

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRANDON FAIRLEY and
JAYLA FAIRLEY-OLIVER, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

GWENDOLYN D. FAIRLEY,

Respondent-Appellant,

and

JEFFREY C. OLIVER,

Respondent.

UNPUBLISHED

July 12, 2005

No. 257755

Muskegon Circuit Court

Family Division

LC No. 02-031064-NA

Before: Cooper, P.J., and Fort Hood and R.S. Gribbs*, JJ.

MEMORANDUM.

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

The trial court did not clearly err in determining that grounds for termination had been established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). Respondent-appellant initially came to the attention of petitioner in 1991, when her newborn tested positive for the presence of cocaine. This petition, involving two other children, was premised on respondent-appellant's recent arrest and her admitted drug problem. Over the course of this case, respondent-appellant progressed very well with services and apparently was successful in her battle with her substance abuse problem. However, she was not successful in staying out of prison and also demonstrated a habit to self-destruct just when reunification with the children drew near. The day before the August 1, 2002 petition was filed, respondent-appellant was arrested for domestic assault and non-aggravated assault. At the time of the August 23, 2002 adjudication, respondent-appellant was again incarcerated, this time on a charge of breaking and entering. Then, in January 2003, she was jailed for writing bad checks.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

In August 2003, she suffered a drug relapse just prior to reunification, which resulted in petitioner's request for termination. Then, in April 2004, after being given one "last chance" to reunite with her children, respondent-appellant was arrested and charged with resisting a police officer and probation violation. This last incident resulted in concurrent sentences of sixteen months for the probation violation and twelve months for the criminal conviction.

Based on this evidence, the trial court did not clearly err in finding that the adjudicating condition of respondent-appellant's incarceration continued to exist pursuant to subsection 19b(3)(c)(i). Because of her lengthy sentences, there was no reasonable likelihood that the condition could be rectified within a reasonable time considering the children's ages. Furthermore, respondent-appellant's pattern of self-destructive behavior raised the concern that she would again do something to ruin her chances of reunification even if she were released from prison in a short amount of time. This same evidence also clearly and convincingly established the termination ground set forth in subsection 19b(3)(g). Since termination was proper pursuant to these two statutory grounds, any error in basing termination upon subsection 19b(3)(j) was harmless. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Lastly, the evidence failed to establish that termination of respondent-appellant's parental rights was clearly not in the children's best interests. While testimony established the presence of a strong bond between the children and respondent-appellant, the children's need for stability and consistent care outweighed the benefit they received from the loving but unpredictable and peripheral relationship they had with respondent-appellant.

Affirmed.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Roman S. Gribbs