

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KAYLA JEWEL HERNANDEZ
and JESSIA LYNNMARIE HERNANDEZ,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KIMBERLY POST,

Respondent-Appellant.

UNPUBLISHED

April 24, 2007

No. 273872

St. Clair Circuit Court

Family Division

LC No. 05-000424-NA

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

MEMORANDUM.

Respondent appeals as of right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g).¹ We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

The trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Thirteen months after the initial disposition, respondent had not rectified the conditions of lack of a safe and stable environment, substance abuse, and incarceration. Rather, after making some progress in obtaining housing and employment, respondent violated probation by diluting and missing drug screens and was reincarcerated at the time of the termination hearing. In addition, the evidence showed that, despite completing parenting classes and substance abuse counseling, respondent's parenting skills and decision-making did not improve, and she did not demonstrate a desire to admit or overcome her substance abuse problem. There was no reasonable expectation that respondent would become able to rectify the conditions leading to adjudication and properly parent the

¹ Petitioner also sought termination under MCL 712A.19b(3)(c)(ii). However, the trial court ultimately ordered termination under subsections (c)(i) and (g) only.

children within a reasonable time. The evidence clearly supported termination under subsections (c)(i) and (g).

After this involuntary child protective proceeding had progressed for nearly a year without respondent's cooperation toward facilitating a change of the children's custody, after respondent was incarcerated, and after the termination petition was filed, respondent indicated a desire to change full custody of the children to their father. The change of custody was effected at the termination hearing, but respondent's parental rights were terminated. Despite respondent's contention to the contrary, her untimely agreement to relinquish custody to the children's father did not transform this case from a child protective proceeding into a custody case. Nor did it constitute a rendering of proper care for the children and negate a finding in support of termination under section 19b(3)(g). Indeed, the evidence clearly showed that respondent did not seek or facilitate the change of custody until termination was imminent and ample evidence supporting termination of her parental rights had already accumulated. We recognize that the change in custody away from respondent could be a factor in determining whether termination of parental rights was clearly contrary to the children's best interests. However, petitioner was simply not obligated to pursue the less onerous remedy of change of custody instead of requesting termination.

Although custody of the minor children was changed to the children's father, the evidence as a whole still indicated that termination of respondent's parental rights was not clearly contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Kayla was old enough to be confused and distressed by respondent's inconsistent appearances and disappearances due to missed visits and lengthy periods of incarceration. As late as June 2006, and after completing services designed for rehabilitation, respondent was associating with a drug user, missing and intentionally diluting drug screens, and missing visits with the children. She did not financially contribute to the children's support at any time during the proceedings, and would be absent from their lives until released from incarceration. Respondent remained in the unrehabilitated state in which she had neglected the children and placed them in danger, and there was no reasonable likelihood that she would be rehabilitated within a reasonable time. Complete severance of contact with respondent by way of termination of parental rights was not clearly contrary to the children's best interests.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Stephen L. Borrello