

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of EBONY JOHNSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LATORA JOHNSON,

Respondent-Appellant.

UNPUBLISHED

August 12, 2004

No. 253645

Muskegon Circuit Court

Family Division

LC No. 02-031460-NA

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TIPRAY JONES,

Respondent-Appellant.

No. 253646

Muskegon Circuit Court

Family Division

LC No. 02-031460-NA

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

MEMORANDUM.

In these consolidated cases respondents appeal the trial court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), and (g). We affirm in each case. These appeals are 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 3.977(J); *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 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 that 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 respondents' parental rights.¹ The child was placed in foster care shortly after birth due to respondent Johnson's abuse of another child. Respondent Johnson made no attempt to contact the child after that time. Respondent Jones was incarcerated when the child was born, and during one short period of liberty visited the child on one occasion. The failure to visit or contact a child constitutes evidence of an intent to desert the child. *In re Sterling*, 162 Mich App 328, 335; 412 NW2d 284 (1987). Respondents are incarcerated, and cannot provide proper care or custody for the child. The trial court did not clearly err in finding that termination of respondents' parental rights was warranted on the grounds of desertion, MCL 712A.19b(3)(a)(ii), that the conduct that lead to the adjudication continued to exist, MCL 712A.19b(3)(c)(i), and that respondents were unable to provide proper care or custody for the child, MCL 712A.19b(3)(g). The trial court's finding regarding the child's best interests was not clearly erroneous. MCL 712A.19b(5); *Trejo, supra* at 364-365.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly

¹ We reject respondent Jones's argument that MCL 712A.19b(3)(a)(ii) is unconstitutionally vague because it does not provide fair notice of the conduct proscribed. His argument that a period of ninety-one days is insufficient to support a conclusion that a parent who failed to seek custody within that period has deserted the child is not based on vagueness, but rather states a disagreement with the Legislature's judgment that parental absence for a period of ninety-one days can constitute desertion. Respondent Jones has not overcome the presumption that the statute is constitutional. *People v Wilson*, 230 Mich App 590, 593-594; 585 NW2d 24 (1998).