

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of DEVION E. DALTON, DAVON  
STRANGE, DAVID STRANGE, and DAJUAN  
DALTON, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LARRY FULTON,

Respondent-Appellant,

and

SHERRELL ANN DALTON and DAVID  
STRANGE,

Respondents.

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UNPUBLISHED

July 14, 2009

No. 289889

Ingham Circuit Court

Family Division

LC No. 07-002246-NA

Before: Meter, P.J., and Murray and Beckering, JJ.

PER CURIAM.

Respondent Larry Fulton appeals as of right the order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (h), and (j). We affirm.

Although respondent had made child support payments, the consistency and duration of which is not entirely clear from the record, he never met the child and has otherwise been wholly absent from the child's life since his birth in 2000. In 2005, and again in 2007, respondent was incarcerated. When the November 2007, initial petition was filed in this case and the child was removed from his mother's custody, respondent remained incarcerated in Ohio, but petitioner did not know where he was. The child's mother had indicated to a caseworker that respondent had paid child support in the past but she was unaware of his present whereabouts. After making efforts to locate respondent, a caseworker again questioned the child's mother about respondent in the last reporting period before the filing of the supplemental petition. This time, the child's mother mentioned respondent's incarceration, and petitioner was able to locate respondent in an Ohio correctional facility and serve him with notice of the protective proceedings and a copy of the supplemental petition. Respondent contested the termination of his rights and proposed that his mother care for the child until his release from prison in February 2010. At the December

2008, hearing on the supplemental petition, respondent was represented by an attorney but did not participate in person at the hearing.

On appeal, respondent argues that petitioner failed to make reasonable efforts to locate and provide services to him. In general, when a child is removed from the custody of the parents, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000). The reasonableness of services is relevant to the sufficiency of evidence for termination of the respondent's parental rights. See *In re Newman*, 189 Mich App 61, 66-69; 472 NW2d 38 (1991).

In support of his argument that petitioner did not make reasonable efforts to locate him, respondent cites *In re Rood*, 483 Mich 73; 763 NW2d 587 (2009), in which the Michigan Supreme Court evaluated the efforts made by the petitioner and the trial court to communicate with or locate the respondent. The Michigan Supreme Court first reviewed Michigan statutes and court rules governing child protective proceedings, the Department of Human Services Children's Foster Care Manual (which directs the petitioner to consult the Absent Parent Protocol (APP) in cases where a parent is "absent"), and federal statutes and regulations. *Id.* at 93-107. It then applied those provisions to the facts in *Rood* and found that the petitioner and trial court failed to comply with state and federal requirements in attempting to communicate with and provide notice to the respondent about the proceedings.<sup>1</sup> *Id.* at 118-119. Finally, it concluded that, under the circumstances of the case, the combined failures of the petitioner and the trial court acted to deprive the respondent of sufficient information to meaningfully participate in the proceedings, thereby denying him minimal procedural due process. *Id.*

This case is similar to *Rood* in that the whereabouts of the respondents were sometimes unknown. The relevant question in this case is whether petitioner sufficiently protected respondent's rights to due process when attempting to locate him. As stated above, petitioner's first effort to locate respondent was to question the child's mother, who reported that while respondent had paid child support in the past, she was unaware of respondent's present whereabouts. Petitioner made a second attempt to locate respondent by telephoning the Friend of the Court (FOC). When the FOC did not respond, petitioner did not telephone the FOC again and, instead, made a third attempt to locate respondent by accessing the Parent Locator Service, which provided an address for respondent. Petitioner sent at least one letter to that address, which was returned to the sender according to an updated service plan prepared by petitioner and the supplemental petition. Finally, petitioner located respondent after re-questioning the child's mother, who told petitioner about respondent's incarceration. These attempts show that petitioner substantially complied with the required actions set forth in the APP. It was troubling that the caseworker did not follow-up with a second telephone call to the FOC but, based on the record before us, she did make the minimum efforts required for an absent parent search to be considered diligent. These efforts distinguish this case from *Rood*, where the only efforts made

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<sup>1</sup> Despite having been given proper contact information by the respondent, the trial court and the petitioner sent notices to respondent at an incorrect address or attempted to contact him using an outdated telephone number on multiple occasions.

by the petitioner and the court to locate the respondent consisted of two inquiries by the foster care worker to the child's mother.<sup>2</sup> Therefore, there was sufficient evidence to conclude that petitioner acted reasonably in its efforts to locate respondent. With respect to providing respondent with services, services are not required in all situations. *In re Terry, supra* at 25 n 4. In this case, by the time respondent was located, termination proceedings were underway; thus, there was no error in failing to provide respondent with services.

Next, respondent protests the trial court's determination that sufficient evidence warranted the termination of his parental rights. "This Court reviews the trial court's determinations that a ground for termination has been established and regarding the child's best interest under the 'clearly erroneous' standard." *In re Jenks*, 281 Mich App 514, 516-517; 760 NW2d 297 (2008); MCR 3.977(J). In this case, the evidence clearly and convincingly established that respondent had deserted the child within the meaning of MCL 712A.19b(3)(a)(ii). Although fully aware that he had fathered the child, respondent never once met the child, who was eight years old by the time of the termination hearing. Further, prior to learning of these proceedings, respondent had never sought to meet, visit, call, write, obtain custody, obtain visitation, or otherwise establish a relationship with the child.<sup>3</sup> Although respondent accepted financial responsibility for having fathered the child, child support payments are not a substitute for being a parent. Based on this evidence, the trial court did not clearly err in determining that respondent's actions constituted desertion, that respondent had deserted the child for more than 91 days, and that respondent did not seek custody of the child during that period. See *In re Rood, supra* at 127 n 5 (Young, J., concurring in part) (stating that a parent abandons or deserts his child if he is *absent* for more than 91 days and has not sought custody); *In re Hall*, 188 Mich App 217, 223-224; 469 NW2d 56 (1991) (finding that a parent's failure to visit or communicate with a child is considered desertion); *In re Webster*, 170 Mich App 100, 109; 427 NW2d 596 (1988) (finding that the respondents' "failure to make any substantial effort to visit or communicate with their child for over one year" established abandonment).

Termination was also proper under MCL 712A.19b(3)(j), because respondent's past conduct or capacity indicated that he was unable to place the needs of the child before his own and he had a propensity to pass parental responsibilities onto others. The evidence of respondent's long-term absence from the child's life further supports the conclusion that the child would likely be harmed if placed in his care. Respondent not only made no attempt to see or communicate with the child, but compounded his ability to be involved in the child's life by

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<sup>2</sup> The Supreme Court in *Rood* also concluded that the child's mother had an incentive to lie about the respondent's whereabouts in an effort to sabotage the respondent's ability to retain his parental rights or gain custody of the child. *In re Rood, supra* at 86 n 11.

<sup>3</sup> Respondent argues that he was merely honoring the child's mother's wishes when he failed to contact the child. However, the evidence clearly shows that respondent's lengthy absence from the child's life was due to his own actions and prevented him from knowing about the circumstances in which the child lived and the instigation of the protective proceeding. Such ignorance about the child's situation only buttressed the finding that respondent deserted the child.

twice committing offenses that resulted in his incarceration. Therefore, the trial court did not clearly err when it found that clear and convincing evidence established a reasonable likelihood that, due to respondent's conduct or capacity, the child would be harmed if placed in respondent's care. Any error committed by the trial court in basing termination upon MCL 712A.19b(3)(c)(i) and (h) was harmless since the trial court properly based termination of respondent's parental rights on other statutory grounds. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Finally, the trial court did not clearly err in its best interests determination. Under MCL 712A.19b(5), the trial court must order termination if "the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests . . . ." The evidence in this case showed that the child had never met respondent; thus, there was no bond or relationship of any kind. Respondent would be incarcerated until February 2010, at which point the child would be around nine and a half years old. Although the child indicated a desire to have a father in his life, it was not reasonable to make him wait until respondent's release in 2010 to determine whether respondent would display a personal interest in him. Respondent had eight years to be a father to the child, but did not take advantage of that opportunity. Furthermore, although respondent had been involved in the life of another of his children, he chose to engage in criminal behavior that led to successive incarcerations. Respondent's past conduct showed that he was unlikely to put the child's needs before his own and would not care for the child in a stable and permanent way. Furthermore, placing the child in the care of respondent or respondent's mother in another state would separate him from his half-siblings, to whom he was bonded. Therefore, the trial court did not clearly err in its best interests determination.

Affirmed.

/s/ Patrick M. Meter  
/s/ Christopher M. Murray  
/s/ Jane M. Beckering