

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of J. MILLER, Minor.

UNPUBLISHED
October 22, 2013

Nos. 314870, 314872
St. Clair Circuit Court
Family Division
LC No. 12-000324-NA

Before: MURPHY, C.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

In these consolidated appeals, respondents E. Lincoln and M. Miller each appeal as of right from the circuit court’s order terminating their parental rights to the minor child. The court terminated the parental rights of both respondents pursuant to MCL 712A.19b(3)(g) and (j), and additionally terminated Lincoln’s parental rights pursuant to §§ 19b(3)(i) and (l). We affirm in both appeals.

I. DOCKET NO. 314870 (RESPONDENT M. MILLER)

The record shows that Miller is the alleged biological father of the minor child, who was born during Lincoln’s marriage to W. Taylor. Because there is no indication that any court ever determined that the child was not the issue of the marriage, Lincoln’s estranged husband is the child’s legal father. MCR 3.903(A)(7)(a). Because the child has a legal father, Miller “cannot properly be considered even a putative father.” *In re KH*, 469 Mich 621, 624; 677 NW2d 800 (2004). Petitioner and the trial court apparently treated Miller as a putative father because Lincoln identified him as the biological father and Taylor’s parental rights had been terminated. However, the termination order for Taylor did not affect his status as the child’s legal father because a termination of parental rights to a child is not a determination that the child was not the issue of the marriage. *In re CAW*, 469 Mich 192, 199; 665 NW2d 475 (2003). For those reasons, Miller had no standing to appeal. Cf. *In re AMB*, 248 Mich App 144, 174; 640 NW2d 262 (2001) (a putative father does not have any rights regarding his biological child). Still, assuming that Miller does have standing, we find no error warranting reversal.

We find no basis for reversal on the ground that the trial court violated Miller’s due process rights by dismissing his attorney from the hearing. “There is no question that parents have a due process liberty interest in caring for their children and that child protective proceedings affect that liberty interest.” *In re AMB*, 248 Mich App at 209 (footnotes omitted). “The essence of due process is ‘fundamental fairness,’” *In re Adams Estate*, 257 Mich App 230, 233-234; 667 NW2d 904 (2003), and it “applies to any adjudication of important rights.” *In re*

Brock, 442 Mich 101, 110; 499 NW2d 752 (1993). “The constitutional concepts of due process and equal protection . . . grant respondents in termination proceedings the right to counsel.” *In re Powers*, 244 Mich App 111, 121; 624 NW2d 472 (2000). This right is recognized by MCR 3.915(B)(1), which provides that a respondent in child protective proceedings has a right to retain an attorney or to request and receive appointed counsel if indigent. A “respondent” includes a parent, and for a man to be a parent and thus a respondent, he must be a father as defined in MCR 3.903(A)(7). MCR 3.903(A)(17) and (C)(10); MCR 3.977(B)(2). As noted previously, Miller is not a legal or even a putative father of the minor child. Therefore, Miller has not shown that he was a respondent who had the right to counsel at the termination hearing.

Furthermore, the record indicates that both a putative-father hearing, see MCR 3.921(D)(2), and a hearing on the petition were to be conducted on the same day. The purported confusion as to the timing of the termination hearing is irrelevant to whether Miller failed to appear to take the first step, establishment of his status as a legal father. Miller failed to appear for the hearing and he has offered no legitimate reason for his absence. Counsel asked to be dismissed from further representation of Miller because she had “no contact with him” despite the fact that he had been released from jail, and she did not know whether he still wanted to establish paternity or whether he had lost interest in the matter. The trial court dismissed counsel at her request because Miller had failed to appear for the putative-father hearing and thus had abandoned his claim of paternity, see MCR 3.921(D)(3)(a), or had severed his relationship with counsel by failing to maintain contact with her and advising her whether he was still interested in establishing paternity. Under these circumstances, the trial court did not err in dismissing counsel. *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991).

II. DOCKET NO. 314872 (RESPONDENT E. LINCOLN)

The trial court did not clearly err in finding that § 19b(3)(g) and (l) were each established by clear and convincing evidence. MCR 3.977(E)(3) and (K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The evidence indicated that Lincoln had struggled with drug addiction for decades. Her parental rights to five other children had been terminated following the initiation of child protective proceedings many years earlier, and the minor child had been the subject of two prior child protective proceedings, one in 2005 and one in 2010. Lincoln relapsed less than three months after the 2010 case was closed, and she failed to provide proper care for the child by inviting others into her home to engage in drug use with her while the child was present in the home and by her own admission in the same room when she used drugs in her recent relapse. Lincoln’s long-standing addiction and her unsuccessful efforts to overcome it despite the prior terminations of her parental rights to other children and the prior temporary wardships of the minor child support the court’s finding that Lincoln would not be able to effect the changes necessary in order to provide proper care and custody within a reasonable time given the child’s age.

Finally, considering that Lincoln did not visit the child during the time this case was pending even when she was available to do so, and her unwillingness to acknowledge her continuing drug problem, the trial court did not clearly err in finding that termination of Lincoln's parental rights was in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ William B. Murphy

/s/ Mark J. Cavanagh

/s/ Cynthia Diane Stephens