincing evidence. Father acknowledged that he had not provided the child with any care. At the time of the hearing, he was living a few days a week with his wife and mother-in-law, and the rest of the week with his parents, in a house that had been deemed unsuitable for children. Given father's lack of stable, suitable housing, it was unlikely that he would be able to provide the child with proper care and custody within a reasonable amount of time. Father argues that the trial court should have considered whether he could provide proper care and custody through relative placement or with public assistance, but he did not present any plan for relative placement, nor does he on appeal, and there was no evidence presented suggesting that he planned to seek public assistance.

There was also clear and convincing evidence establishing a reasonable likelihood that the child would be harmed if placed in father's care. See MCL 712A.19b(3)(j). Father had spent time in jail in 2006 and 2010 for physical altercations involving his sisters. There was also

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[1] Therefore, we need not address the argument that the trial court concluded, in the alternative, that respondent mother had the opportunity to prevent someone else from abusing the child.

[2] We decline to address any argument pertaining to termination under MCL 712A.19b(3)(b), because it is apparent from the trial court's findings at the termination hearing, when they are considered in context, that the trial court did not terminate father's rights on that ground.

evidence that he had attempted suicide and assaulted respondent mother when she was pregnant. Father's history of mental instability and violence toward his family members was sufficient to find that it was likely the child would be harmed in his care. Father contends that his conduct before he established paternity should not be considered in terminating his parental rights because at the time of the conduct he was not a parent to the child for purposes of MCL 712A.19b(3). We have held, however, that a "father's conduct before perfecting paternity can provide a basis for termination." *In re LE*, 278 Mich App 1, 23; 747 NW2d 883 (2008). Therefore, the argument is without merit.

Finally, father argues that the trial court erred by failing to order petitioner to offer him a service plan and reunification services before terminating his parental rights, in violation of his constitutional right to procedural due process. Because he raises this argument for the first time on appeal, our review is for plain error affecting substantial rights. *In re Williams*, 286 Mich App 253, 274; 779 NW2d 286 (2009). We review de novo the interpretation and application of statutes and court rules. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Petitioner is usually required to make reasonable efforts to rectify the conditions that caused a child to be removed from his or her parents through a service plan, but doing so is not required if the agency's goal is termination. *In re HRC*, 286 Mich App 444, 462-463; 781 NW2d 105 (2009). A putative father must perfect his legal paternity to be entitled to services. See *In re LE*, 278 Mich App at 19.

When the child was removed, father was only a putative father, not a legal parent or otherwise a party to the proceedings, see MCR 3.903(A)(7), (18), (19)(b), so he was not entitled to a service plan. See MCL 712A.13a(1)(d), (8); MCR 3.965(E); *In re LE*, 278 Mich App at 19. Shortly after father did become a legal parent, petitioner filed an amended petition to terminate his rights; therefore, while respondent father had perfected his legal paternity, the agency's goal was termination, so a service plan and reunification services were not required. See *In re HRC*, 286 Mich App at 463. The trial court therefore committed no error and did not violate father's constitutional right to procedural due process. Father additionally argues that the trial court's failure to order a service plan and reunification services resulted in insufficient evidence to terminate his parental rights. As detailed above, however, there was sufficient evidence to support the court's termination decision.

Affirmed.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Amy Ronayne Krause