

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOSHUA WILLIAM
CLAYBRON, ALICIA ANAY RILEY, ASHLEY
TRANAY RILEY, and ALEXUS ALEXANDRIA
RILEY, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

PELESTINE CLAYBRON-RILEY,

Respondent-Appellant,

and

ADAM RILEY,

Respondent.

UNPUBLISHED
November 20, 2003

No. 247223
Wayne Circuit Court
Family Division
LC No. 02-408377

Before: Cooper, P.J., and Markey and Meter, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (h). We conditionally affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I), now MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent-appellant's inability to provide proper care or custody for the children was the condition leading to adjudication, and because she would remain incarcerated until at least 2019, she would be unable to rectify that condition within a reasonable time. Contrary to respondent-appellant's argument, she was unable to provide custody for the children within a reasonable time; her custodial plan that the children reside with relatives was not realized because relatives did not affirmatively step forward to undertake that responsibility, or remained unsuitable, after being contacted by petitioner.

Further, termination of respondent-appellant's parental rights was not contrary to the children's best interests because respondent-appellant would not be available to care for them until they had attained adulthood, and their needs were being well met in foster care.

Respondent-appellant additionally argues that the trial court lacked jurisdiction because petitioner failed to provide notices required by the Indian Child Welfare Act (ICWA), 25 USC §1912(a), and that the trial court's order terminating her parental rights should be vacated. The fact that respondent-appellant asserted that the children may have some Indian heritage was sufficient to trigger the notice requirements of the ICWA. *In re IEM*, 233 Mich App 438, 446-447; 592 NW2d 751 (1999). Petitioner erred in failing to provide notice to any agency or tribe. However, in a case such as this where the trial court otherwise properly terminated respondent-appellant's parental rights and there has not been a determination that the ICWA applies, the proper remedy is not necessarily invalidation of the trial court's order but remand so that proper notice may be ordered. *In re IEM, supra* at 449-450.

The trial court's order terminating respondent-appellant's parental rights is conditionally affirmed, and this case is remanded for the purpose of providing notice in accordance with the Indian Child Welfare Act, §25 USC 1912(a). We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ Jane E. Markey
/s/ Patrick M. Meter