

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MI'ANGEL COURTNEY
MARIA ALLEN, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ERVIN C. ALLEN,

Respondent-Appellant,

and

KATRINA HEADSPETH,

Respondent.

UNPUBLISHED

June 16, 2005

No. 259948

Berrien Circuit Court

Family Division

LC No. 2004-000093-NA

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to the minor child under MCL 712A.19b(3)(h). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent, who has been incarcerated since before the child's birth, argues that as a putative father, he had a right to a state-paid paternity test. He cites little relevant authority to support this argument. A parent's right to the custody of his child is an element of liberty protected by due process guarantees. *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982). However, MCR 3.921(C) provides extensive procedures to assure a putative father has a chance to assert his rights if he chooses. See *In re Gillespie*, 197 Mich App 440, 446; 496 NW2d 309 (1992). Respondent does not dispute that the lower court provided him with the notice required under MCR 3.921(C)(1). If a natural father fails to appear or fails to establish paternity within the time set by the court, the court can find this a waiver of all rights to further notice and waiver of the right to a court-appointed attorney. MCR 3.921(C)(3); see also *In re KH*, 469 Mich 621, 630 n 15; 677 NW2d 800 (2004).

Respondent contends that he did not want to establish paternity until a genetic test confirmed that he was the biological father and claims he could not afford a test while incarcerated. No law grants him the right to a state-sponsored test. Further, respondent did not ask the lower court directly for a test or ever express doubts about the child's parentage until after the court terminated his parental rights. Despite his knowledge of a court-set deadline, he still made no further effort to communicate his interest in the child to the court. Further, the lower court did not terminate respondent's rights because he failed to establish paternity but rather because the court found clear and convincing evidence of a statutory ground for termination under MCL 712A.19b(3)(h). Respondent does not address the elements of that statutory ground and instead argues that petitioner was required to show evidence of long-term neglect, citing decisions not relevant to the present case. Therefore, respondent fails to persuade us that the trial court violated his rights in any way.

According to MCL 712A.19b(3)(h), grounds for termination exist if

[t]he parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, 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.

While the trial court may have miscalculated the minimum amount of time respondent had remaining on his prison sentence, petitioner offered clear and convincing evidence that respondent failed to provide proper care and custody and was not likely to provide proper care and custody within a reasonable time. These elements alone are sufficient grounds for termination under MCL 712A.19b(3)(g). Even if respondent were released on the earliest date possible, the infant child would still be in foster care for a significant amount of time. Further, there was no evidence that respondent had a plan to care for the child even after he was released. Therefore, the same facts that the trial court used to substantiate the second two elements in MCL 712A.19b(3)(h) satisfied MCL 712A.19b(3)(g), and any oversight by the trial court in this regard was harmless error. *In re Perry*, 193 Mich App 648, 650; 484 NW2d 768 (1992).

Affirmed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello