

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CHRISTOPHER LASHEA
GOLIGHTLY, JR., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHRISTOPHER L. GOLIGHTLY, SR.,

Respondent-Appellant,

and

KELLI SHERISE HUNT, a/k/a KELLI SHERISE
BROWN,

Respondent.

UNPUBLISHED

March 16, 2004

No. 248304

Wayne Circuit Court

Family Division

LC No. 99-382626

Before: Griffin, P.J., and White and Donofrio, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the circuit court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We conditionally affirm.

The circuit court did not clearly err in determining that at least one statutory ground for termination was 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). The condition leading to adjudication was the parents' lack of a satisfactory explanation for the severe brain damage, blindness and other injuries the child suffered when severely shaken by an unknown perpetrator, which resulted in permanent, severe medical conditions that require round-the-clock monitoring. The condition to be rectified was not the child's injury, which would never be remedied, but respondent-appellant's inability to properly care for a child with such extreme medical needs and deficits, who requires constant monitoring.

Respondent-appellant complied in large part with his parent agency agreement but did not show the extraordinary level of maturity and stability that the minor child required for survival. Respondent did not maintain his own housing, rather he had lived with his mother and an aunt, he did not have stable employment, and he tested positive for marijuana. His social history revealed two suicide attempts and some anger management issues. The proper statutory subsection for termination was §19b(3)(c)(ii) instead of (c)(i), but the parties were well aware of the basis for the termination.

The circuit court also properly terminated respondent-appellant's parental rights under §§19b(3)(g) and (j). Respondent-appellant was not the perpetrator of the child's abuse, but was unable to provide proper care or custody for such a medically-fragile and vulnerable child. Given respondent-appellant's incapacity to provide the high level of stability and constant care required by the child, the child would likely suffer harm in his custody.

Further, the evidence did not show that termination of respondent-appellant's parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Although respondent-appellant was extremely emotionally attached to the minor child, visited the child consistently for three years, and had a strong bond with his son, the evidence did not show that termination of respondent-appellant's parental rights would be clearly contrary to the child's best interests. The child had resided with his foster parents for the duration of his wardship and did as well as he could possibly do in their care. The foster parents expressed an interest in adopting the child. Although respondent-appellant argued for long-term foster care instead of termination of parental rights, the statute requires termination to provide the child with a permanent home.

Respondent also argues that this case should be remanded to the trial court for provision of notice under the Indian Child Welfare Act (ICWA), 25 USC §1912(a). The circuit court failed to inquire regarding the child's or his parents' possible Indian heritage at the preliminary hearing, or at subsequent hearings, after a Clinic for Child Study revealed that both parents had possible Indian ancestry. That the Clinic for Child Study indicated that the minor child may have 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). Failure to provide notice was error. However, in a case such as this, where the circuit 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 court's order but remand for proper notice. *In re IEM*, *supra* at 449-450.

The circuit 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 ICWA. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Helene N. White
/s/ Pat M. Donofrio