

STATE OF MICHIGAN
IN THE CIRCUIT COURT FAMILY DIVISION
FOR THE COUNTY OF MARQUETTE

IN THE MATTER OF:

FILE NUMBER: 09-8955-NA

TREVOR HANSEN, d.o.b. 01/20/2009

ORDER REGARDING PUTATIVE FATHER

On November 12, 2010, this court entered an Order determining that there was evidence which showed by more than a preponderance that Jordan Schroeder is the biological father of Trevor Hansen. Mr. Schroeder is an inmate in a Wisconsin prison. He testified that he wanted to participate in the current child protective proceeding regarding Trevor, and requested that the court appoint an attorney to represent him.

Mr. Schroeder also testified it would be difficult for him to establish himself as Trevor's legal father because he needed \$40 to have himself added to Trevor's birth certificate. He testified he had no assets, and his income from his prison employment was minimal.

After considering Mr. Schroeder's testimony, this court extended the 14-day time period specified in MCR 3.921(D)(2)(b) to 45 days from the date of the November 12th Order. The 45-day time period expired December 27th. Mr. Schroeder failed to submit any documentation that he had established himself as Trevor's legal father.

Even if one assumes that Mr. Schroeder was unable to borrow \$40 from a friend or relative, the 32 weekdays since the order was entered should have allowed him to earn more than \$40 from his prison employment. Furthermore, this court would have accepted

an Affidavit of Parentage signed by Mr. Schroeder and Ms. Tilly, which he could have obtained for the cost of postage alone.

This court finds that Mr. Schroeder, who is the biological father of Trevor Hansen, has failed to establish himself as the legal father of Trevor Hansen within the extended time allowed to him by the court. Pursuant to MCR 3.921(D)(3), the court finds that Mr. Schroeder waives all rights to further notice of these proceedings, including notice of a hearing to terminate his parental rights.

The court further finds that, by his failure to establish himself as a legal father within the time permitted to him, he has waived the right to participate in proceedings that would have otherwise been granted under MCR 2.004. MCR 2.004(E) recites the purposes for the telephone participation. They include the right to receive adequate notice and the right to counsel.

Several recent appellate cases have discussed MCR 2.004 and its application to incarcerated fathers in child protection cases. The most significant of these is In re Mason, 486 Mich 142; 782 NW² 747 (2010). In the Mason case, the Michigan Supreme Court held that failure to comply with MCR 2.004 was one of the grounds which supported reversal of the trial court's termination of a father's parental rights.

After the Supreme Court released the Mason decisions, the Michigan Court of Appeals issued several unpublished opinions reversing terminations of the parental rights of incarcerated fathers. Some of these, particularly In re Lopez, Docket #296506, (June 22, 2010), and In re Holmes, Docket #295427 (June 17, 2010), involved fathers who were incarcerated in other states. The Holmes decision, in particular, couches the reversal in terms of a violation of the father's due process rights, citing In re Vasquez, 199 MichApp 44; 501 NW² 231; (1993), a case which was decided before the adoption of

MCR 2.004. These cases make it clear that the concept of a father's due process rights extends beyond MCR 2.004, which by its terms only applies to prisoners in the custody of the Michigan Department of Corrections. However, none of these case deals explicitly with the application of MCR 2.004 to putative fathers.

The standing of putative fathers was addressed in a different line of cases, beginning with Gerard v. Wagenmaker, 437 Mich 231; 470 NW² 372; (1991). In the subsequent case of In re CAW, 469 Mich 192; 665 NW² 475; (2003), the Supreme Court held that a putative father did not have standing to intervene in a child protective proceeding if the child had a legal father.

In re CAW did involve the interpretation of 3.921(D). When the case was remanded to the Court of Appeals, the Court of Appeals held that the putative father, in order to have standing to participate, had to show that he had a "substantial relationship" with the child. In re CAW (On Remand), 259 Mich App 181; 673 NW² 470; (2003). The Court of Appeals held that, since the putative father did not establish such a relation, he was not denied due process by being excluded from the child protective proceeding. (at p.183).

In the instant case, Jordan Schroeder has had no relationship with the child, either before or after his incarceration. The only evidence that even bears on the question is the letter he wrote to the caseworker stating that he wanted to establish a relationship with the child. Although offered an opportunity to establish himself as a legal father, he has not done so. Given these facts, this court believes that Mr. Schroeder should be excluded from further participation in these proceedings, and that such an exclusion does not deny his due process rights.

RIGHT TO COUNSEL

The statute which authorizes the right to counsel in a protective proceeding is MCL 712A.17c. Subsection (4) of that statute and MCR 3.915(B)(1) say that the court shall advise a “respondent” of his or her right to counsel. MCR 3.903 (C)(10) defines “Respondent” as among other things, a “parent”. MCR 3.903(A)(18) defines “Parent” as the mother or father, as further defined in MCR 3.903(A)(7). MCR 3.903(A)(7) defines “Father” as a legal father. The definition of “father” does not include putative fathers.

The Michigan Court of Appeals has held, in In re L.E., 278 MichApp 1; 747 NW² 883; (2008), that a trial court is permitted to find, if a putative father fails to become a legal father within the prescribed time, that he has waived not only his right to notice, but his right to an attorney. (at p.20).

For reasons stated herein,

IT IS HEREBY ORDERED:

- 1.) That Jordan Schroeder is not the “father” of Trevor Hansen as that term is defined in law and court rule;

- 2.) That Jordan Schroeder has waived his right to any further notice of these proceedings, and has waived his right to participate in any further hearings. This waiver includes the right to participate by telephone that he otherwise would have been granted by MCR 2.004 and existing case law;

3.) That Jordan Schroeder has waived his right to be represented by counsel, including court-appointed counsel, in these proceedings.

DATED:

HON. MICHAEL J. ANDEREGG P10166
Probate Court Judge