

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of C.R.H., M.L.H., and R.M.H.,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

UNPUBLISHED
February 10, 2005

v

MICHELLE HENDERSON,

Respondent-Appellant,

No. 254682
Wayne Circuit Court
Family Division
LC No. 00-391514-NA

and

VERNON HENDERSON,

Respondent.

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

MEMORANDUM.

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

The trial court did not clearly err in determining that at least one statutory ground for termination was established by clear and convincing evidence. MCR 3.977(J); *In re Sours Minors*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). Because the children were initially taken into the court's custody following sexual abuse allegations that did not involve respondent-appellant and occurred when the children were not in her care, and respondent-appellant substantially completed the requirements of the initial court-ordered treatment plan, the trial court clearly erred in terminating respondent-appellant's parental rights under § 19b(3)(c)(i). However, this error was harmless where evidence of respondent-appellant's continued drug use, which came to light after the initial adjudication, supported termination of respondent-appellant's parental rights under §§ 19b(3)(c)(ii), (g), and (j). MCR 3.977(G)(3); *In re Miller*, 433 Mich

331, 337; 445 NW2d 161 (1989); *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Respondent-appellant's argument that the court's mistaken belief that C.R.H. was only two years old rather than eleven at the time of the termination trial constitutes clear error requiring reversal is without merit where the court's order indicated C.R.H.'s correct birth date and where the court also terminated the respondent's parental rights to M.L.H. who was only a year younger and, therefore, similarly situated to C.R.H.

Furthermore, the evidence did not show that termination of respondent-appellant's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Although it was clear that respondent-appellant loved her children and that she and they were bonded, respondent-appellant continued to test positive for cocaine and did not comply with her treatment program. Additionally, after the children were removed from her care, she was convicted of retail fraud based on a shoplifting episode. Thus, the trial court did not err in terminating respondent-appellant's parental rights to the children.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh

/s/ Stephen L. Borrello