

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JUAN APONTE, IVAN
APONTE, and ISSAC APONTE, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
July 25, 2006

Petitioner-Appellee,

v

RENE APONTE, JR.,

Respondent-Appellant,

and

STACY FOOTE,

Respondent.

No. 268431
Genesee Circuit Court
Family Division
LC No. 03-117414-NA

Before: Neff, P.J., and Bandstra and Zahra, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from an order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent-appellant was incarcerated at the time the original petition was filed and remained incarcerated throughout the entire proceedings. The trial court did not terminate respondent-appellant's parental rights under MCL 712A.19b(3)(h) because, at the time the termination petition was filed, it was not certain that he would be incarcerated for two years or more. Still, respondent-appellant's incarceration was a condition that continued to exist at the time of termination for purposes of subsection (3)(c)(i) and his subsequent conviction for escape and prisoner with contraband constituted "other conditions" for purposes of subsection (3)(c)(ii). Respondent-appellant's imprisonment resulted in his inability to provide proper care or custody for the children under subsection (3)(g). He had not seen the children since the oldest was three years old and the twins were eight months old. He had no means of

providing financial or emotional support. While respondent-appellant recommended placement with his mother or his sister, these placements were not a serious consideration because the relatives lived in New York and were strangers to the children. Finally, respondent-appellant's criminal lifestyle placed the children at risk for purposes of subsection (3)(j).

Having found a statutory basis for termination, the trial court was required to terminate respondent-appellant's parental rights absent clear evidence on the whole record that termination was not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondent-appellant had no relationship with the children because of his incarceration. The children were entitled to permanence and stability.

Affirmed.

/s/ Janet T. Neff
/s/ Richard A. Bandstra
/s/ Brian K. Zahra