

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

---

In the Matter of DAVION DAVIS and  
DEARIOUS DAVIS, Minors.

---

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

HOLLY COPE,

Respondent-Appellant,

and

DOUGLAS DAVIS,

Respondent.

---

In the Matter of ROBERT SCOTT, Minor.

---

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

HOLLY COPE,

Respondent-Appellant,

and

ROBERT SCOTT,

Respondent.

---

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

UNPUBLISHED

August 19, 2004

No. 252346

Berrien Circuit Court

Family Division

LC No. 2002-000113-NA

No. 253346

Berrien Circuit Court

Family Division

LC No. 2003-000040-NA

PER CURIAM.

In these consolidated appeals, respondent-appellant appeals from two orders, the first terminating her parental rights to the minor children Davion Davis and Dearious Davis pursuant to MCL 712A.19b(3)(c)(i) and (g), the second terminating her parental rights to the minor child Robert Scott pursuant to MCL 712A.19b(3)(c)(i), (g), and (l). We affirm.

The two older children, Davion and Dearious, came into care when respondent-appellant was arrested and incarcerated. Robert was in the care of his paternal grandmother under a power of attorney, but respondent-appellant revoked that instrument while incarcerated, leaving Robert without a suitable caregiver. Prior to her incarceration, respondent-appellant had a long-standing drug problem, and indeed tested positive for cocaine and marijuana when arrested. She had no stable housing and was moving among several residences. She had a criminal history, including possession with intent to distribute illegal substances. Respondent-appellant was subject to severe domestic violence in her relationship with the father of Davion and Dearious, to the point that she avoided prenatal care when pregnant with Dearious because of the signs of abuse on her body. During the proceedings in the instant matter, respondent-appellant was sentenced to incarceration for eighteen months to four years for conspiracy to commit unarmed robbery.

Respondent-appellant challenges the sufficiency of the evidence for termination, asserting on appeal that termination was improper because petitioner failed to provide any services directed at reunification. In general, when a child is removed from the custody of the parents, the agency is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f(1), (2), (4). However, services are not required in all situations. *In re Terry*, 240 Mich App 14, 26, n 4; 610 NW2d 563 (2000). MCL 712A.18f(1)(b) requires the agency to justify its decision not to provide services to a family. *Id.* We conclude that it is reasonable for the agency to defer services until a parent is released from incarceration. We note that, after her conviction for conspiracy to commit unarmed robbery, respondent-appellant was imprisoned in Plymouth, Michigan, a substantial distance from Berrien County where these proceedings took place. Respondent-appellant never contacted her social worker while incarcerated.

The trial court did not clearly err by finding with respect to all three children that at least one statutory ground for termination was established by clear and convincing evidence. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 364-365; 612 NW2d 407 (2000). The principal conditions that led to adjudication concerning Davion and Dearious were respondent-appellant's incarceration, her lack of stable housing, and her failure to properly care for the children, as evidenced by the fact that Dearious was ill with mucus over half his face and respondent-appellant lacked any clothing or supplies for him. The conditions of adjudication concerning Robert similarly included respondent-appellant's incarceration and the absence of any appropriate person to care for the child.

As respondent-appellant remained incarcerated at the time of both termination trials, clearly the primary condition of both adjudications continued to exist. MCL 712A.19b(3)(c)(i). Moreover, the trial court correctly found that the conditions of adjudication would not be rectified within a reasonable time considering the ages of the children. At the time of the first termination trial relating to Davion and Dearious, respondent-appellant's earliest possible release date was seven months away. Upon release she would need to carry out her parent-agency

agreement and address several substantial barriers to reunification including her history of drug use, lack of stable housing, and long-term emotional instability. A social worker testified that this process would take six months at a minimum. Even that timetable was highly uncertain since respondent-appellant had not completed a psychological and parenting assessment due to her incarceration. We cannot conclude that the trial court erred when it found that waiting thirteen months at a minimum for the possibility of reunification was an unreasonable time considering the children's ages. MCL 712A.19b(3)(c)(i). Similarly at the time of the termination trial relating to Robert, respondent-appellant was approximately five months from a possible early release, and eleven months at a minimum from being in a position to care for the minor child. Again, given the young age of the child, and as he had not seen respondent-appellant since he was two months old, the trial court properly found eleven months was too long to wait.

The trial court's termination of parental rights to all three children under MCL 712A.19b(3)(g) was also warranted by the evidence. Clearly, respondent-appellant failed to provide proper care and custody for Davion and Dearious when she became incarcerated, and for Robert when she revoked the power of attorney of his caregiver while incarcerated. The same evidence that showed there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time, considering the ages of the children, equally established that there is no reasonable likelihood that respondent-appellant will be able to provide proper care and custody for the children within a reasonable time considering their ages. MCL 712A.19b(3)(g). The trial court did not clearly err in so finding.

Respondent-appellant's parental rights to Robert were also terminated under MCL 712A.19b(3)(l). The earlier termination of parental rights to Davion and Dearious supplied the basis for this action. The trial court's action was not clearly erroneous. Respondent-appellant's contention that this result was not intended by the Legislature is defeated by the plain statutory language of subsection (l). The Legislature must have intended the language it plainly expressed, and the statute must be enforced as written. *Frasier v Model Coverall Service, Inc.*, 182 Mich App 741, 744; 453 NW2d 301 (1990). We note that subsection (l) is, however, subject to the provision of MCL 712A.19b(5), permitting the trial court to deny termination where statutory grounds have been established if "termination of parental rights to the child is clearly not in the child's best interests." *Id.*

However, no clear error appears in the trial court's best interests determinations. Robert was fifteen months old at the time of the termination trial and, having last seen respondent-appellant at two months of age, was not bonded with her. He was doing well in a foster family that wishes to adopt him. Respondent-appellant could not resume care of Robert for nearly a year. Her prospects for rehabilitation thereafter are uncertain, as she had not undergone any assessment or carried out the parent-agency agreement due to her incarceration. Under these circumstances, the trial court's determination that termination was consistent with Robert's best interests was not clearly erroneous. Similarly, Davion and Dearious are young children facing a

lengthy wait preceding even a possibility of reunification. The record indicated that both children did well in foster care, appeared happy, and made progress learning boundaries and rules. The trial court properly found that termination was not contrary to their best interests.

Affirmed.

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