

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

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In the Matter of SHIANN LEWIS, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DMARCUS LINWOOD JONES,

Respondent-Appellant,

and

KIMBERLY BOYD,

Respondent.

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UNPUBLISHED

January 3, 2008

No. 277528

Macomb Circuit Court

Family Division

LC No. 2005-5783811-NA

Before: Schuette, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Respondent<sup>1</sup> appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i), (c)(ii), (g), (h), and (j). We affirm. We decide this appeal without oral argument under MCR 7.214(E).

**I. FACTS**

On February 27, 2007, respondent's parental rights were terminated as to his daughter, Shiann Lewis. This case first came to the attention of the Department of Human Services (DHS) around September 27, 2004, because of allegations of physical abuse by Shiann's mother, Kimberly Boyd. It was also alleged that Boyd had left Shiann and her siblings with relatives without providing means of support, necessary medical information, or means of contacting Boyd, and that there was cocaine and marijuana in Boyd's residence. Shiann was placed in respondent's care, and he was given a parent-agency agreement. The parent-agency agreement

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<sup>1</sup> Respondent Kimberly Boyd is not a party to this appeal. Therefore, all references to "respondent" refer to Dmarcus Jones only.

required respondent to obtain custody of Shiann through the Friend of the Court, to take parenting classes, to participate in a psychological evaluation, to maintain employment, and to provide suitable housing.

Shiann was placed with respondent from November 2004 until February 2005. In February 2005, respondent was incarcerated for a parole violation and for intent to deliver marijuana. A second petition was filed on April 28, 2005, alleging that respondent was incarcerated and unable to provide support for Shiann. Shiann was placed in the care of her maternal aunt and her maternal grandfather. She also spent time in a residential facility to receive intensive counseling because she was acting out in the relatives' homes. At the time of the termination trial, Shiann was doing very well and was scheduled to leave the facility in three or four months.

Shiann's foster care worker testified that, to her knowledge, respondent had not complied with his parent-agency agreement. He also remained incarcerated at the time of the termination trial, with a maximum release date of February 2016. She also indicated that respondent would still have care of Shiann if he was not incarcerated and that it would make a difference if he were released next month or next year.

Respondent testified that he was currently incarcerated with the Michigan Department of Corrections. While his latest out date was February 3, 2016, he indicated that he had reason to believe he would be paroled sooner. Respondent did acknowledge that he was previously incarcerated for armed robbery and served five years, from 1999 until June 2004. He further testified that while incarcerated he had completed a pre-release class that addressed parenting. He also stated that he would still have his job as a graphic designer upon release, and he would continue to attend school at National Institute of Technology. Respondent did explain that he had telephone contact with Shiann three times per month and had written letters to her. He believed that he would be able to complete the parent-agency agreement in one month after his release.

## II. STATUTORY GROUNDS FOR TERMINATION

### A. Standard of Review

To terminate parental rights, the trial court must find that at least one statutory ground for termination in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). We review the trial court's decision for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours, supra* at 633. A decision is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made, giving due regard to the trial court's special opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

### B. Analysis

The trial court did not clearly err by finding that at least one statutory ground for termination of respondent's parental rights was established by clear and convincing evidence.

The sole condition of adjudication relating to respondent was his incarceration and inability to provide for the child. Respondent remained incarcerated at the time of the termination trial, with a maximum release date of February 3, 2016. While respondent testified that he had reason to believe that he would soon be paroled, based on an upcoming interview date and the “standard operating procedure” indicating incarceration of two years for parole violators, at the time of the termination trial his parole was speculative. Further, after his release, respondent would have to undertake a parent-agency agreement, which he had not begun to do. Given the already lengthy duration of this case, and considering the uncertainty of respondent’s future compliance with a service plan, we are not left with a firm and definite impression that the trial court made a mistake by finding that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the age of the child. MCL 712A.19b(3)(c)(i); *In re Terry*, 240 Mich App 14, 22-23; 610 NW2d 563 (2000).

The trial court also did not clearly err by finding clear and convincing evidence that respondent failed to provide proper care and custody for the minor child and that there was no reasonable likelihood that he would be able to do so within a reasonable time considering the age of the child. MCL 712A.19b(3)(g). Respondent failed to provide proper care and custody for the minor child when he violated his parole and was incarcerated and therefore unable to care for her. The same evidence indicating that there is no reasonable likelihood that the conditions of adjudication will be rectified within a reasonable time considering the child’s age, MCL 712A.19b(3)(c)(i), equally indicates that there is no reasonable likelihood that respondent will be able to provide proper care and custody for the minor child within a reasonable time considering her age. Respondent has been incarcerated and unavailable for the greater part of the child’s life; he was incarcerated from 1999 until June 2004, then from February 2005 through the time of the termination trial. His past pattern supplies further evidence to support the trial court’s conclusion that there is no reasonable likelihood that he will be able to provide proper care and custody for the child within a reasonable time considering her age.<sup>2</sup>

### III. BEST INTERESTS OF THE CHILD

#### A. Standard of Review

If the trial court determines that a statutory ground for termination has been established, the court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child’s best interests. MCL 712A.19b(5); *Trejo, supra* at 353. Again, we review the trial court’s decision for clear error. *Trejo, supra* at 356-357.

#### B. Analysis

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<sup>2</sup> We conclude that MCL 712A.19b(3)(c)(ii), (h), and (j) were inappropriate grounds for the termination of respondent’s parental rights, and we do not rely on these subsections in affirming the termination of respondent’s parental rights.

The trial court did not clearly err by finding that termination was not clearly contrary to the best interests of the child. MCL 712A.19b(5). Respondent has been imprisoned for the substantial majority of the child's life, and by violating parole during these proceedings, again made himself unavailable to care for her. After more than two years of proceedings in this matter, his ability to provide her a stable and permanent home remains unknown at best, and unlikely if past history is any indicator of future conduct. Respondent argues that termination is clearly contrary to the child's best interests because her behavioral issues may make adoption unlikely. It is not at all clear that a better outcome would be likely by continuing to work toward reunification with respondent; therefore, we are unable to say that the trial court made a mistake by finding that termination was not clearly contrary to the best interests of the child. *Terry, supra* at 22-23.

Affirmed.

/s/ Bill Schuette

/s/ Stephen L. Borrello

/s/ Elizabeth L. Gleicher