

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JASZIMIN AALIYAH
IRELAND, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

STACEY IRELAND,

Respondent-Appellant,

and

MARVIN CHAPMAN,

Respondent.

UNPUBLISHED

April 1, 2004

No. 251131

Ingham Circuit Court

Family Division

LC No. 00-050578-NA

Before: Zahra, P.J., and Saad and Schuette, JJ.

MEMORANDUM.

Respondent Stacey Ireland appeals as of right from an order terminating her parental rights to Jaszimin Aaliyah Ireland, born May 2, 2003. Termination was based on MCL 712A.19b(3)(c)(i), (g), and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent's parental rights to three older children were terminated on April 29, 2003, three days before Jaszimin's birth. A fourth child was placed with respondent's mother and stepfather. When respondent was 32 weeks pregnant, she used cocaine. This constituted a probation violation and, to protect Jaszimin, respondent was jailed until she was brought to the hospital for the birth. Within a month following the birth, respondent was again using cocaine.

Respondent first argues that the court erred in relying on MCL 712A.19b(3)(c)(i). The prosecutor acknowledges this error. MCR 3.977(E)(3)(a) governs termination of rights at an initial disposition hearing. It excludes § 19b(3)(c) as a ground upon which termination may be based. However, this error was harmless since the court properly terminated rights under §§ 19b(3)(g) and (j). See *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Respondent argues that the court erred in relying on § 19b(3)(g), the failure to provide proper care or custody, since Jaszimin was never in her custody. However, Jaszimin was never in her custody because she could not provide proper care and custody. This was established by the fact that respondent came to the hospital to deliver Jaszimin directly from jail, where she had been sent to keep her from taking cocaine during her pregnancy. Respondent provides no support for the proposition that subsection (g) only applies when a parent has actually exercised custody.

Respondent also challenges the finding that Jaszimin would be harmed if returned to her home since she had not abused or neglected her other children. However, she took cocaine just weeks before the birth and used cocaine again within a month after the birth. Moreover, on April 29, 2003, her parental rights to the three older children were terminated based in part on grounds that they would likely be harmed if returned to her care due to her anger management issues. See *In re Ireland/Parlour Minors*, unpublished per curiam opinion of the Court of Appeals (Docket Nos. 249050, 249093, dec'd January 15, 2004). Thus, the trial court did not clearly err in finding that Jaszimin would likely be harmed.

Affirmed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Bill Schuette