

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WILLIAM AARON MILLER,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHAWN MICHELLE ALLEN,

Respondent-Appellant.

UNPUBLISHED

January 28, 2010

No. 292360

Wayne Circuit Court

Family Division

LC No. 08-477449

Before: Donofrio, P.J., and Meter and Murray, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care or custody), (j) (reasonable likelihood child would be harmed if returned to care of parent), and possibly (h) (parent imprisoned such as to deprive child of a normal home in excess of two years) and (n)(i) (parent convicted of crime such that continuing relationship would be harmful to child). Because termination of respondent's parental rights was supported by clear and convincing evidence under MCL 712A.19b(3)(c)(i), (g), (j), and (n)(i); and, sufficient evidence was presented that termination of respondent's parental rights was in the best interest of the minor child, we affirm.

Initially we point out that the statutory provisions cited by the referee in its report and recommendation in support of termination of respondent's parental rights were more expansive than those referenced from the bench, where the court cited only sections §§19b(3)(c)(i), (g), and (j). On review of the record, we conclude that reliance on section §19b(3)(h) would have been error because there was not clear and convincing evidence that respondent's incarceration would necessarily deprive the minor child of a normal home in excess of two years. Nevertheless, we find no clear error in the termination of respondent's parental rights under §§19b(3)(c)(i), (g), (j), or (n)(i), and only one statutory ground need be established by clear and convincing evidence to order termination. *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000).

The conditions that led to adjudication, primarily respondent's arrest and conviction for third-degree criminal sexual conduct involving a 15-year-old minor, MCL 750.520d, continued to exist and there was no reasonable likelihood that respondent would be able to rectify the

conditions within a reasonable time given the age of the child. Respondent failed to provide proper care or custody of the child while incarcerated where all four potential relative placements proved unsuitable. The nature of respondent's conviction and history of drug use and dishonesty demonstrated that the child would likely be harmed if returned to her care.

Respondent was a member of an Indian tribe, and before termination of her parental rights could be ordered, the court was required to find evidence beyond a reasonable doubt that continued custody of the child by respondent was likely to result in serious emotional or physical harm to the child under the Indian Child Welfare Act, 25 USC 1912(f). Expert testimony was presented that respondent's conduct violated the norms and customs of the Chippewa Tribe and that continued custody was likely to result in serious emotional harm to the child. Accordingly, the court did not clearly err in finding that termination was in the best interest of the child.

Affirmed.

/s/ Pat M. Donofrio

/s/ Patrick M. Meter

/s/ Christopher M. Murray