STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of AR, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner -Appellee,

v

LIANE ROBERSON,

Respondent -Appellant.

UNPUBLISHED
January 26, 2001

No. 228248
Kalamazoo Circuit Court
Family Division
LC No. 00-000003-NA

Before: Hoekstra, P.J., and Whitbeck, and Meter, JJ.

PER CURIAM.

Respondent appeals by right from the family court's order terminating her parental rights to a minor child. The court terminated respondent's rights on the basis of MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) ("[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age") and MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j) ("[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent").

This Court reviews for clear error a family court's finding that a statutory basis for termination has been met. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Once a statutory basis has been proven by clear and convincing evidence, the court must terminate parental rights unless the court finds that termination is clearly not in the best interests of the child. *Trejo*, supra at 344, 355. A court's finding on the best interests prong is also reviewed by this Court for clear error. *Id*. at 356-357, 365.

Respondent first argues that the family court clearly erred in finding that respondent would not be able to care for the child within a reasonable amount of time (see MCL 712A.19b[3][g]; MSA 27.3178[598.19b][3][g]). Specifically, respondent contends that despite her mental illness, she would be an effective parent as long as she stayed medicated. Respondent argues that she should have been given a chance to demonstrate that she could effectively care

for the child while on her medication and that her rights therefore should not have been terminated at the initial dispositional hearing. We disagree. MCR 5.974(D) indicates that a court *shall* order the termination of a respondent's parental rights at the initial dispositional hearing if, among other things not at issue here, one or more of the facts alleged in the petition are true and justify terminating the respondent's rights, unless the court finds that termination is clearly not in the best interests of the child. Here, the petition alleged that respondent (1) was a paranoid schizophrenic, (2) had been admitted multiple times to a psychiatric hospital but had failed to comply with any treatment plans, (3) had auditory and visual hallucinations, (4) experienced periods of poor hygiene and nourishment, (5) could not remember if she had received prenatal care for the child, and (6) did not willingly accept prenatal and psychiatric treatment without a court order. These allegations were proven at trial by the testimony of petitioner's witnesses and were sufficient to justify the termination of respondent's parental rights under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). Indeed, a parent who repeatedly does not accept treatment for her own illness, who has hallucinations, who resists prenatal care, and who cannot provide even herself with proper hygiene and nourishment cannot be expected to provide proper care and custody for a child. Accordingly, the trial court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) at the initial dispositional hearing.

Next, respondent argues that the trial court clearly erred in concluding that the child would likely be harmed if placed in respondent's care (see MCL 712A.19b[3][j]; MSA 27.3178[598.19b][3][j]). Again, we disagree. A psychiatrist testified at trial that respondent could not be trusted to take her medication and that without medication, she was unable to care even for herself, much less for a child. A social worker testified that even when court orders relating to respondent's medication had been issued in the past, respondent had failed to take the medication. The social worker further testified that even while *on* medication, respondent could not properly care for a child. In light of this testimony, the trial court did not clearly err in finding a reasonable likelihood that the child would be harmed if returned to respondent. Termination under MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j) was appropriate.

Next, respondent argues that the trial court clearly erred in finding that termination was in the best interests of the child. Once again, we disagree. The testimony of petitioner's witnesses clearly established that respondent posed a risk of harm to the child, and the trial court appropriately found that the child should be placed in a home that did not pose such a risk of harm.

Finally, respondent argues that her mental illness, schizophrenia, constitutes a disability under federal and state law and that petitioner should have made reasonable accommodations under the Americans with Disabilities Act (ADA), 42 USC 1210 *et seq*., before seeking to terminate her parental rights. Specifically, respondent contends that she should have been given a chance to demonstrate her parenting ability instead of having her rights terminated at the initial dispositional hearing. As support for this argument, respondent cites only one case: *In re Terry*, 240 Mich App 14; 610 NW2d 563 (2000). Respondent contends that *Terry* disallows the termination of a disabled person's parental rights at the initial dispositional hearing. We disagree with this interpretation of *Terry*. *Terry* dealt with termination occurring after a petition for temporary jurisdiction was filed, the respondent was given a chance to rehabilitate, review

hearings were held, and petitioner eventually sought to terminate the respondent's rights. In those circumstances, *Terry* indicates that "reunification services and programs provided by the FIA must comply with the ADA." *Id.* at 25. *Terry*, however, did not even address a situation in which termination is sought at the initial dispositional hearing, as allowed under MCR 5.974(D). Accordingly, respondent cannot properly use *Terry* to argue that she was denied proper accommodations in this case; *Terry* is inapposite.

Respondent has simply set forth no applicable authority for the proposition that a disabled person's parental rights may never be terminated at the initial dispositional hearing. An appellant may not leave it up to this Court to search for authority to sustain a position. *Palo Group Foster Care, Inc v Dep't of Social Services*, 228 Mich App 140, 152; 577 NW2d 200 (1998). We remain with our prior conclusion that the trial court properly terminated respondent's rights at the initial dispositional hearing in this case.

Even assuming that respondent *had* set forth some applicable authority for her ADA argument, we would nonetheless find no basis for reversal. Indeed, *Terry* emphasized that "[a]ny claim that the FIA is violating the ADA must be raised in a timely manner . . . so that any reasonable accommodations can be made." *Id*. at 26. Here, respondent did not raise the issue of the ADA until her appeal. If she believed that the ADA prevented the termination of her parental rights at the initial dispositional hearing, she should have objected below. Instead, respondent waived the argument. No error requiring reversal occurred.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Patrick M. Meter