

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DIVINITY BERKEL, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROBYN BERKEL,

Respondent-Appellant,

and

NICKEY M. NICOLLS,

Respondent.

UNPUBLISHED
December 16, 2004

No. 254991
Kalamazoo Circuit Court
Family Division
LC No. 01-000029-NA

In the Matter of DIVINITY BERKEL, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

NICKEY M. NICOLLS,

Respondent-Appellant,

and

ROBYN BERKEL,

Respondent.

No. 255020
Kalamazoo Circuit Court
Family Division
LC No. 01-000029-NA

Before: Hoekstra, P.J., and Griffin and Borrello, JJ.

PER CURIAM.

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) and 25 USC 1912(f). We affirm.

The minor child entered foster care early in 2001, based on respondent mother's homelessness and inability to care for the child. The adjudication took place with respect to respondent mother alone, because respondent father's paternity had not then been established. Despite this, we reject respondent father's argument that he was not a "respondent" within the meaning of MCL 712A.19b(3)(c)(i). See MCR 3.903(C)(10); MCR 3.977(B); *In re CR*, 250 Mich App 185, 207; 646 NW2d 506 (2002). After his paternity was shown, he became a "respondent" in the proceedings and, thereafter, more than 180 days elapsed before termination of his parental rights. Long before this, his name was on the petition, and he received notice as a putative father. FIA suggested he get a paternity test, but he did not do so.

In any event, even if subsection (c)(i) is inapplicable to respondent father, sufficient evidence was presented to terminate his parental rights under subsection (g). Only one statutory ground need be proven to terminate parental rights. *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999). Respondent father was unable to provide proper care and custody for the child because of his incarceration. He had a severe alcohol problem and extensive criminal record and, during the pendency of the case, committed an assault on a family member and his third OUIL (operating under the influence of liquor) offense. While he did undertake an intensive substance abuse program in prison and was scheduled to be released soon after the hearing,¹ his past behavior was the best predictor of his future parenting ability. We find no clear error in the trial court's decision. *Id.*

Similarly, with respect to respondent mother, the evidence clearly and convincingly showed that the conditions of adjudication had not changed, and that she failed to provide proper care and custody and would be unable to do so within a reasonable time. A parent's failure to carry out a parent-agency agreement is evidence of the parent's failure to provide proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Respondent mother lived in more than twelve different places while the case was pending. She was usually unemployed, did not visit the child with any regularity, and did virtually nothing on her parent-agency agreement until after the termination petition was filed. She failed to correct the conditions necessitating adjudication. At the time of the final hearing, respondent was unemployed and living with a married man in the Detroit area. She, like respondent father, had no bond with the child. The evidence was sufficient to terminate her parental rights under subsections (c)(i) and (g).

The above evidence, plus the testimony of expert Native American witnesses, also proved beyond a reasonable doubt that serious emotional or physical harm would result if the minor

¹ The appellate brief of respondent Nicolls represents that "Mr. Nicolls would be released on April 8, 2004."

child were returned to the custody of either respondent. 25 USC 1912(f); *In re Kreft*, 148 Mich App 682, 695; 384 NW2d 843 (1986). Respondent father's long-standing substance abuse problem and criminal history, and respondent mother's failure to follow through or improve sufficiently, despite numerous services, satisfied petitioner's burden under the Indian Child Welfare Act. We further conclude that petitioner did attempt to provide respondent father with remedial services and rehabilitative programs as required by 25 USC 1912(d).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello