

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MERCEDECES MECHELLE
GUTIERREZ, ANASTASIA ARCOS
GUTIERREZ, SHAWN PATRICK NAWROCKI,
JR., and ASIA LYN KAISER, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY

UNPUBLISHED
August 17, 2006

Petitioner-Appellee,

v

MICHELLE GUTIERREZ,

Respondent-Appellant.

No. 266823
Macomb Circuit Court
Family Division
LC No. 2003-5576111-NA

Before: Saad, P.J., and Jansen and White, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court orders terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The three oldest children entered foster care in November 2003, at the ages of 8 1/2, 7 1/2, and 4. Respondent had left the children with her mother, but the mother was allegedly arrested, and the children were without proper care and custody. Previously, respondent was incarcerated from May 2002 to March 2003 on uttering and publishing convictions. The fourth child, Shawn, Jr., was born on November 7, 2004, and on March 15, 2005, respondent pleaded no contest to a petition to take temporary custody of Shawn. Orders of disposition were entered with regard to Mercedeces ("Cedi"), Asia, and Anastasia ("Anna") on February 3, 2004, and to Shawn on May 5, 2005.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence, except for subsection (c)(i) with regard to Shawn. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). Respondent's parent agency agreement (PAA) was adopted by the court and required visitation, parenting classes, a psychological evaluation, domestic violence counseling, individual and/or family therapy, contact with the worker, suitable housing and employment, and a substance abuse assessment, treatment, screens, and AA/NA. While respondent did comply or substantially comply with some aspects of her PAA, she fell short in several important respects. She was

incarcerated from July 2004 to June 2005 and thus unable to work on her PAA. The parenting class she completed in prison was not the equivalent of that recommended by the foster care worker. Before entering prison, respondent missed several visitations and did not provide verification of employment or attendance at individual or domestic violence counseling. The older children exhibited very disturbing behaviors in foster care. They told their therapist that respondent taught them to masturbate and steal, and used them to help with shoplifting. None had a good grasp of what a healthy family is.

The trial court reasonably looked to respondent's history and found no reasonable expectation that she could provide proper care and custody within a reasonable time, and that the children would likely be harmed in her care. Some of the conditions that brought the children into care remained unresolved, despite many months in foster care. At the time of the last hearing, respondent was working diligently to complete her PAA, but the older children, by then 10 1/2, nine, and six, had been out of her care for nearly two years and did not wish to live with her. Even if respondent were able to stay crime-free and complete the rest of her PAA, she faced an uphill battle in winning the trust of, and being able to provide a proper home for, the children.

We do find, however, that MCL 712A.19b(3)(c)(i) was not proven by clear and convincing evidence with regard to Shawn. Subsection (c)(i) requires 182 days from the initial dispositional order until termination. In the present case, disposition with regard to Shawn was May 15, 2005, and termination was October 7, 2005, or less than five months. Consequently, the trial court clearly erred in terminating respondent's parental rights to Shawn under subsection (c)(i). The other subsections were proven by clear and convincing evidence, however, and only one subsection is required to terminate parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Further, the evidence did not establish that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. The older children had no strong bond with respondent, and Shawn never lived with her. The older three children had significant problems brought on in part by respondent's unstable lifestyle and poor parenting. The children need a safe, stable, loving, permanent home, which respondent cannot provide. Consequently, the trial court did not err in its best interests ruling.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Helene N. White