

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of DAWN MERCEDES WORLEY,  
MONICA WORLEY, THERESA OLIVIA  
ALEXU ESPINO, MARIEA CLARA ELENA  
ESPINO, and RAMIRO SALVADOR ESPINO,  
JR, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NICOLE RENEE WORLEY,

Respondent-Appellant,

and

RAMIRO SALVADOR ESPINO,

Respondent.

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UNPUBLISHED

May 26, 2009

No. 287706

Wayne Circuit Court

Family Division

LC No. 07-463524-NA

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

MEMORANDUM.

Respondent mother appeals as of right the trial court's order terminating her parental rights under MCL 712A.19b(3)(c)(i), (g), (h), and (n)(i). We affirm.

We review the trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court clearly erred in relying on §§ (h) and (n)(i) to terminate respondent mother's parental rights because they were not included in the petition and respondent mother did not receive adequate notice of these sections. *In re Perry*, 193 Mich App 648, 651; 484 NW2d 768 (1992). However, the error was harmless because §§ (c)(i) and (g) were established by clear and convincing evidence and only one statutory section need be established for termination. MCL 712A.19b(3).

The conditions leading to adjudication were respondent mother's substance abuse and admitted inability to care for the children, her criminal conviction and failure to comply with probation, the medical neglect of the children, and the inability of the children's guardian to care

for them. Over a year later, respondent mother still had not completed a substance abuse treatment program, was incarcerated for further failures to follow her probation, and had no ability to care for the children. Respondent mother had been in several inpatient substance abuse treatment programs during the pendency of the case and did not complete any. Further, when she was not in a treatment program she did not remain in contact with the foster care worker. Although respondent mother participated in NA and AA and claimed sobriety while in prison, this was not strong evidence of her ability to remain sober upon her release. She had not been employed or had housing for the children while this case was pending. Respondent mother should be lauded for her efforts while in prison, but she did very little before she was in prison. Although respondent mother argues that petitioner failed to make reasonable efforts toward reunification, the testimony of the foster care worker established that respondent mother did not stay in contact with petitioner when she was not in treatment.

Finally, the trial court did not clearly err in finding that petitioner established that termination was in the children's best interests. MCL 712A.19b(5). Respondent mother had not cared for the children in some time and, during the year before her incarceration, made no progress toward being able to care for the children. The older children expressed a preference for staying with their cousin with whom they were placed.

Affirmed.

/s/ Kathleen Jansen  
/s/ Joel P. Hoekstra  
/s/ Jane E. Markey