

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

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In the Matter of A.D.C., L.D.C., L.C.C., and T.E.C.,  
Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LATONYA CUTTS,

Respondent-Appellant,

and

LATONCE KATHON BENSON, MICHAEL  
THORNTON, and ALFONSO WINN, a/k/a  
ALPHONZO WINN, a/k/a ALPHONZO WYNN,

Respondents.

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UNPUBLISHED  
December 13, 2002

No. 239587  
Wayne Circuit Court  
Family Division  
LC No. 00-389065

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to her children pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), (j), and (k)(i).<sup>1</sup> We affirm in part and reverse in part. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review a trial court's decision to terminate parental rights for clear error. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one or more

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<sup>1</sup> The trial court's order also terminated the parental rights of respondent Latonce Kathon Benson, the legal father of the children, respondent Michael Thornton, the putative father of A.D.C., and respondent Alfonso Winn, the putative father of L.D.C. Benson, Thornton, and Winn have not appealed the order.

statutory grounds for termination, the court must terminate parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review the trial court's decision regarding the child's best interests for clear error. *Id.* at 356-357.

We hold the trial court did not clearly err in finding that petitioner established by clear and convincing evidence the existence of one or more statutory grounds for the termination of respondent's parental rights. The children were removed from respondent's custody because she left them unsupervised and because she appeared to be under the influence of a controlled substance. The evidence produced at the termination hearing showed that respondent had made virtually no effort to comply with the terms of the parent-agency agreement. In particular, respondent had not undergone substance abuse treatment to address her use of crack cocaine, and had not visited the children for several months. Respondent was unable to give a legitimate reason for her failure to comply with the parent-agency agreement. The failure to comply with a parent-agency agreement is evidence that return of a child to the parent could cause a substantial risk of harm to the child. MCR 5.973(C)(4)(b). Respondent's circumstances at the time of the termination hearing were essentially the same as when the children were removed from her custody.

Thus, the trial court did not clearly err in finding that termination of respondent's parental rights was warranted on the grounds that were properly listed in the petition: the conditions that led to adjudication continued to exist and were not likely to be rectified within a reasonable time, MCL 712A.19b(3)(c)(i); that respondent failed to provide proper care or custody for the children and could not be expected to do so within a reasonable time, MCL 712A.19b(3)(g); and that there was a reasonable likelihood that the children would be harmed if returned to respondent's custody, MCL 712A.19b(3)(j). Moreover, the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo*, *supra*.

However, we believe that the trial court erred in terminating respondent's parental rights pursuant to MCL 712A.19b(3)(a)(ii) and (k)(i). Respondent was never given notice that she would have to defend on those grounds. These grounds were not listed in the petition, nor was the petition amended before or during the termination hearing to include them.<sup>2</sup>

Affirmed in part and reversed in part. We do not retain jurisdiction.

/s/ Donald S. Owens  
/s/ William B. Murphy  
/s/ Mark J. Cavanagh

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<sup>2</sup> We have held that a failure to include the specific statutory basis for termination is not a violation of due process as long as facts are pleaded with sufficient specificity to give a respondent notice of the reasons that would justify termination of respondent's parental rights. *In re Slis*, 144 Mich App 678, 684; 375 NW2d 788 (1985). In the instant matter, the petition did not allege sufficient facts to put respondent on notice that petitioner would be relying on either subsection (a)(ii) and (k)(i).