

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of KOLOREAN CHANNEL  
KERSHAW, TANISHA LESHAY DANELLE  
KERSHAW, ELIZABETH PATRIECE  
KERSHAW, and KATRINA YEVELLE  
KERSHAW, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DELVINN LEMAR SILVER,

Respondent-Appellant,

and

TRACEY DIONNE KERSHAW, BYRON  
CLEMENS, and LESTER ZEAKE LARKINS,

Respondents.

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Before: Bandstra, C.J., and Griffin and Collins, JJ.

BANDSTRA, C.J., (*dissenting*).

I would reverse the decision of the family court terminating respondent-appellant's parental rights and remand this matter for further proceedings to determine whether respondent-appellant has been released from prison and whether, on the basis of that determination, his parental rights should be terminated.

Respondent-appellant's rights were terminated under subsections (c)(i), (g), (h) and (j) of the statute. MCL 712A.19b(3)(c)(i), (g), (h), (j); MSA 27.3178(598.19b)(3)(c)(i), (g), (h), (j). Subsections (c)(i), (g) and (h) require that petitioner show that conditions justifying termination will not be rectified "within a reasonable time considering the child's age." The record shows that the family court relied, at least in part, upon respondent-appellant's continuing imprisonment

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in determining that this statutory requirement was satisfied. However, petitioner did not contact the Department of Corrections to find out when respondent-appellant was due to be released. According to respondent-appellant's attorney, his earliest possible release date was to be May, 2000, only some seven or eight months after the termination of parental rights hearing. On appeal, petitioner-appellee's attorney states that "upon information and belief, the Appellant-Father has been released from prison."

Thus, I conclude that there was no clear and convincing evidence that subsections (c)(i), (g) or (h) of the statute were established. Further, there is simply no evidence whatsoever to establish that the child would be harmed if she were returned to respondent-appellant's home, as required under subsection (j) of the statute.

/s/ Richard A. Bandstra