

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of STEVEN JOSEPH REGINEK and
JACOB SETH REGINEK, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

STEVEN REGINEK,

Respondent-Appellant,

and

CYNTHIA GIBBISH,

Respondent.

UNPUBLISHED

April 14, 2005

No. 257167

Oakland Circuit Court

Family Division

LC No. 99-628121-NA

In the Matter of JORDAN DENNIS GIBBISH,
VALINCIA JASMIN GIBBISH, JOSHUA CLYDE
EDMONDS, STEVEN JOSEPH REGINEK, and
JACOB SETH REGINEK, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CYNTHIA GIBBISH,

Respondent-Appellant,

and

DONALD NASH, STEVEN REGINEK, and
CLYDE EDMONDS,

Respondents.

No. 257227

Oakland Circuit Court

Family Division

LC No. 99-628121-NA

Before: Whitbeck, C.J., and Zahra and Owens, JJ.

PER CURIAM.

I. Overview

In these consolidated appeals, respondents Steven Reginek and Cynthia Gibbish appeal as of right from the July 29, 2004, order terminating their parental rights to their minor children. The trial court terminated Reginek's parental rights to his two children, Steven Joseph Reginek (d/o/b 9/9/1994) and Jacob Seth Reginek (d/o/b 9/18/2001), pursuant to MCL 712A.19b(3)(b)(i) (parent sexually abused child or child's sibling, and abuse is likely to recur), (c)(i) (failure to rectify the conditions that led to adjudication), (g) (failure to provide proper care and custody) and (j) (likelihood children will be harmed if returned to parent's care). The trial court terminated Gibbish's parental rights to Steven, Jacob, and her three other children, Jordan Dennis Gibbish (d/o/b 10/8/1987), Valincia Jasmin Gibbish (d/o/b 6/23/1989), and Joshua Clyde Edmonds (d/o/b 4/12/1991), pursuant to MCL 712A.19b(3)(c)(i), (g) and (j).¹ We affirm.

II. Basic Facts And Procedural History

A. Pre-1999 cases

Gibbish and Reginek have an extensive history with the FIA. In 1986, Gibbish's five-month-old son, Chad, was placed with the FIA after she told the police that she did not want to care for him. Three months later, Gibbish voluntarily relinquished her parental rights to Chad. In 1988, Jordan was placed in foster care after Gibbish failed to provide a proper home and left him unsupervised in a wading pool when he was less than a year old. Jordan was returned to her care the following year. In 1989, Jordan and Valincia were placed in foster care because Gibbish had no home and no income. They were returned to her care in 1991. Gibbish believed that the children were physically and sexually abused while in foster care, and the FIA and the trial court agreed that this belief may have been warranted.

In the early 1990s, Gibbish became involved with Reginek, and their first child together, Steven, was born in 1994. In 1995, when Gibbish was living with Reginek, Jordan, Valincia, Joshua, and Steven, the FIA sought temporary wardship of the children, alleging that Reginek had sexually abused Valincia, and that Gibbish's mental illness prevented her from protecting and caring for the children. Gibbish and Reginek entered no contest pleas to the temporary wardship petition. The trial court ordered Gibbish to attend individual and family therapy, and Reginek to attend sex offender treatment. In November 1997, the trial court terminated jurisdiction because it determined that Gibbish had made sufficient progress in managing her mental illness, and she was no longer involved with Reginek. Reginek continued to have contact with his son, Steven. The FIA continued to monitor the family until 1998, when the file was closed. After the file was closed, Gibbish and Reginek reconciled and married.

¹ The trial court also terminated the parental rights of Donald Nash (Jordan's father) and Clyde Edmonds (Valincia and Joshua's father), but they have not appealed. Nash and Edmonds were incarcerated on separate murder charges throughout the pendency of this case.

B. The 1999 Case

In 1999, the FIA sought permanent wardship of the children after Gibbish forcibly removed Steven from his kindergarten classroom and loudly accused the principal of molesting her children. The principal called the police, and while waiting for them to arrive, Gibbish made bizarre statements to the effect that she had to get away from the evil people in black, and that she rented her house from her brother, who was also the Lord. Gibbish was hospitalized pursuant to a seventy-two hour commitment procedure.

The children were removed from Gibbish's and Reginek's care. The children told a social worker that Reginek was living in the home, and that they had been instructed not to tell anyone about this. They reported that Gibbish was "sick," and that it was "scary" when she did not take her medication. They related how Gibbish frightened them by standing on their toy box and talking about the end of the world, among other incidents.

Valincia reported that Reginek fondled her breasts and vagina when she was in the first grade, and also more recently. The FIA learned that Reginek had been terminated from his required sex offender treatment program for failure to cooperate. In March 2000, Reginek was charged with two counts of second-degree criminal sexual conduct against Valincia, but the prosecutor dismissed the charges. According to the FIA, this was because Gibbish influenced Valincia not to testify against Reginek.

At the bench trial on the adjudication, Steven's principal testified about his encounter with Gibbish at the school, and a police officer testified about a 1998 incident in which Gibbish was running around naked on her front lawn screaming that the devil was inside her, all of her children had been molested, and one of her children had been sacrificed to Satan. Gibbish was briefly committed to a hospital after this incident, and Reginek stayed at home with the children. This incident did not prompt a Protective Service referral.

The foster care worker from the 1995-1997 case testified that the parent-agency agreement required Reginek and Gibbish to attend sex-offender therapy to resolve issues relating to Reginek's abuse of Valincia. However, Gibbish's compliance was "marginal," and Reginek failed to attend. The worker testified that she remained concerned for the children's safety when the case was dismissed, because she anticipated that Gibbish would renew her relationship with Reginek and fail to protect Valincia.

Jordan's special education teacher testified that Gibbish was conscientious about attending meetings for Jordan's educational planning, and she made efforts to learn about the program and Jordan's teachers. Diane Schatzman, whose son was a friend of Joshua's, stated that she often drove Gibbish's children to school, and they were always well behaved, cheerful, and prepared for the school day. Schatzman described Gibbish as a good mother who used appropriate discipline when necessary and kept the children healthy and happy. Gibbish's friend Ronald Lockhart testified that Gibbish was always appropriate and nurturing with her children and provided well for them, and that he never saw any erratic behavior or signs of mental illness.

The trial court did not find clear and convincing evidence that Gibbish's and Reginek's parental rights should be terminated, but it did find that Gibbish and Reginek had several deficiencies that needed to be resolved, and it expressed disappointment that the previous case

had been closed despite the fact that Gibbish and Reginek had not addressed their problems. The trial court questioned why Gibbish would marry Reginek after he abused Valincia, and noted that the foster care worker had predicted that Gibbish would fail to protect Valincia from contact with him. Despite its misgivings, the trial court ordered reunification efforts.

The FIA arranged for Gibbish, Reginek, Jordan, and Valincia to undergo individual and family therapy. By the time of the April 2001 hearing, the FIA and the trial court believed Gibbish and Reginek were making good progress, and allowed them to have an extended visit with the children. Steven, and later Jordan and Joshua, were returned home in the following months. The FIA delayed Valincia's return home because needed more time to resolve her behavioral problems before being reintegrated into the family.

At the November 2001 hearing, the FIA reported that all of the children were home, the family was involved in therapy, and Gibbish and Reginek were coping well with the return of the children and the arrival of their new baby, Jacob. The FIA advocated dismissing the case, and the trial court did so. The FIA indicated, however, that Jordan continued to have emotional problems, and that he might need residential treatment in the future. Neither the FIA nor the trial court expressed concern that Reginek's presence in the home posed any danger to Valincia.

C. The Case At Bar

The case at bar began in April 2002, when Gibbish found herself unable to handle Valincia's behavioral problems. Gibbish sent Valincia to stay with out-of-state relatives, but they could not handle her either, and sent her back after two weeks. Gibbish then sent Valincia to a two-week program at a crisis center. Protective Services was notified when Gibbish refused to pick Valincia up from the program when it ended, and that Gibbish had said, with respect to Valincia, "I'm going to kill this child. . . . I think I will do the bathtub routine. I really wouldn't do it but she's killing me. I don't have a life."

When Protective Services worker Nancy Keller arrived to investigate, Gibbish admitted that she could not manage Valincia, and explained that she told the crisis center that she wanted Valincia placed in a private residential program for troubled children. The Protective Services worker found that Gibbish had made the statement about killing Valincia only to express desperation, and that she quickly said, "I don't mean it" and "I need to get help" after making it. Gibbish declined Keller's advice to consult the Easter Seals program because it began with outpatient treatment, and she wanted immediate inpatient treatment for Valincia. On April 12, 2002, Gibbish sent Valincia to live with Gibbish's friend Margo Brabant, and tried to arrange for Brabant to become Valincia's guardian.

Gibbish said she was able to manage the other children, although she had been having problems finding a suitable educational setting for Jordan, who had been out of school since Gibbish withdrew him from his special education program. Gibbish disapproved of the program's use of a glass-enclosed "time out" room, and she believed the other students were a bad influence. After the public school authorities could not find a program that served Jordan's needs, Gibbish arranged to enroll him in a program that Keller had suggested.

Gibbish had not been on medication since she became pregnant with Jacob, and she did not want to go back on medication because it made her too sleepy to care for her five children.

On one occasion, during an argument, Reginek tried to force medication into her mouth, and Gibbish called the police. Reginek was arrested for domestic violence but was freed on bond, under the condition that he not go to the home. Reginek was subsequently placed on probation for the offense and required to attend domestic violence counseling.

At a preliminary hearing to determine the children's placement pending the adjudication hearing, Keller testified that she believed Valincia was at risk of harm if she stayed in the home, but did not believe that the other children should be removed. Keller believed that if Valincia were placed in an appropriate setting, Gibbish would be able to manage the family's needs with the help of in-home services. Keller stated that Gibbish's plan to arrange a guardianship for Valincia deserved further consideration.

The trial court found probable cause to authorize the petition. The trial court disagreed with Keller's assessment that Valincia was the only child at risk, finding that the domestic violence, Gibbish's mental illness history, and the family's lengthy history with the FIA put all the children at risk. However, the trial court placed the children with the FIA and gave the FIA discretion to leave the boys in the home if they believed it was appropriate. The trial court stated that too little was known about Margo Brabant to determine if she would be an appropriate guardian for Valincia, and instead placed Valincia in Shelter Care.

Gibbish entered a plea of admission, acknowledging that she had been unable to handle Valincia and had placed her with a friend. Reginek stipulated to the police report and entered a no contest plea. The trial court ordered Gibbish and Reginek to cooperate with the Judson family therapy programs. Caseworker Velma Coleman arranged for Gibbish and Reginek to receive family reunification services from the Judson Center, but the Judson Center refused to work with them after Reginek was abusive to a worker over the telephone.

Between October 2002 and May 2003, the FIA reported that Jordan's and Valincia's problems were worsening, that Gibbish and Reginek were not benefiting from therapy, and that their home was becoming increasingly unfit for the children. When the FIA discovered that Gibbish had placed Jordan in a program called Promise Village, it arranged for the trial court to temporarily release Jordan from its jurisdiction so that Gibbish could keep him enrolled there. However, Jordan was later terminated from the program and returned to Gibbish's home. At the March 2003 hearing, the FIA reported that Jordan had been hospitalized for depression, and when he was discharged, Gibbish refused to pick him up. The trial court reasserted jurisdiction over Jordan, and he was placed in a residential program.

At the October 2002 hearing, the FIA indicated that there had been "a lot of chaos in the month of August," but the chaos had lessened. In August, Joshua had called his former foster parents, the Hoags, and told them that he felt unsafe in the home because Reginek was hitting him. Joshua stayed with the Hoags for a week, but then returned home because the FIA had not authorized his removal.

Valincia had been placed in a foster home, but she was disobedient, stole things at home and at school, and failed all her classes. Valincia was charged as a juvenile with larceny in a building after stealing shoes from a school locker, but the charge was dismissed with a warning so the trial court could continue to treat her as a neglect ward rather than a delinquency ward. The FIA placed Valincia in the Crossroads residential program in November 2002; however,

while in the program, Valincia was suspended from school four times. She had recently been prescribed medication for bipolar symptoms. Valincia expressed agitation that Gibbish never came to visit her despite regularly promising to do so. The Crossroads program eventually terminated Valincia after she was charged as a juvenile with assault and placed in a lockup facility. The trial court again agreed to accept a plea and dismiss Valincia with a warning so she could be placed “in the most benign setting.” The FIA placed Valincia at a highly structured facility that provided schooling and counseling. The FIA later reported that she was adjusting well to the program.

Joshua, Steven, and Jacob remained with Gibbish and Reginek until May 2003. During this period, no major problems were reported with Steven or Jacob, but Joshua exhibited worsening academic and anger problems, and Gibbish entered him in a youth assistance program. Reginek had left the home after the domestic violence incident in the spring of 2002, but he and Gibbish reunited later in the summer. Reginek began participating in a father’s group that covered parenting and anger management issues, and he and Gibbish attended marriage counseling.

At the January 2003 hearing (which neither respondent attended), the FIA expressed concern that Gibbish’s and Reginek’s relationship was “extremely chaotic.” The FIA believed that Gibbish was doing the best she could for the children, but Reginek was not helping. Although Reginek had completed his psychological evaluation, was complying with his probation, and was attending the father’s group, he would sometimes cut the phone line and deny Gibbish access to the car. Gibbish had realized that her relationship with Reginek was not healthy, but she could not afford legal services for a divorce. The trial court criticized Gibbish and Reginek for their apparent loss of interest in reunification, commenting that “this family’s been in and out of the system for eight years, and I don’t see any progress. Zero in that amount of time. They’re a chaotic mess, and the children are now all suffering as a result.”

At the May 2003 review hearing, the FIA stated that although Gibbish and Reginek were complying with the treatment plan, their relationship was still extremely chaotic and emotionally harmful to the children. By this time, both Gibbish and Reginek wanted to divorce, and the FIA wanted to remove the three younger children and file a termination petition. The trial court ordered the children removed, but the termination petition was not filed until October.

While in foster care, Joshua, then twelve years old, was given alcohol on a visit to a friend’s house, and was treated for alcohol poisoning. Steven, aged eight, got a bump on his head while playing on a trampoline in the foster home. Jacob began to have recurrent ear infections. Jacob also sustained a bump on his head, purportedly from bumping into a kitchen counter in the foster home. While Valencia and Jordan were playing basketball during a visit, they bumped heads and Valincia was taken to the emergency room with a mild concussion. Gibbish and Reginek, especially Reginek, continually raised these incidents as evidence that the children were being neglected and mistreated in foster care.

Gibbish and Reginek had supervised visits with their children at the Oakland Family Services agency office, and workers there complained that Gibbish and Reginek would disregard the rules regarding limitations on videotaping the facilities and bringing pets. On one visit, Reginek gave Jacob a ride in a bicycle trailer, and dangerously wove in and out of rows of parked cars at the facility. Gibbish and Reginek also allowed the children to roller blade in the

parking lot where cars were coming and going, and one child was nearly hit by a car. Gibbish and Reginek argued with each other during visits, on one occasion because Gibbish was angry that Reginek had come to her home in violation of his probation.

Gibbish and Reginek also clashed with the foster parents and agency workers during visits. They angrily confronted agency workers about the bump on Steven's head. Gibbish and Reginek once followed Steven and Jacob's foster parents to their car, despite the agency's request that foster parents and visiting parents avoid contact. Gibbish yelled at another foster child in that home, accusing him of mistreating her children. Reginek once followed the agency's vice president as she drove through the parking lot, blocked her car with his, and walked toward her with a video camera in his hand. The agency workers notified the police that Gibbish's and Reginek's disruptive behavior was causing security concerns, and the police department began to send officers for Gibbish's and Reginek's visits.

At the July 2003 hearing, the FIA reported that Joshua was having anger problems, and that he and Steven would be attending therapy. Gibbish was on medication and attending therapy. Reginek was attending therapy, and his therapist reported that he appeared "much calmer and relaxed." Jordan tried to escape from his program, and he resisted therapy. Gibbish and Reginek argued that the children should be returned home because they were complying with their treatment plans and the foster homes were neglectful. Gibbish alleged that she had seen a "fairly large knot" on Jacob's forehead, and that Jacob's foster parents failed to take him to speech therapy. The FIA responded that the children were happy and well cared for in their foster home.

Before the FIA filed the permanent custody petition, Gibbish filed a "Motion to Show Cause" why she should not have unsupervised visitation with Jordan and Valincia. At an evidentiary hearing, Jordan's therapist advocated unsupervised visits, despite the fact that Jordan had recently stated that he wanted to become an assassin so that he could kill Gibbish and everyone else who lied to him and hurt him. She explained that Jordan had said this before he started taking Zoloft, and that he had since improved greatly. Jordan had been diagnosed with dysthymia, meaning depression lasting longer than six months, and post-traumatic stress disorder (PTSD) brought on by the stress of living in Gibbish's and Reginek's home.

Valincia was diagnosed with oppositional disorder and PTSD. Valincia's therapist testified that Valincia was making good progress, and that "it would not be detrimental" for Valincia to gradually work up to unsupervised visits with Gibbish. The trial court did not allow unsupervised visits because it was not convinced that the therapists were familiar with the case file.

Reginek then moved to have the children placed in his custody. At an evidentiary hearing, Velma Coleman, the caseworker from Oakland Family Services, explained that the children had been removed from Gibbish's and Reginek's home because the children were upset and disturbed by the constant arguing between Gibbish and Reginek. Joshua was doing poorly in school and was sometimes truant. Steven was doing well academically, but would not interact with other children. Gibbish could not handle Joshua's school problems, and Reginek was not assisting her with bills.

Coleman did not fault the foster parents for the injuries the children sustained while in foster care. Coleman testified that Reginek was undergoing domestic violence counseling and Gibbish was attending mental health sessions. They were attending marriage counseling and living together again. Reginek was employed, had health insurance, and was in compliance with his probation. Nonetheless, Coleman did not believe the children should be returned to Gibbish and Reginek because, although they were complying with the parent-agency agreement, they still were not benefiting. Coleman stated that the children should be removed because the environment was not safe, and noted that the FIA had to restrict their visitation because the visits were so out of control they required strict supervision and extra security. Coleman did not believe that Jacob's, Steven's, and Joshua's problems with anger and depression stemmed from their separation from Gibbish and Reginek.

Brabant testified that the children were well cared for and well behaved, that she had never seen Gibbish and Reginek use physical force against each other or the children, and that they had resolved most of their problems. Brabant believed that Reginek had made a strong attempt to become involved with the children and help Gibbish with parenting.

Reginek testified that he and Gibbish found marriage counseling on their own, because they did not receive a referral from the FIA. Reginek stated that their marital problems had greatly improved with counseling, and denied that they had any physical fights. Reginek argued that the children's emotional condition had deteriorated since they were placed in foster care, and mentioned Steven's broken thumb, Jacob's ear infections, and Joshua's alcohol poisoning. Reginek stated that before the children were removed, Steven earned good grades, and Jacob was in speech therapy, but after being in foster care, Jacob's vocabulary had "diminished to virtually nothing." Jacob clung to Gibbish and Reginek and cried when they had to leave visits.

Reginek stated that he was in compliance with his probation for the domestic violence incident. With regard to his behavior at FIA-supervised visits, Reginek stated that he did not know that the rules prohibited bringing pets or video cameras until he was told. He denied being intentionally rude to Jacob's foster parents, and explained that he became emotional about the children's well being because Jacob had mosquito bites, and he was worried about West Nile virus. Reginek denied having any threatening intent when he blocked in the car of the Oakland Family Services vice president and videotaped her, and also denied being rude to the police when they came to a visit. Reginek argued that the FIA was not working toward reunification. The trial court denied the motion to return the children.

The FIA filed a supplemental petition to terminate Gibbish's and Reginek's parental rights in October 2003. The FIA reviewed Gibbish's and Reginek's history, including Reginek's sexual abuse of Valincia, and quoted extensively from psychological evaluations from the 1995, 1999, and current cases. The FIA alleged generally that Gibbish and Reginek repeatedly failed to resolve their problems, and that the result was a harmful, chaotic household that had already caused severe problems for Jordan and Valincia.

Velma Coleman again testified that although Gibbish and Reginek attended therapy sessions, they did not benefit from them. Gibbish frequently told Coleman that she felt overwhelmed by the three younger children still at home and that Reginek was not helping her. They were constantly arguing, and Reginek was threatening her. Coleman believed that Gibbish

wanted to do what was best for the children, but she felt too overwhelmed to do it without help. Coleman advised Gibbish to consider separating from Reginek.

Coleman testified that Gibbish and Reginek behaved appropriately at some visits, but reiterated the instances of openly aggressive behavior toward agency workers, foster parents, and each other. Coleman testified that the FIA provided many counseling and therapy services to Gibbish and Reginek, but that at least two agencies refused to work with them, and Gibbish frequently changed therapists for insurance reasons or because she did not like the therapist.

Coleman acknowledged that there were reports of physical and sexual abuse of Jordan and Valincia in their foster homes in the 1990s. Coleman also acknowledged that when Joshua was in foster care in 2000, he had to be moved to a different home because the other children were abusing him. Coleman characterized Joshua as defiant, oppositional, and angry.

Kirk McKelvey, the visitation supervisor, testified that the visits were sometimes calm, but more often stressful. He stated that Gibbish, Reginek, and the children were very rude to FIA workers during the visits, and that Gibbish and Reginek had trouble disciplining the children when they became wild. Steven often felt stressed because he felt obligated to choose between Gibbish and Reginek and his foster parents. McKelvey stated that Reginek frequently tried to videotape bruises, mosquito bites, and other injuries on the children.

Brabant again testified that the children were always clean, fed, and appropriately dressed, and that she never saw Gibbish and Reginek argue in front of the children. Brabant testified that the children were well behaved and contented, with no indications of abuse or neglect, and that Gibbish did a good job of supervising and disciplining the children.

Reginek testified that he found it extremely difficult to contact Coleman, who would not return his calls for days. Reginek testified that he asked Coleman for a list of written rules for visits, but she did not provide one until a month after he asked for it. He claimed that the agency kept creating new rules, such as forbidding him to bring pets and video cameras after previously permitting him to do these things. Reginek explained that he took still photographs and videos of his children to record their growth and development, but he believed the photos revealed "alarming" occurrences in their foster placements. He mentioned Joshua's alcohol poisoning incident, the bruises on Steven, Jacob, and Valincia, and Jacob's ear infections, and noted that these problems never arose when the children were in their home. Reginek stated that Jacob and Steven were very attentive to him during visits; however, he also stated that Jacob was not responsive to him, and that he appeared to have trouble hearing. When he raised this concern with McKelvey, McKelvey replied that nothing seemed to be wrong. He and Gibbish tried to schedule a hearing test for Jacob, but the test could not be performed because he had a double ear infection. Reginek blamed Coleman for causing the head-bumping incident between Valincia and Jordan because she distracted them while they were playing.

Reginek stated that he and Gibbish were living apart but were not pursuing a divorce. He admitted that he and Gibbish had argued frequently while the children were still in their home, but maintained that they seldom argued in front of the children. He had not lived with Gibbish since December 2003.

The children's attorney stated that Valincia and Jordan did not want Gibbish's parental rights terminated, but that Steven and Jacob were ambivalent.

The trial court found that the FIA had demonstrated statutory grounds for terminating Gibbish's parental rights under MCL 712A.19b(3)(c)(i), (g) and (j), and Reginek's parental rights under MCL 712A.19b(3)(b)(i), (c)(i), (g) and (j). The trial court reviewed the case's history, and concluded:

Despite all of the intervention that has occurred, little progress has been made. Jordan and Valincia cannot return home. It is unlikely Ms. Gibbish would be able to handle Joshua. Given the long-term history of the parents and the severe problems faced by the older children, the prospects for Steven and Jacob are also bleak if returned to their parents' care. The parents are so enmeshed in their own conflictual [sic] relationship that there is little likelihood they will ever be able to focus their attention on the needs of the children. They have taken the position that they are victims of the system and have failed to fully benefit from the many services they have received. In spite of their love for the children, they remain unable to provide a safe and satisfactory home where the children can emotionally thrive.

The trial court held a separate hearing on the children's best interests. Court psychologist Victoria Timms-Rupert testified that Gibbish struggled to care for her children, and became easily overwhelmed when they were in her care. Gibbish admitted that she needed support as a parent, and that her housing and finances were uncertain. Timms-Rupert concluded that both Gibbish and Reginek had difficulty dealing with authority figures, and that Reginek's anger problem undermined his judgment.

Timms-Rupert believed the children would be harmed if returned to Gibbish and Reginek because, based on their history of domestic violence and their own descriptions of their relationship, the home environment was too "chaotic" for the children's "multiple needs." She acknowledged that the children wanted to return to their parents, but she believed these wishes were based on the children's "idealism and fantasies" about their relationship with their parents, not on reality. When told that Reginek had filed for divorce since the last hearing, Timms-Rupert stated that she did not believe this would improve the situation, because Gibbish and Reginek were likely to remain involved with one another even after the divorce.

Timms-Rupert stated that all of the children had "shown some degree of improvement" since being removed, except for Jordan. She stated that Jordan was "doing poorly," but she did not know if he was doing better than he had in Gibbish's care. Timms-Rupert believed that the children would struggle emotionally for a time if Gibbish's and Reginek's parental rights were terminated, but they would benefit from being in a stable environment without the upheaval of Gibbish's and Reginek's home. Jordan and Valincia would benefit because Gibbish made decisions that prevented the children from receiving recommended services and treatment, and Gibbish did not take responsibility for her own role in causing the children's problems. Timms-Rupert acknowledged that the children were strongly bonded to Gibbish, and that Gibbish loved them and tried to serve their best interests. However, she did not believe that Gibbish could care for them because she was "vulnerable to poor judgment" when managing her own behavior and coping with the children.

Reginek testified that the FIA told them to “make changes in our familial situation,” but he did not know what changes needed to be made. He eventually decided to divorce Gibbish. He complained that their parent-agency agreement did not set forth any goals or objectives, but simply instructed them to attend services. Reginek stated that he had held a full-time job for seven years, and he recently purchased a home.

Reginek accepted “fifty percent” responsibility for the children being placed in foster care in May 2003, because he was charged with domestic violence; however, he explained this incident by saying that he merely pushed Gibbish into bed to persuade her to sleep because she was very tired and stressed out from caring for Jacob when he was sick. He acknowledged that his arguments with Gibbish were distressing to his children, but he believed that it was common for children to be distressed by parental arguments. He admitted that he refused to sign a parent-agency agreement because he had not been allowed to participate in its formation.

Gibbish testified that until March 2003, a court order required her to take the medication Paxil, despite the fact that it made her so sleepy that she was unaware she was pregnant for six months. Gibbish explained that since her medication was changed to Zoloft, she was much better able to handle her problems, and that her life before Zoloft had been a blur. Gibbish stated that while she would always have mental health issues to manage, she was benefiting from medical treatment and her current counselor, who had referred her to a church that had counseling and other helpful programs for her and the children. Gibbish commented that this was the sort of resource she had hoped to find through Oakland Family Services, but when she tried to find help for her family from the FIA, their only response was to remove her children.

Gibbish testified that Jordan was sexually and physically abused when he was four years old, and he had only recently begun to discuss these issues. She stated that he had been doing “some bizarre things” that frightened her, and she did not feel safe around him. She had long believed that he had attention deficit disorder and had tried for years to find help for him from school counselors and psychiatrists, but he had only recently been diagnosed and medicated for this problem. Gibbish found it difficult to discipline Jordan knowing that he had been abused. His school had just started mainstreaming him into a regular classroom when he was removed in 1999, and when he returned from foster care, he was very angry that he had to return to a special education classroom.

Gibbish testified that she and Reginek decided to divorce because they came to the conclusion that they did not know each other anymore. She believed that the FIA, the children, their families, their “totally different dysfunctional backgrounds,” and the allegations about sexual abuse and other issues put too much stress on their marriage. Gibbish believed she would be better able to take care of herself emotionally if she divorced Reginek, because she had always felt angry and stressed while trying to persuade him to help her. She believed that she and Reginek focused too much on the children, and failed to take care of themselves. She believed her children had been happy at home, although they had issues.

Gibbish testified that she was living in the house Reginek purchased, and Reginek was living with his father. If she and Reginek divorced, and the children were returned, her plan was to immediately find in-home help, allow her parents to share custody of Jordan and Valincia, and continue living in Reginek’s house, which he bought more for the children than himself. She

accepted some responsibility for her children being placed in foster care, but believed the FIA and Reginek were also partly responsible.

The trial court reiterated its findings that Gibbish and Reginek were unable to parent the children:

Despite efforts to rectify the conditions which led to the children's removal, Ms. Gibbish and Mr. Reginek are not currently capable of meeting the children's needs nor will they be in the future. The extensive support this family requires to function as a unit in the community simply does not exist. Ms. Gibbish and Mr. Reginek have proven unable to work cooperatively and effectively with various agencies for treatment, many times undermining services for the children. Despite years of counseling and intervention, they have been unable to effectively and consistently apply the insights they should have gained to provide an appropriate home for the children. This leaves the children at on-going risk in their care.

The trial court therefore terminated Gibbish's and Reginek's parental rights.

III. Docket No. 257167: Reginek

A. The Michigan Rules Of Evidence

Reginek argues that MRE 410 barred the trial court from admitting evidence that he previously entered a no contest plea to a temporary wardship petition alleging that Reginek sexually abused Valincia. However, the Michigan Rules of Evidence do not apply at a hearing on a petition to terminate parental rights if the trial court already has jurisdiction over the child and termination is sought on the same basis.² Consequently, the trial court was not bound by MRE 410 at the termination hearing.

B. Res Judicata

Reginek argues that the trial court should have dismissed the supplemental petition to terminate his parental rights because the doctrine of res judicata barred the FIA from seeking termination on the basis of the prior sexual abuse, which had already been considered in the 1995-1997 case. We review de novo the question whether res judicata applies.³ For a prior judgment to operate as a bar to a subsequent proceeding, three requirements must be satisfied: (1) the subject matter of the second action must be the same; (2) the parties or their privies must be the same; and (3) the prior judgment must have been on the merits.⁴

² See MCR 3.977(G)(2).

³ See *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

⁴ *In re Pardee*, 190 Mich App 243, 248; 475 NW2d 870 (1991); see also *Sewell v Clean Cut Management, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001).

In *Pardee*,⁵ this Court held that res judicata did not bar an order terminating a father's parental rights, even though the petitioner relied in part on facts that predated a prior order denying termination, where the petitioner also relied on circumstances that were new and different from the grounds raised in the first petition. The Court emphasized that the unique concerns in termination cases militate against an overly rigid application of the doctrine:

We recognize that respondent has a significant interest in protecting himself from repeated vexatious or unnecessary relitigation of issues which the doctrine of res judicata is designed to prevent. Nevertheless, this doctrine cannot settle the question of a child's welfare for all time, nor prevent a court from determining at a subsequent time what is in the child's best interest at that time. Moreover, res judicata should not be a bar to "fresh litigation" of issues that are appropriately the subject of periodic redetermination as is the case with termination proceedings where new acts and changed circumstances alter the status quo.^[6]

Here, although the petition raised the prior sexual abuse allegations, and other allegations of neglect and parental unfitness dating back to the 1996 and 1999 cases, these matters related to allegations that Gibbish and Reginek continued to fail at parenting despite all the past efforts at rehabilitation. The petition referred to psychological evaluations from past cases, but it also referred to more recent evaluations to show the continuing nature of Reginek's and Gibbish's deficiencies. The petition raised new allegations of problems with the children, including Valincia's and Jordan's worsening conditions. The FIA also alleged that Gibbish and Reginek did not properly supervise the children during visits, and that their hostility and uncooperativeness marred the visits. Consequently, the petition raised new and different circumstances, and res judicata did not apply.⁷

C. Statutory Grounds For Termination

Reginek claims that the trial court erred in finding sufficient evidence of statutory grounds to terminate his parental rights. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence.⁸ We review the trial court's findings of fact for clear error.⁹ Under this standard, the trial court's decision "must strike [the reviewing court] as more than just maybe or probably wrong."¹⁰

⁵ *Pardee*, *supra* at 249.

⁶ *Id.* at 248-249 (citations omitted).

⁷ See *id.*

⁸ *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

⁹ MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

¹⁰ *In re Trejo*, *supra* at 341, quoting *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

We agree that the trial court erred in terminating Reginek's parental rights under § 19(3)(b)(i). To terminate Reginek's parental rights under this subsection, the trial court was required to find both that he had previously abused his child or the child's sibling, and that abuse was likely to recur. Although the FIA showed that Reginek had previously pleaded no contest to allegations that he sexually abused Valincia in 1995, and although the supplemental petition to terminate his parental rights suggested that the abuse would be used as a basis for terminating Reginek's parental rights to Steven and Jacob, the FIA failed to present any evidence to satisfy the second prong of § 19b(3)(b)(i). The FIA instead focused on Reginek's dysfunctional relationship with Gibbish and his inappropriate behavior during agency visits; it did not present any evidence from which the trial court could properly infer that Reginek had a propensity for sexual abuse that placed his own children at risk.

Reginek's past sexual abuse of Valincia does not establish the anticipatory abuse prong of § 19b(3)(b)(i). Although a parent's treatment of one child is probative of how he will treat other children,¹¹ Reginek's abuse of a female child who was not his own daughter does not necessarily mean that he is likely to abuse his own male children. There is simply too little information to conclude that the past abuse of Valincia placed either Steven or Jacob at risk of abuse in the future. Indeed, the FIA never expressed any concerns that Steven or Jacob were at risk of sexual abuse from Reginek, and these children were permitted to stay in Reginek's home for several months until they were removed for reasons unrelated to sexual abuse.

However, a trial court need only find one statutory ground to terminate a respondent's parental rights.¹² We are satisfied that the evidence was sufficient to support termination under §§ 19b(3)(c)(i), (g), and (j). Reginek's behavior throughout most of the case, both before and after his children were removed, justified the trial court's finding that he was too enmeshed in his own problems to focus on the children and give their needs due attention. Reginek would not help Gibbish with the children's problems, and he provoked Gibbish with such acts as cutting the telephone line and denying her access to the car. Reginek himself described how he tried to "help" Gibbish by pushing her into a bed, purportedly because he wanted her to rest.

During agency visits, Reginek repeatedly focused his attention on hostility toward the agency rather than the children. The record indicates that he was deliberately obtuse in claiming to misunderstand the agency's rules concerning pets and video cameras, and he deliberately fought with the workers over these matters. His disingenuous and exaggerated accusations over the unremarkable and ordinary childhood mishaps and illnesses his children experienced in foster care further revealed his tendency to manufacture clashes between himself and the agency rather than focus on his children. A visitation supervisor testified that he influenced the children to argue with agency workers, and placed Steven in the uncomfortable position of having to choose sides in a battle between his parents and his foster parents. Reginek's rude behavior toward agency workers – especially his intimidation of the agency vice president – and his fights with Gibbish during visits, further supports the trial court's finding that Reginek was too focused on himself to attend to the needs of his children.

¹¹ See *In re Powers*, 208 Mich App 582, 588-589; 528 NW2d 799 (1995).

¹² *In re Sours*, *supra* at 632.

Although Reginek argues that he complied with the parent-agency agreement by attending therapy and visitation, objective compliance with the requirements of a plan is not satisfactory; the parent must also sufficiently benefit from the services.¹³ Reginek did not demonstrate an ability and commitment to focusing on and attending to his children's needs and, therefore, did not benefit from the services. We therefore affirm the order terminating his parental rights.

IV. Docket No. 257227: Gibbish

A. Res Judicata

Respondent Gibbish argues that the FIA was barred by res judicata from raising issues related to Reginek's past sexual abuse of Valincia. As we have already concluded in Docket No. 257167, because the petition alleged sufficient new and different conditions, res judicata did not apply.

B. Statutory Grounds For Termination

Gibbish also argues that the trial court erred in finding sufficient evidence of the statutory grounds to terminate her parental rights. While we are troubled by the trial court's failure to make particularized findings regarding Gibbish's relationship to each of the children, we nonetheless conclude that the trial court did not clearly err in concluding that termination was proper under MCL 712A.19b (c)(i) (failure to rectify the conditions that led to adjudication), (g) (failure to provide proper care and custody) and (j) (likelihood children will be harmed if returned to parent's care). The trial court based its ruling on a finding that the family required more extensive support to function than the community could provide, that neither Gibbish nor Reginek could work effectively with available treatment agencies, and that they had not been able to apply the benefits they should have gained from years of counseling and intervention, leaving the children at "on-going risk."

Evidence supported the trial court's finding that Gibbish was too preoccupied with her own problems and her problems with Reginek to properly focus on her children, who all require intensive attention. Gibbish persisted in her relationship with Reginek, despite the fact that he did not help her care for the children, as Gibbish's frequent complaints to Coleman attest. Testimony established that Gibbish often spent her visitation time with the children arguing with Reginek. Gibbish allowed Reginek to resume living with her and the children, despite her testimony that Reginek had abused her at least three times while he was living with her. We cannot conclude that these problems will be resolved by divorce, because Gibbish and Reginek have reunited after separating in the past, including after Reginek sexually abused Valincia. Moreover, Gibbish admitted that she did not want the divorce, and that she was still depending on Reginek to provide housing. These circumstances support the trial court's finding that Gibbish and Reginek "are so enmeshed in their own conflictual [sic] relationship that there is little likelihood they will ever be able to focus their attention on the needs of the children."

¹³ *In re Gazella*, 264 Mich App 668, 676-677; ___ NW2d ___ (2005).

Under these circumstances, we conclude that the trial court did not clearly err in determining that the applicable statutory factors were met.

C. The Children's Best Interests

Gibbish also contends that the trial court erred in declining to find that termination was contrary to the children's best interests. Once a petitioner establishes by clear and convincing evidence that a statutory basis for termination exists, the trial court must order termination of parental rights unless it finds from evidence on the record that termination is clearly not in the child's best interests.¹⁴ We review the court's best interest decision for clear error.¹⁵

The evidence does not establish that termination of Gibbish's parental rights was contrary to the children's best interests. Valincia's difficulty following her removal does not indicate that she would be better off in Gibbish's care, especially when the instant case began because Gibbish decided that Valincia needed to be placed outside her home. Although Valincia continued to experience problems in foster care, and then the Crossroads facility, her therapists reported that she improved after she was placed at the Bowman facility. Gibbish's ultimate failure to care for Jordan when she refused to pick him up from Havenwick negates her claim that termination was contrary to Jordan's best interests. Joshua's alcohol poisoning incident, which occurred at the home of a friend, also does not establish that he was better off with Gibbish and Reginek, especially when he once attempted to leave Gibbish's and Reginek's home to stay with his former foster parents. The evidence does not establish that termination was contrary to the children's best interests.

Affirmed.

/s/ William C. Whitbeck
/s/ Brian K. Zahra
/s/ Donald S. Owens

¹⁴ MCL 712A.19b(5); *In re Trejo*, *supra* at 353.

¹⁵ *Id.* at 356-357.