

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of VIN'NISHIA PAULETTE  
JACKSON, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LAKISHIA KAI WILLIAMS, CEDRICK DAVIS,  
and MARIO AVERY, a/k/a MARIO DAVIS,

Respondents,

and

VINCENT JACKSON,

Respondent-Appellant.

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In the Matter of DAJA CHAVONNE WILLIAMS,  
DAMOND ALEXANDER WILLIAMS, and  
VIN'NISHIA PAULETTE JACKSON, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LAKISHIA KAI WILLIAMS,

Respondent-Appellant,

and

VINCENT JACKSON, CEDRICK DAVIS and  
MARIO AVERY, a/k/a MARIO DAVIS,

UNPUBLISHED  
August 16, 2007

No. 275000  
Wayne Circuit Court  
Family Division  
LC No. 02-413719-NA

No. 275001  
Wayne Circuit Court  
Family Division  
LC No. 02-413719-NA

Respondents.

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Before: Meter, P.J., and Talbot and Owens, JJ.

PER CURIAM.

In Docket No. 275001, respondent Lakishia Kai Williams appeals as of right from a trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). In Docket No. 275000, respondent Vincent Jackson appeals as of right from the same order, which also terminated his parental rights to his daughter, Vin'nishia, pursuant to MCL 712A.19b(3)(a)(ii). We affirm.

I

Respondent Jackson first argues that the trial court lacked personal jurisdiction to enter an order terminating his parental rights because no one personally served him with notice of the termination hearing. Although this issue is unpreserved for appellate review, this Court nonetheless may address it because it involves a question of law and the facts necessary for our disposition are before us. *In re SZ*, 262 Mich App 560, 564; 686 NW2d 520 (2004); *In re Lang*, 236 Mich App 129, 135; 600 NW2d 646 (1999).

Our review of the record reflects that Jackson waived any objection to the trial court's exercise of personal jurisdiction. The Michigan Court Rules contemplate a waiver of alleged defects in notice:

The appearance and participation of a party at a hearing is a waiver by that party of defects in service with respect to that hearing unless objections regarding the specific defect are placed on the record. If a party appears or participates without an attorney, the court shall advise the party that the appearance and participation waives notice defects and of the party's right to seek an attorney. [MCR 3.920(G).]

On the second day of the termination hearing, Jackson appeared at the hearing with his counsel, testified, presented a second witness, and argued through counsel regarding the propriety of terminating his parental rights. At no point did he lodge any objection to an alleged defect in the service of notice of the termination hearing. Consequently, under the plain language of MCR 3.920(G), Jackson waived any alleged defect in the service of the termination hearing summons.<sup>1</sup>

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<sup>1</sup> At any rate, we note that the record contains an April 24, 2006, order authorizing substituted service by publication, the existence of which reflects the trial court's implicit determination that personal service on Jackson, who had not appeared at any hearing for some time, was impracticable. Because the record as a whole shows that the trial court found personal service impracticable, and because notice of the termination hearing was also sent to Jackson's last

(continued...)

## II

Jackson also argues that the trial court lacked clear and convincing evidence to warrant termination of his parental rights. We review for clear error a trial court's finding that a statutory ground for termination has been established by clear and convincing evidence "and, where appropriate, the court's decision regarding the child's best interest." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005) (internal quotation omitted); see also MCR 3.977(J). Clear error exists when, even though some evidence may support a finding, a review of the entire record leaves the reviewing court with the definite and firm conviction that the lower court made a mistake. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

Jackson acknowledged at the termination hearing that he knew that Vin'nishia had become a court ward shortly after her birth in September 2003 and that, since her birth nearly three years earlier, he had visited her "[n]ot very often," maybe on three or four occasions. When questioned concerning specific visitation dates, Jackson recalled that he had attended two supervised visits with Vin'nishia, once in December 2003 and the second and last time on March 24, 2004. Jackson conceded that he never paid child support for Vin'nishia, that he never sent her birthday cards, clothing, gifts, money, or toys, and that he first decided to seek custody of Vin'nishia in approximately June 2006.

Jackson's testimony alone provides clear and convincing evidence that he deserted Vin'nishia for at least two years between March 2004, the time of his last visit, and June 2006, when he purportedly determined to seek custody. This constituted a period far greater than the 91 days necessary to warrant termination under MCL 712A.19b(3)(a)(ii). *In re TM (After Remand)*, 245 Mich App 181, 193-194; 628 NW2d 570 (2001). Jackson did offer nonspecific testimony that "[respondent Williams] would let me talk to [Vin'nishia] . . . when she comes over every once in a while, but she wouldn't have a number for me" to call. However, in the absence of any specific dates on which Jackson may have spoken to Vin'nishia through Williams between March 2004 and June 2006, when he made no other outreach whatsoever, we conclude that his vague assertion fails to rebut the clear and convincing evidence that he deserted Vin'nishia for a period in excess of 91 days. *Id.* at 194.

Jackson also suggests that termination of his parental rights clearly contravened Vin'nishia's best interests.<sup>2</sup> However, in light of the testimony that Jackson made no efforts to care or provide for Vin'nishia during most of her first three years and that Vin'nishia, who had spent her entire life in foster care, needed stability, the record does not support a finding that termination of his parental rights was clearly not in the child's best interests. MCL 712A.19b(5).

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known address by certified mail, we find that this notice sufficed to confer personal jurisdiction over Jackson for the termination hearing. *In re Mayfield*, 198 Mich App 226, 231-232; 497 NW2d 578 (1993).

<sup>2</sup> Although Jackson does not raise this issue on appeal, we note that the trial court's failure to make best interests findings pursuant to MCL 712A.19b(5) does not, in our opinion, constitute an error requiring reversal or remand because Jackson did not offer any evidence or testimony that was designated as relevant to a finding concerning Vin'nishia's best interests. *In re Gazella*, 264 Mich App 668, 677-678; 692 NW2d 708 (2005).

### III

Respondent Williams likewise challenges the sufficiency of the evidence supporting the trial court's termination of her parental rights. Regarding MCL 712A.19b(3)(c)(i), more than 182 days had elapsed since the trial court entered its initial dispositional order on December 18, 2003. The trial court adjudicated the children court wards on the basis of its findings that "Damon was abused by someone in the home," which resulted in skull fractures inconsistent with Williams's explanations, and that

there were a number of people in the home and . . . the mother was at [W]ork [F]irst for much of the time, perhaps when the injury occurred. The mother was, albeit, neglectful for failing to protect and supervise the child and for failing to seek prompt medical treatment.

In the initial dispositional order, the trial court directed Williams to satisfy elements of a treatment plan including employment, individual counseling, parenting classes, psychological and psychiatric evaluations, and a "home . . . without alot [sic] of residents in the home."

At the termination hearing, the trial court astutely observed that maintaining a suitable home environment for the children had remained problematic for Williams throughout the several years that the children were in foster care. After the initial dispositional order was entered in December 2003, Williams failed to locate any suitable housing until approximately July 2005. By August 2005, Williams had occupied a three-bedroom rental house on Tyler Street in Detroit, which petitioner deemed potentially suitable when Williams obtained a refrigerator and a stove. A Lutheran Child & Family Services (LCFS) report for a review hearing in October 2005 observed that Williams's home "still needs couches, dressers, beds for all of the children, and a dinner table," and according to the LCFS report for the next hearing in January 2006, the list of furnishing necessities had dwindled to "dressers and beds for all of the children."

By the time of a February 2006 permanency planning hearing, however, the LCFS report documented the landlord's advisory that Williams owed back rent of \$575. A subsequent LCFS report noted that Williams's landlord again called the agency on February 20, 2006, reiterating his request for some payment toward back rent, which he claimed amounted to \$1,300; the report listed another call from the landlord on March 20, 2006, during which he informed the agency that Williams owed \$1,647 and that "he will start the eviction process." The landlord informed a caseworker, who advised Williams by telephone the same day, that she would have to pay over \$1,000 by early April 2006, but on April 3, 2006, the landlord phoned again to advise petitioner that he believed Williams had moved out. Williams agreed at the termination hearing that she moved out of the Tyler Street house, although she averred that she did so at a later date. She testified that, at the time of the termination hearing, she resided with a cousin, her boyfriend, and four children, where she slept on the floor.<sup>3</sup> The evidence thus indicated that, at the time of the

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<sup>3</sup> Another witness testified that Williams resided with her mother at the time of the termination hearing.

termination hearing, as when the case began in October 2002, Williams lacked appropriate housing.

Additionally, Damond's injury in October 2002 occurred after Williams had left him in her mother's supervision and when others, including Williams's sisters and a sister's boyfriend, also were present. Significantly, even when Williams subsequently obtained housing, she disclaimed that she could parent all the children by herself, and she identified her mother as an individual who would make up her social support system. For at least a couple of weeks after Williams obtained her house, her mother and a sister resided there. The testimony and other evidence reflected that Williams continued to need assistance and support to help her parent the children and that she would use her mother as part of her support system, but she never gave an adequate explanation regarding why it would be appropriate to have the children around her mother, in light of the earlier injuries to Damond.<sup>4</sup> Williams's initial lack of careful judgment concerning an appropriate caregiver for the children constituted another condition that she failed to rectify.

Regarding the likelihood that Williams might rectify these conditions within a reasonable time, for most of the long pendency of this case, Williams lacked appropriate housing. Even with assistance, such as intensive in-home services, help from LCFS, and some gifts of furniture, she could not for a significant period maintain the home and pay the rent while caring for the children. All of the children had resided in foster care for most of their lives, with the twins having lived in foster care for four years, between October 2002 and November 2006, and Vin'nishia having spent her entire life in foster care. In light of the several years the children have spent in foster care, the several years during which Williams received and participated in extensive assistance programs, and her ultimate failure to remedy the most significant conditions that originally brought the children to the trial court's attention, we conclude that no reasonable likelihood exists that Williams would rectify these conditions within a reasonable time given the children's ages.

In summary, clear and convincing evidence supports the trial court's finding that termination was warranted under § 19b(3)(c)(i). *In re Trejo*, 462 Mich 341, 357-360; 612 NW2d 407 (2000).

Williams's inability to maintain a stable physical environment for the children and her expressions of intent to rely on her mother for assistance in caring for the children also clearly and convincingly demonstrate that, without regard to intent, she failed to provide the children proper care and custody, thus justifying termination under § 19b(3)(g).<sup>5</sup> *In re Trejo, supra* at 362-363. Additionally, considering Williams's inability to provide the children proper care

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<sup>4</sup> Williams did testify at the termination hearing that she would not let her mother be around the children, but this testimony was belied by other testimony and by earlier occurrences during the pendency of the case.

<sup>5</sup> Williams's other failures to achieve the elements of her court-ordered treatment plan, for example, missing a substantial number of visits, also are "indicative of neglect." *Trejo, supra* at 360-361 n 16.

despite her participation in extensive services, the several years the children have spent in foster care, and the children's paramount interest in obtaining permanency and stability, the evidence also clearly and convincingly established the unlikelihood that she would rectify these conditions within a reasonable time considering the children's ages.

Williams lastly avers that in light of her bond with the children, termination of her parental rights clearly would contravene the children's best interests.<sup>6</sup> Williams undisputedly loved the children and shared a bond with them. However, after nearly three years of treatment and assistance, including counseling and intensive in-home services, Williams still had yet to achieve basic housing for the children or a safe support system. By all accounts, even hers, Williams could not parent all the children without assistance, and in light of her low cognition level and lack of improvement over the course of her participation in services, it is doubtful that she will make any further improvement in her parenting abilities. The children, who have lived most of their lives in foster care, need permanency as immediately as possible. Consequently, the evidence did not clearly establish that termination of Williams's parental rights was not in the children's best interests. MCL 712A.19b(5).

Affirmed.

/s/ Patrick M. Meter  
/s/ Michael J. Talbot  
/s/ Donald S. Owens

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<sup>6</sup> Like Jackson, Williams did not offer specific best interests evidence, and thus, the trial court was not obligated to make specific best interests findings. See footnote 2, *supra*. We note, however, that Williams does not raise this issue on appeal.