

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CIERRA RENE SMITH, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

HENRY SMITH,

Respondent-Appellant,

and

CONNIE JACKSON,

Respondent.

UNPUBLISHED
June 24, 2004

No. 251856
Wayne Circuit Court
Family Division
LC No. 99-381899

In the Matter of CIERRA RENE SMITH, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CONNIE JACKSON,

Respondent-Appellant,

and

HENRY SMITH,

Appellant.

No. 251925
Wayne Circuit Court
Family Division
LC No. 99-381899

Before: Griffin, P.J., and Cavanagh and Fort Hood, JJ.

MEMORANDUM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (g). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The conditions that led to adjudication were respondent-mother's substance abuse and lack of housing and respondent-father's failure to establish paternity and plan for his daughter. The evidence clearly and convincingly demonstrated that respondents failed to comply fully with the parent-agency agreement. After more than four years of intervention, respondents never reached a point where they could parent their child with consistency and stability. At the time of termination, respondent-mother was unable to demonstrate that she was living a drug-free lifestyle. Further, she lacked housing and employment. Similarly, respondent-father failed to participate in services and attend visitation for three of the four years his daughter was in care. He refused to submit regularly to random drug screens, and he failed to demonstrate that he possessed suitable housing and a legal source of income. Because respondents did not participate in and/or benefit from the services offered, the conditions that led to adjudication continued to exist at the time of termination, and there was no reasonable likelihood that the conditions would be rectified within a reasonable time. For similar reasons, there was clear and convincing evidence that respondents failed to provide proper care and custody for their daughter and would be unable to do so within a reasonable time. Further, the evidence did not show that termination of respondents' 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).

Respondent-mother additionally argues that she was denied a fair trial when her substitute counsel, who appeared on her behalf at one permanency planning hearing, was appointed nearly eighteen months later to represent the minor child. The attorney appeared at four hearings on behalf of the minor child, including the permanent custody hearing. Respondent did not object in the trial court to the attorney's representation of the child and has not argued on appeal that the attorney relied on any privileged information obtained from respondent or that the representation otherwise prejudiced respondent in any way.¹ This Court has previously interpreted an opinion from our Supreme Court to hold that "a plain error regarding a conflict of interest of counsel falls within the category of error for which prejudice must be proved before reversal may be ordered." *In re Osborne (On Remand, After Remand)*, 237 Mich App 597, 603; 603 NW2d 824 (2000). Because no prejudice has been established, respondent's claim of error does not require reversal.

¹ Respondent states in her brief, "The ethical violation may have been unintended, there may be no record evidence that counsel for the child was aware of her actual conflict of interest, and there is no evidence to prove that counsel for the child relied on any privileged information obtained from her former client."

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Karen M. Fort Hood