

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JAYLA FAIRLEY-OLIVER,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JEFFREY C. OLIVER,

Respondent-Appellant,

and

GWENDOLYN FAIRLEY,

Respondent.

UNPUBLISHED
September 23, 2004

No. 255230
Muskegon Circuit Court
Family Division
LC No. 02-031064-NA

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent argues that there was not clear and convincing evidence that he failed to provide proper care and custody of the child. He notes that the child was placed with a relative when she was made a ward of the court and asserts that he might have made the same arrangement of his own accord. However, respondent did not take this initiative. Since he and the child's mother had substance abuse problems, were incarcerated at the time the petition was filed, and had not made suitable arrangements for the child, the child was without proper care and custody within the meaning of MCL 712A.19b(3)(g).

Respondent further argues that there was not clear and convincing evidence that he would be unable to rectify his living situation and provide proper care and custody within a reasonable time. The determination of what is a reasonable time properly includes both how long it will take for the parent to improve conditions and how long the child can wait for the improvement. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991). Defendant believed he would be released from prison in six months to one year, would become successfully employed

upon release, and that he and his daughter could live with his mother until he found a place of his own. Further, he argues that petitioner did not establish how often he was using cocaine during the pendency of the proceedings, and that if the positive tests for cocaine showed only that he was using cocaine occasionally, “it could mean that he is successfully being rehabilitated.”

We find no clear error in the trial court’s determination that respondent would not be able to rectify the conditions that led to the adjudication or provide proper care and custody within a reasonable time. First, if respondent’s positive tests for cocaine were only occasional, it does not follow that he was “successfully being rehabilitated.” To the contrary, the positive drops, even if occasional, would support the conclusion that the prospects for providing proper care and custody were questionable. Moreover, presuming that upon his release from prison he and the child could stay with his mother, his substance abuse problem was addressed, and he could support the child, the evidence indicated that his sentence was for one to eight years, to be served consecutively to a sentence that would conclude in May 2004. Even if he was released in May 2005, it was improbable that he would be able to immediately resume care of the child given his track record, including his substance abuse problem and repeated incarcerations. Since the child was two years old when she was taken into custody and would be five years old at respondent’s earliest possible release date, the trial court properly found that the situation would not change within a reasonable time.

Finally, respondent asserts that there was no evidence presented to establish that termination would be in the child’s best interests. However, once the statutory grounds were established, the trial court had to “issue an order terminating parental rights unless there exist[ed] clear evidence, on the whole record, that termination [wa]s not in the child’s best interests.” *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000); MCL 712A.19b(5). Based on the record as a whole, the trial court properly found that there was no clear evidence showing that termination would not be in the child’s best interests.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood