

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LAUREN E-LECE JORDAN,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

EARL DWAYNE DAVIS, a/k/a DWAYNE
DAVIS,

Respondent-Appellant

and

KAREN DENEISE JORDAN,

Respondent.

In the Matter of LAUREN E-LECE JORDAN,
JOSHUA LAMONT JORDAN, JONATHAN
BRICE JORDAN, BABY GIRL JORDAN, KYLE
LEE HARRIS, and TRE SHAQUILLE MARION,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KAREN DENEISE JORDAN,

Respondent-Appellant,

and

FOR PUBLICATION
February 12, 2008
9:00 a.m.

No. 276924
LC No. 03-686283-NA
Oakland Circuit Court

No. 276925
LC No. 03-686283-NA
Oakland Circuit Court

EARL DWAYNE DAVIS, a/k/a DWAYNE
DAVIS, and EDWARD LAMONT PATTON,

Respondents.

Before: Wilder, P.J., and Cavanagh and Hood, JJ.

PER CURIAM.

In Docket No. 276924, respondent Earl Dwayne Davis (“father”) appeals as of right the trial court’s order terminating his parental rights to Lauren E-Lece Jordan (d/o/b 2/21/05), under MCL 712A.19b(3)(g) (failure to provide proper care and custody). In Docket No. 276925, respondent Karen Deneise Jordan (the “mother”) appeals as of right the same order terminating her parental rights to Lauren, and also to Jonathan Brice Jordan (d/o/b 7/17/91), Tre Shaquille Marion (d/o/b 4/26/93), Joshua Lamont Jordan (d/o/b 1/6/97), Kyle Lee Harris (d/o/b 7/31/98),¹ and Baby Girl Jordan, a/k/a Tea Harris² (d/o/b 12/04/99) (“Tea”), under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), and (g) (failure to provide proper care and custody).³ Respondent father’s parental rights were terminated for failure to provide proper care, because he did not formally establish paternity until Lauren was approximately a year and a half old. Respondent mother’s parental rights were terminated because she failed to attend drug screens consistently, and failed to obtain suitable housing. We affirm.

I Facts and Procedural History

The children were taken into foster care on February 23, 2005, while the mother was in the hospital after Lauren’s birth. The agency’s complaint alleged that Lauren tested positive for cocaine at birth, and that Tre and Tea had also been born with cocaine in their systems. Father later testified that he was on “the streets” from March to June 2005, and did not initially know about Lauren. Father also later admitted that he had a substance abuse problem at the time Lauren was born; that he used drugs since he was 13 years old, drank daily, and used cocaine two or three times per month since he was 18 or 20 years old. Father had convictions in Arkansas dating from 1992 to 1997. In 1994, father received a gunshot wound to the stomach, resulting in him receiving \$625 per month in disability benefits. Father had several Michigan convictions, for misdemeanors and felonies, from 1997 and 1998.

¹ Kyle was born in 1998. The petition erroneously states 1999.

² Her name was never officially changed from Baby Girl Jordan to Tea Harris.

³ The trial court also terminated the parental rights of Joshua’s father, who has not appealed. The trial court did not terminate the parental rights of respondents Tre’s father, finding that it was not in Tre’s best interests, or the parental rights of respondent Jonathan’s father, finding no statutory basis for termination. The alleged father of Kyle and Tea consented to the termination of his parental rights.

The agency's complaint alleged that the mother had no income, except \$300 per month in child support; that the home was dirty, had no heat or electricity, and there was minimal food; and that the children were wearing dirty clothes, and sleeping on dirty sheets on the living room floor. The mother had received various services in the past from the agency, including substance abuse treatment, when two of her older children (not part of this case) were left home alone and burnt the house down while playing with matches.

On February 24, 2005, a preliminary hearing was held. Father did not attend. But Lauren's paternal grandmother, Reena Mae Williams, did attend this hearing, indicating that she wanted to have Lauren placed in her home, but that she had been unable to locate father to sign an affidavit of paternity. The mother was granted visitation and ordered to submit to random drug screens.

On March 23, 2005, a pretrial conference was held. Father attended, indicating that he wished to become Lauren's legal father. The mother confirmed that he was Lauren's biological father. The court then instructed father to take further action:

At this point in time the Court takes the position that you do not have standing to be represented by counsel here, to be a party in this action as you are the putative father. *But if you were to take direct action to be made the legal father of this child by filing for paternity in this case, and if you're found to be the legal father, the Court will have you made a party and you will be represented by counsel. You are to perfect paternity with regard to Lauren Davis within 14 days of today. So you can discuss this with the FIA after today's hearing as to what steps you should take.* [Emphases added.]

The court clarified that, because the mother stated that she was certain that respondent Davis was the father, it was not ordering a paternity test, and that an affidavit of parentage, executed with the mother, would suffice.

At the March 2005 hearing, the mother pled no contest to the allegations in the complaint. The court ordered psychological evaluations of the mother and children aged over six years, and continued the mother's random drug screens. The mother attended a psychological evaluation on May 12, 2005.

On May 23, 2005, a disposition hearing was held. Father did not appear. The mother signed a parent-agency agreement, requiring her to complete a substance abuse program, continue random drug screens, obtain employment and suitable housing for all six children, and complete parenting classes. The court warned the mother that the evaluator was skeptical of her ability to remain drug-free, and that showing that she could do so was the most important goal.

On May 25, 2005, the mother's drug screen was positive, so her next visitation of the children (on June 3) was cancelled. Sometime in June 2005, father was arrested for felonious assault. Later, he was convicted. (Sometime in 2005, father was also convicted of retail fraud.)

On June 3, 2005, another dispositional hearing was held. Father did not appear. The court noted that it had instructed father to perfect paternity within 14 days, and that he had not

done so. The court asked petitioner to contact him and determine whether he intended to perfect paternity, otherwise his rights to Lauren “may be cut off.”

During a period of time in 2005, the mother submitted to drug screens during substance abuse treatment at PRISM. In August 2005, the mother was referred to another drug testing center (JAMS) for follow-up random screens. Also during August 2005, a new caseworker, Mandy Ryals, was assigned to the case, although the original caseworker, Lauren Hughes, apparently continued to work on the case also, at times.

On August 16, 2005, mother ceased attending random drug screens. On August 29, 2005, a permanency planning hearing was held. Jonathan, Joshua, Tre and Kyle all had some behavioral issues and were in therapy. Another of the mother’s visitations was cancelled because of her failure to attend the substance abuse program for three days (thus also missing her screens). The mother was referred for weekly random screens. She asked to be ordered to attend alcoholics anonymous/narcotics anonymous, to motivate her to go to her screens. The mother was supposed to begin working at McDonald’s.

In September 2005, the mother told Hughes that father had been arrested. Hughes attempted to locate father on the offender tracking information system (OTIS), but was unsuccessful.

In the beginning of October, the mother’s visitations were suspended, when Hughes learned of her failure to submit to drug screens since August 16, 2005. Visitations did not resume until January 2006, contingent on three negative drug screens.

On November 28, 2005, a dispositional hearing was held, which neither the mother or father attended. The mother had provided verification that she was employed at a home health care agency. But she had not submitted to any random drug screens since October 10, 2005. The mother had also been inconsistent with her therapist, attending only one session in November 2005, and had been dropped from the program.

On January 30, 2006, a permanency planning hearing was held, which the mother attended. No one had heard from father. The mother still did not have housing. Nonetheless, the agency asked for another 60 days to give her an opportunity to comply with the new drug screen schedule. The court agreed, but warned the mother that it would “be looking very closely at what you do during the next two-month period.”

On March 30, 2006, a review hearing was held at which father did not appear. The court noted that there had been no adjudication concerning father, but that one was not required. The mother appeared. Hughes noted that the mother had failed to appear for drug screens on February 7, 10, 18 and 23, 2006. The mother had been terminated from her job because she stopped appearing for work, and her last day was February 2, 2006. Impact counseling reported that from December 17, 2005, to February 26, 2006, the mother had failed to attend five out of seven therapy sessions. The caseworker recommended a termination petition, and the court stated that one could be filed, but did not order the agency to do so. The court warned the mother that “if there is not close to perfect compliance we’re likely looking at a situation where the Court is going to order that a petition be filed.” The court warned the mother that she could not miss the drug screens.

In April or May 2006, the mother moved-in with her sister, within walking distance of the drug-testing center (JAMS). Nonetheless, the mother continued to miss some screens.

On June 9, 2006, a permanency planning hearing was held, at which the mother appeared. Father did not appear. There had been no contact with father, and termination was recommended on grounds of abandonment. The mother had missed almost half of her random weekly drug screens, on April 14 and 16, and May 19 and 21, 2006, with only one absence excused. The mother had also missed two parenting classes. The caseworker concluded that the mother had made little overall progress, and recommended that a termination petition be filed. The court agreed, and ordered a petition to be filed.

On July 12, 2006, the caseworker informed the mother that she had missed two drug screens and the agency suspended visitations with the children. Nevertheless, the mother failed to appear for the next two drug screens.

Sometime in August 2006, father got out of jail. He then entered an inpatient substance abuse treatment program. (This would last till October 2006.) While an inpatient, father had telephone privileges and could have written letters (for instance, he completed job applications). The program report states that father was not strongly motivated for treatment.

Sometime in August 2006, Hughes contacted the paternal grandmother, to ascertain father's whereabouts, and learned that he was in the inpatient program, so she attempted to contact him there. But the program staff would not confirm that father was there without a release. Thereafter, grandmother attempted to maintain frequent contact with Hughes, who informed her of the next hearing date, and asked her to tell father.

On August 15, 2006, the agency sent a notice to father stating that his failure to appear at the next hearing would be considered a waiver of any further notice and of the right to counsel, and could result in the termination of his parental rights. On August 20, 2006, the agency filed a supplemental petition for termination of the mother's parental rights.

On August 21, 2006, a pretrial/review hearing was held. Father appeared, as did the mother. Before the hearing began, father signed an affidavit of parentage, formally acknowledging paternity of Lauren. The mother had missed four drug screens since the last hearing. The court continued the suspension of visitation.

On September 12, 2006, the agency filed an amended petition, stating that father had now established paternity, and alleging grounds for terminating his parental rights. On September 19, 29, and November 1, 2006, termination hearings were held. The father's portion of the hearing was adjourned until November 6, 2006.

At the termination hearings, the following testimony was adduced. The mother admitted that she was an alcoholic, and that she used crack cocaine, powder cocaine and marijuana for approximately 20 years. She admitted that despite being ordered to attend AA/NA meetings, she attended only a few times. She admitted that she still struggled with her addiction. The testimony adduced indicated that from August 2005 to June 2006, the mother failed to appear for more than half (31 of 56) of the random drug screens. The mother was working at Costco about

30 hours per week, earning about \$600 per month. The mother admitted that she had two outstanding bench warrants, for driving with a suspended license, and disobeying a traffic signal.

On October 29 and 30, 2006, the mother tested positive for cocaine. Sometime in November 2006, father was paroled. Sometime in 2006, father was convicted of possession of a firearm by a felon. It is unclear whether he served time in jail for this conviction. There is testimony indicating that as of the November 6, 2006, trial date (see below) father had only been out of jail one week.

On November 6, 2006, father's initial adjudication trial was held. Hughes testified that father had not had any contact with Lauren, or with the agency, since Lauren came into foster care in February 2005. He did not establish paternity until August 2006. The worker was aware of father's identity since March 2005 (when the court instructed him to take further action to establish paternity). The worker testified that the affidavit of parentage, the form for establishing paternity, was available at the agency's front desk, as well as online, and a parent can simply mail it to the address listed on the back. The worker testified that neither father, nor anyone on his behalf, contacted the agency for assistance in establishing paternity.

At the November 6, 2006, initial adjudication trial for father, Hughes testified that she knew that respondent Davis was the putative father, and that she periodically made efforts to contact him through the mother. The mother told Hughes that she had asked father to call Hughes, but he never did.

Hughes acknowledged that the agency did not attempt to "reunify" Lauren with father because father had not established paternity. Hughes testified that parent-agency agreements are not usually created for putative fathers, but if father had contacted the agency, one would have been created.

Father admitted using drugs since he was 13 years old, and drinking daily. He admitted using cocaine two or three times per month since he was 18 or 20 years old, and that when Lauren was born, he had a substance abuse problem. Father claimed that at the time of trial, November 2006, he had been sober for 15 months. Father admitted that he was on "the streets" when Lauren was born, and did not know about Lauren until she was taken into foster care. Father admitted that he had no housing from March until June 2005, when he was arrested.

At the November 6, 2006, adjudication trial, father testified to several reasons why he did not acknowledge paternity in writing sooner. For instance, while he admitted that he appeared at the March 2005 court hearing, and acknowledged paternity verbally, he claimed "no one told me about all this." He stated that he did not know anything about how to go get affidavits, and that no one talked to him about this subject. Father claimed he did not hear the court tell him to perfect paternity within 14 days. He admitted that, later, the mother told him "how to go do it, whatever the papers or something I had to sign," but father testified that then he was arrested in June 2005, and lost contact with the mother when she moved. Father testified that he wrote the mother two letters from jail, approximately a year apart. Father testified that he asked the mother to bring him the papers, but she never did, so father "left it at that." Father testified that he "didn't know [any]thing about going to [any]body else about the papers."

Father testified that he knew his mother (Lauren's paternal grandmother) had driven the mother to one of the visits. Father testified that his mother told him he could not visit Lauren. She asked him whether he would be getting custody of Lauren, and he responded "yes, if they ever come to me with her." Father testified that the mother told him that he could not visit Lauren, "because I didn't get some papers or something. She said I lost my rights or something like that." Father testified that he did not know how to regain his rights, and that he did not support Lauren because he was jailed. Father admitted that he could have used the telephone in jail if he had the money to pay for the calls; claimed that he did not know about the agency; and admitted that the mother told him about one of the court dates when he was in jail.

On November 13, 2006, the trial court held a review hearing. The new caseworker, Sherry Pullins, reported on how the children were doing. The trial court then issued a decision. It found that the mother and Hughes were very credible witnesses, that father was generally credible, but that the parents did not dispute much of Hughes's testimony.

The trial court found that the mother failed to provide proper care and failed to rectify the conditions that brought the children into foster care. The court noted that the mother had missed an extensive number of drug screens; that the mother admitted that two of the children tested positive for cocaine at birth, and that part of her reason for missing drug screens was her continuing struggle with her addiction. Thus, the court found that the mother failed to fully address the central problem in the case. The court also found that the mother failed to provide consistent proof of employment for significant periods of time, and failed to obtain adequate housing. The court found there was no reasonable expectation that the mother would be able to provide proper care within a reasonable time.

Concerning father, the trial court noted that he failed to perfect paternity, in part because he was in jail. After researching, the trial court found that it could terminate father's parental rights despite his failure to perfect paternity until late in the proceedings. The trial court considered father's testimony that he did not know how to perfect paternity, but found that, based on the evidence presented at trial, there were grounds to terminate his parental rights for failure to provide proper care. In particular, the court found that father had a lengthy criminal record, and was living on the streets at the time of Lauren's birth. The trial court concluded that there was no reasonable expectation that father would be able to provide proper care within a reasonable time, considering Lauren's age. The court ordered psychological evaluation of father and children, except for Lauren, in preparation for the best interests hearing, indicating that it would consider the evaluations and testimony at that hearing very carefully.

On December 14, 2006, a new foster care worker, Jill Pranion, took over the case. The father did not appear for his psychological evaluation. On January 29, 2007, the mother attended her evaluation.

On February 2, 2007, the court held the best interests hearing. The court took judicial notice of the file and admitted the psychological evaluations of the mother.

Pranion testified that she had provided weekly therapy to Kyle since June 2005, and to Joshua and Tea since July 2005, and continued to see all three. Pranion testified to the children's behavioral and mental health problems. But Pranion testified that Lauren, the only child removed from the mother's care at birth, had no special needs.

Pranion concluded that the mother benefited only minimally from substance abuse treatment. Since August 2006, the mother had missed six drug screens, and tested positive for cocaine twice in October 2006. Pranion testified that the mother never obtained suitable housing for the children, and was now staying at two addresses. Pranion testified that she believed the mother's therapy sessions were being cancelled due to noncompliance. Pranion opined that in the long run, termination would benefit the children, because they would be able to achieve stability, and that the children needed to be able to move on, given that the case had been open for two years. Pranion opined that the mother did not earn enough money and did not have a large enough support system to be able to provide housing and proper care to the several children, especially given that most of them have special needs. Pranion testified that there were no further services that could be offered to the mother, and that her parental rights should be terminated so that the children can achieve stability.

Concerning father, Pranion testified that the agency does not offer visitation or services to putative fathers; that father never provided documentation of suitable housing or parenting classes; that there would be no harm to Lauren from termination because Lauren never had a relationship with father; that, to the contrary, Lauren would be harmed by "reunification," because bonding with father would require a huge process of adjustment and would be difficult emotionally; and that termination was in Lauren's best interests. Pranion testified that she had no contact with father; that she did not know of his plan for Lauren to be placed with the paternal grandmother, and that he had other children, who were doing well.

At the February 2, 2007, best interests hearing, father testified that his 15-year-old daughter is healthy and happy, and has no problems, and that his 14-year-old son is the same way. Father testified that he talks to those two children daily to make sure they go to school daily and do not get into drugs, and they listen to him. Father testified that his plan is for Lauren to live with him, at the paternal grandmother's house, which has six bedrooms; that he lives there with his parents and one of his brothers; that aside from himself, no one in that home has a criminal record or agency involvement.

Father further testified that if he had known how to file an affidavit of paternity sooner, he would have done so; that no one explained that he might lose his parental rights; and that he would have done whatever such a person had asked him to do. Father testified that he has helped to care for his other two children all their lives, including helping financially, using his disability benefits and money the paternal grandmother gives him. Father acknowledged that he does not work. He testified that he goes to the house of the mother of his two older children, and watches them while she works.

Father testified that he was on parole till November 2007, and attends substance abuse counseling weekly; that he has missed a few appointments with his parole counselor; that he does not have transportation; and that he missed the first psychological evaluation because he did not have a ride, and missed the second evaluation because his identification was in his mother's car. He admitted that he never visited or supported Lauren; that he initially had doubts about his paternity of Lauren, but not anymore; and that when he was in jail, he did not call the mother.

On February 9, 2007, the trial court announced its decision to terminate the parental rights of the mother and father. The court found that, given the mother's continued failure to submit to drug screens and her two positive screens, her compliance with the parent-agency

agreement had been minimal, and she had not fully benefited from the services provided; and that the mother's long history of drug abuse, problematic behaviors and instability outweighed any recent gains. The court concluded that termination of the mother's parental rights would not be clearly contrary to the best interests of the children, but rather, termination was in their best interests.

Concerning father, the court noted his failure to submit to a psychological evaluation, and that it took him 17 months to perfect paternity after being told to take action. The court noted that the father had a significant criminal history and no relationship with Lauren, and therefore, termination would have no effect on Lauren. The court concluded that the evidence did not support a finding that termination of father's parental rights would be clearly contrary to Lauren's best interests, and rather, found that termination was in Lauren's best interests.

II Law & Analysis

A Father's Claims on Appeal

Father argues that: (1) the petitioners failed to prove by a preponderance of the evidence that Lauren fell under MCL 712A.2(b), based on father's actions prior to the time he perfected paternity and thus had a legal duty to Lauren; (2) the DHS failed to comply with its statutory duties to assist father and provide him with services; (3) the trial court erred by finding that clear and convincing evidence had been presented as to the statutory ground for termination under MCL 712A.19b(3); and (4) it was not in Lauren's best interests to terminate his parental rights.

1

Father first argues that the trial court erred in asserting jurisdiction over Lauren based on actions he took before perfecting paternity, when he had no legal duty toward the child. We disagree.

The circuit court's jurisdiction in termination proceedings is derived from statutes and the constitution. *In re Hatcher*, 443 Mich 426, 433; 505 NW2d 834 (1993); see also MCL 712A.2(b)(2). To determine "whether a child falls within the juvenile court's jurisdiction," the court must make "a finding of probable cause to substantiate that the facts alleged in the petition are true and that if proven at trial would fall under subsection (b)(2)." *Id.* at 433-435. On appeal, questions of statutory interpretation are reviewed de novo, while findings of fact are reviewed for clear error. *In re Ramsey*, 229 Mich App 310, 314-315; 581 NW2d 291 (1998).

Once the family court acquires jurisdiction, it may take measures "against any adult." *In re CR*, 250 Mich App 185, 202; 646 NW2d 506 (2002), quoting former MCR 5.973(A), now MCR 3.973(A). The court need not separately ascertain whether it has jurisdiction over each parent. *In re CR*, *supra* at 202-203.

The trial court acquired jurisdiction over Lauren based on the mother's no contest plea to the allegations of the original petition. The father was present at that hearing on March 23, 2005. However, at that time he had not perfected paternity and had not been appointed counsel.

Because the court had already exercised jurisdiction over Lauren based on the mother's plea, it had no obligation to treat the September 2006 supplemental petition (seeking termination of the father's parental rights) as an original petition, or to independently determine whether it had jurisdiction over Lauren based upon the father's actions. Nonetheless, the court did so. The court found that the father's criminal history and his lack of housing at the time of Lauren's birth were sufficient for the Court to take jurisdiction under the neglect statute, MCL 712A.2(b)(1) and (2).

Because the court already had jurisdiction over Lauren, its findings concerning jurisdiction over the father were superfluous. See *In re CR*, *supra* at 202-203. Thus, this Court need not reach the issue whether a court may consider conduct by a putative father prior to perfecting paternity, as a basis for jurisdiction.

2

Next, father argues that the DHS failed to comply with its statutory duties to assist him and provide him with services. We disagree.

In termination cases, the trial court's findings of fact are reviewed for clear error, and may be set aside only if, although there may be evidence to support them, the reviewing court is left with a definite and firm conviction that a mistake has been made. MCR 3.977(J); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). Due regard is given to the trial court's special opportunity to judge the credibility of witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Questions of statutory interpretation are reviewed de novo. *In re Ramsey*, *supra* at 314-315.

In general, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2003); MCL 712A.18f; MCL 712A.19(7); see also MCL 712A.19b(5). However, these statutory provisions require that services be provided to *a parent*, not to a putative parent.

For example, MCL 712A.18f(3)(c) requires that the case service plan identify the efforts to be made by the agency to return "the child to his or her home." (Emphasis added.) MCL 712A.18f(3)(d) requires that the case service plan contain a "[s]chedule of services to be provided to the parent, child, and if the child is to be placed in foster care, the foster parent, to facilitate the child's return to his or her home or to facilitate the child's permanent placement." (Emphasis added.) MCL 712A.19(7) addresses the court's ability to order services as part of the case service plan. Lastly, MCL 712A.19b(5) states that, upon finding grounds for termination, there will be no "additional efforts for reunification of the child with the parent." (Emphasis added.)

In child protection proceedings, MCR 3.903(A)(17) defines a "parent" as "the mother, the father as defined in MCR 3.903(A)(7), or both, of the minor." Under MCR 3.903(A)(7), a "[f]ather" is a man who (1) was married to the mother at any time between the minor's conception and birth; (2) legally adopts the minor; (3) is judicially determined to be the father by order of filiation or judgment of paternity; (4) is judicially determined to have parental rights; or (5) whose paternity is established by filing of an acknowledgment of paternity in accordance with

the Acknowledgment of Parentage Act, MCL 722.1001 *et seq.*. Thus, in the present case, until father perfected legal paternity, he was not a “parent.”⁴ Therefore, father was not entitled to services before establishing paternity on August 21, 2006. However, the father argues that he was entitled to begin receiving services *after* he established legal paternity.

MCR 3.921(C) addresses a putative father’s right to notice. Here, oral notice was provided to the father at the beginning of these proceedings, and he appeared on March 23, 2005, and was determined to be the natural father, in accordance with MCR 3.921(C)(2).⁵ He was then ordered to establish legal paternity within 14 days in accordance with MCR 3.921(C)(2)(b). He failed to do so.

MCR 3.921(C)(2)(b) states that “[t]he court may extend the time [for establishing paternity] for good cause shown.” *Id.* Alternatively, MCR 3.921(C)(3)(b) provides:

(3) The court may find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights, and the right to an attorney if

* * *

(b) he appears, but fails to establish paternity within the time set by the court.

In the present case, father appeared and was instructed to perfect paternity within 14 days. He did not do so, and the case proceeded for 17 months without his participation. At any hearing during those 17 months, the court could have found that, under MCR 3.921(C)(3), father had waived all rights to further notice, and the right to an attorney. Instead, the court sent father an SCAO⁶ form notice, dated August 15, 2006, summarizing the provisions of MCR 3.921(C)(2) and (3), discussed above. On August 21, 2006, father appeared and was permitted to formally establish legal paternity.

The provisions of the court rule are clear. The court was not required to allow father to perfect paternity beyond the 14 day period, unless good cause for the delay was shown. Until August 21, 2006, when he perfected paternity, father was only a putative father, and the agency never had the goal of “reunifying” Lauren with him. We find no provision of law requiring the

⁴ The prosecutor notes that MCL 712A.18f(1)(b) allows the agency to justify its decision not to provide services before removal. However, because Lauren never lived with the father and was not removed from the father’s care, that section does not apply in this case.

⁵ The mother was never married during her pregnancy and, therefore, Lauren had no legal father. See MCR 3.903(A)(7). Thus, in March 2005, the court properly determined by a preponderance of the evidence that, based on the mother’s and father’s representations, respondent Davis was Lauren’s biological father. See *In re KH*, 469 Mich 621, 629 and n 11; 677 NW2d 800 (2004); see also MCR 3.921(C)(2)(b).

⁶ The SCAO is Michigan’s Supreme Court Administrative Office.

agency to begin to provide him with services 17 months after he was instructed to perfect paternity, when he finally chose to participate in these proceedings. An amended petition to terminate his parental rights was filed on September 12, 2006,⁷ clearly indicating that petitioner did not have “reunification” as its goal for Lauren. Services need not be provided where reunification is not intended. See MCL 712A.18f(1)(b) (agency may explain why services were not provided). Further, father was incarcerated or in inpatient drug treatment until late October 2006, and could not have participated in services. We find no record support for father’s claim that race or economic status played a role in petitioner’s decision not to provide him with services.

Father now claims that petitioner never explained what he was supposed to do. We disagree. On March 23, 2005, the court unequivocally told father to take further action, and to consult the agency regarding steps he should take. Father must take responsibility for his own failure to follow the court’s instruction. Petitioner did not breach any statutory duty.

3

Next, father argues that the trial court erred by finding that clear and convincing evidence had been presented as to the statutory ground for termination under MCL 712A.19b(3). We disagree.

The existence of a statutory ground for termination of parental rights must be proved by clear and convincing evidence. MCR 3.977(F)(1)(b) and (G)(3); *In re Miller, supra* at 344-345; see also MCL 712A.19b(1). “[T]he petitioner must provide legally admissible evidence in order to terminate the rights of the parent who was not subject to an adjudication” *In re CR, supra* at 205-206.

Father’s parental rights to Lauren were terminated under MCL 712A.19b(3)(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 age of the child.” Father argues that his conduct before establishing legal paternity should not be considered because he did not yet owe the child a legal duty. We disagree.

“Well established principles guide this Court’s statutory construction efforts. We begin our analysis by consulting the specific statutory language at issue.” *Kloian v Domino’s Pizza, LLC*, 273 Mich App 449, 458; 733 NW2d 766 (2006). “This Court gives effect to the Legislature’s intent as expressed in the statute’s terms, giving the words of the statute their plain and ordinary meaning.” *McManamon v Redford Charter Twp*, 273 Mich App 131, 135; 730 NW2d 757 (2006), citing *Willett v Waterford Charter Twp*, 271 Mich App 38, 48; 718 NW2d 386 (2006). “When the language poses no ambiguity, this Court need not look outside the statute, nor construe the statute, but need only enforce the statute as written.” *McManamon, supra* at 136. “This Court does not interpret a statute in a way that renders any statutory

⁷ The original termination petition, filed on August 10, 2006, does not mention the father and does not seek to terminate his parental rights.

language surplusage” *Id.*, citing *Pohutski v City of Allen Park*, 465 Mich 675, 684; 641 NW2d 219 (2002).

While we have not addressed this issue in a published opinion, we have held that a father’s conduct before perfecting paternity *can* provide a basis for termination. See *In re Maddox*, unpublished opinion per curiam of the Court of Appeals, issued November 22, 2005 (Docket No. 262009), slip op at 3-4. In *In re Maddox*, we stated:

Respondent McInnes makes a related argument that his parental rights should not have been terminated based on a failure to provide proper care because, as a putative father, he had no legal standing or right to care for the child. Respondent McInnes indeed lacked standing until his paternity was established, as we have noted. *In re KH, supra* at 635-636. However, as a practical matter, respondent McInnes, *even while a putative father, could have offered support or a plan for the care of the child; but he did not attempt to do so.* If respondent’s position were adopted, it would contravene the fundamental purpose of child protective proceedings by excluding from consideration a parent’s conduct, no matter how neglectful or egregious, until paternity was established. In other circumstances, specifically in the application of the anticipatory neglect doctrine, the court considers conduct that may have occurred even before the birth of the child in question. See *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). Moreover, as we have also noted, because the court’s jurisdiction is tied to the child, it is possible to terminate the parental rights of a parent who has not participated in the proceedings. *In re CR, supra* at 205.

We agree with *In re Maddox* and adhere to its reasoning. Even though father, as a mere putative father, did not yet have a legal duty to care for Lauren, he did have, as her biological father, a clear moral duty to do so, and he could and should have offered support or at least a plan to care for her. See *In re Maddox, supra*. Father should have more promptly taken steps to formally acknowledge paternity, and we hold that his failure to do so may be “used against him” as evidence of his failure to provide care and custody.

Other provisions of the Michigan statute indicate that actions of a father occurring before he perfects paternity may be considered for purposes of terminating his parental rights. The existence of statutory grounds involving siblings—such as § 19b(3)(b) (physical injuries or abuse, or sexual abuse of other children), §§ 19b(3)(i), (l), and (m) (prior termination of parental rights to other children), § 19b(3)(k) (child abuse of other children)—and certain prior convictions listed in § 19b(3)(n), indicate that termination of parental rights may be based on conduct before a child is even conceived. Thus, father’s argument has no merit.

Concerning § 19b(3)(g), there was clear and convincing evidence that father failed to provide proper care and custody for Lauren, because he did not attempt to formally establish legal paternity for the first year and a half of Lauren’s life, did not have housing when she was born, did not plan for her birth, and had a long-standing substance abuse problem. He never supported Lauren, and took no steps to determine what he needed to do to perfect paternity, visit, receive services, or be allowed to care for her. There was no bond between him and Lauren. Father had an extensive criminal history that included violent crimes. During the pendency of this case, he was jailed for a year, and in an inpatient drug treatment program for three months.

He had not yet resumed receiving disability benefits. He was totally dependent upon the grandmother for food, housing, and all other necessities. While he testified that he cared for his other children while their mother was at work, there was no evidence that he could care for a baby. In sum, the trial court did not clearly err in finding that there was clear and convincing evidence that father failed to provide proper care for Lauren, and that there was no reasonable expectation that he would be able to provide proper care within a reasonable time, considering Lauren's age.

4

Father finally argues that it was not in Lauren's best interests to terminate his parental rights. Again, we disagree.

Once a statutory ground for termination is established, "the court shall order termination of parental rights . . . unless the court finds that termination . . . is clearly not in the child's best interests." MCL 712A.19b(5). That determination is to be made upon the evidence on the whole record and is reviewed for clear error. *In re Trejo*, 462 Mich 341, 353-354, 356; 612 NW2d 407 (2000).

Although he appeared in court in March 2005, father failed to establish legal parentage until August 2006. He made no inquiries concerning paternity, placement, or visitation. Lauren has no bond with him or with any paternal relative. Father has a lengthy criminal and substance abuse history. As of the best interests hearing, in February 2007, he was still in the process of having disability benefits reinstated. Therefore, he is completely dependent upon the grandmother for housing, food, and other necessities. He failed to appear for his psychological evaluation, even though the court stressed its importance, and he had missed some appointments with his parole officer. He has two older children who were apparently doing well, but they were raised by their mother. In sum, there was no evidence tending to show that termination of father's parental rights would be detrimental to Lauren. The trial court did not clearly err in failing to find that termination of the father's parental rights would be clearly contrary to Lauren's best interests.

B Mother's Claims on Appeal

Mother argues that: (1) the statutory basis for termination was not shown by clear and convincing evidence; and (2) termination of her parental rights was not in the children's best interests.

1

The existence of a statutory ground for termination of parental rights must be proved by clear and convincing evidence. MCR 3.977(F)(1)(b) and (G)(3); *In re Miller, supra* at 344-345; see also MCL 712A.19b(1). "[T]he petitioner must provide legally admissible evidence in order to terminate the rights of the parent who was not subject to an adjudication" *In re CR, supra* at 205-206.

The mother's parental rights to all six children were terminated under MCL 712A.19b(3)(c)(i) and (3)(g):

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial disposition order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

* * *

(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 age of the child.

The mother argues that the trial court erred in finding that there was no reasonable probability that she would be able to rectify the conditions that led to the adjudication, and provide proper care to the children within a reasonable time, considering their ages. The mother explains that there was no evidence concerning how long a reasonable time would be for the different children of various ages, and therefore, the court's ruling must be set aside. We disagree.

Concerning § 19b(3)(c)(i), the conditions that brought the children into care were the mother's lack of appropriate housing, her lack of employment, and her long-standing substance abuse problem. There was some evidence that the mother had some degree of employment, first with a home health care agency, and then with Costco since approximately March 2006. However, she admittedly never obtained adequate housing. Additionally, despite the court's repeated warnings, she missed over half of her random drug screens, and according to her evaluation, she was at risk of relapsing under the stress of caring for so many children.⁸ Therefore, the trial court did not clearly err in finding that the conditions that led to the initial adjudication continued to exist.

Similarly, concerning § 19b(3)(g), failure to provide proper care, the evidence showed that while the mother maintained some employment, she continued to be unable to provide suitable housing for her children. Further, she missed approximately half of her random drug screens, even when doing so resulted in her visits being suspended, which upset the children. Thus, the trial court did not clearly err in finding that the mother failed to provide proper care.

The mother argues that the trial court erred by not individually considering the ages of her six children in evaluating the second part of these statutory grounds, i.e., whether there was a reasonable likelihood that the conditions would be rectified within a reasonable time, or whether

⁸ Also, although she claimed it was a mistake, the mother tested positive for cocaine in October 2006.

there was a reasonable expectation that she would be able to provide proper care and custody within a reasonable time, *considering the ages of the children*. We disagree.

As argued by the mother, §§ 19b(3)(c)(i) and (g) both require that the court consider the ages of the children. By the time the amended petition was filed, however, the children had been in care for nearly 19 months. The mother had made no progress in the area of housing, and had no plan for obtaining appropriate housing in the foreseeable future. Similarly, she had continued to miss drug screens, despite numerous warnings, even when her noncompliance cost her the right to visit her children, and hurt the children's feelings. Thus, even if a reasonable time were a longer time (as it might be for the older children), the trial court did not clearly err in finding that there was no reasonable likelihood that the mother would be able to resolve these problems within a reasonable time.

2

Finally, the mother argues that termination of her parental rights was not in the children's best interests. Again, we disagree.

Once a statutory ground for termination is established, "the court shall order termination of parental rights . . . unless the court finds that termination . . . is clearly not in the child's best interests." MCL 712A.19b(5). That determination is to be made upon the evidence on the whole record and is reviewed for clear error. *In re Trejo*, supra at 353-354.

All the children were in counseling, except for Lauren. Tre, Kyle, and Tea were being treated for ADHD.⁹ Kyle also had nightmares. All the children, except Lauren, had behavior problems, to varying degrees. The worker noted that the only child who did not have special needs was Lauren, who was removed from the mother's care at birth.

The mother was employed (though apparently not full-time), she benefited somewhat from parenting classes, was in treatment for her depression, and was apparently receiving counseling, albeit not faithfully. The worker also recognized that it was difficult to interact with so many children at once. However, the mother missed more than half of her drug screens, and tested positive for cocaine in March 2005, May 2005, and October 2006, and for adulterants in June 2006. She never obtained suitable housing, and did not have transportation or a driver's license.

Lauren was only somewhat bonded to the mother. The other children were very bonded to her. However, the mother's visits were suspended between October 2005, and January 2006, due to her failure to submit to drug screens, and again in July 2006, permanently. Thus, by the time of the termination hearing in February 2007, the children had not seen the mother for more than six months. The worker testified that, while the children would experience grief and loss if the mother's parental rights were terminated, they would be able to overcome that loss, with appropriate support, and would then be able to achieve stability and permanence. In sum, while termination of the mother's parental rights will undoubtedly be difficult for the children, the trial

⁹ ADHD stands for attention deficit hyperactivity disorder.

court did not clearly err in failing to find that termination of the mother's parental rights would be clearly contrary to the best interests of the children.

III Conclusions

Concerning father: (1) the trial court did not err as a matter of law in exercising jurisdiction over Lauren; (2) the DHS did not breach any statutory duties to assist father and to provide him with services; (3) the trial court did not err by finding clear and convincing evidence of statutory grounds for termination, and the actions of a dilatory father occurring before he gets around to perfecting paternity may be used against him in termination proceedings; and (4) the trial court did not err in finding that termination was in Lauren's best interests. Concerning the mother: (1) the trial court did not clearly err by finding clear and convincing evidence of statutory grounds for termination; and (2) the trial court did not clearly err in finding that termination was in the children's best interests.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood