

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANGEL MARIA SMITH, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHEILA DENISE SMITH,

Respondent-Appellant,

and

DEON CHAMBERS a/k/a LEON CHAMBERS,

Respondent.

UNPUBLISHED

January 29, 2002

No. 232319

Wayne Circuit Court

Family Division

LC No. 99-376958

Before: Cavanagh, P.J., and Neff and B. B. MacKenzie*, JJ.

PER CURIAM.

Respondent appeals as of right the termination of her parental rights to the minor child, Angel Smith (DOB 10/17/92), pursuant to MCL 712A.19b(3)(c)(i) [conditions that led to adjudication continue to exist and are not likely to be rectified within a reasonable time], (g) [parent, without regard to intent, fails to provide proper care or custody for the child], and (j) [reasonable likelihood of harm if returned to the parent]. We affirm.

On appeal respondent argues that not one of the statutory grounds for termination was met by clear and convincing evidence. We disagree.

A family court may not terminate a respondent's parental rights unless at least one of the statutory grounds for termination is established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000). This Court reviews the findings of fact under the clearly erroneous standard. MCR 5.974(I); *In re Ramsey*, 229 Mich App 310, 314; 581 NW2d 291 (1998). Once a statutory basis for termination is established, the trial court shall terminate parental rights unless it finds that doing so is clearly not in the child's best interests. *Trejo, supra*

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

at 344; see, also, MCL 712A.19b(5); MCR 5.974(F)(3). The trial court's ultimate decision regarding termination is reviewed in its entirety for clear error. *Trejo, supra* at 356-357.

The minor child was placed in foster care in March 1999, after respondent was arrested in connection with an investigation of the death of another child who had been in her care. At the pre-trial hearing, respondent admitted that she occasionally smoked crack cocaine and that the police found her apartment to be unfit for habitation, have little or no food, smell of a foul odor, and be roach infested. Thereafter, the minor child was made a temporary court ward. At the first dispositional hearing in April 1999, petitioner FIA submitted an initial service plan which included that respondent maintain a drug and alcohol free lifestyle, submit to weekly drug screens, attend an outpatient substance abuse program, attend parenting classes, undergo a psychological evaluation, and maintain suitable income, housing, and contact with the FIA worker and the minor child through supervised visitations on a consistent basis at the FIA agency. Respondent signed the parent-agency treatment plan agreement.

At the dispositional review hearing in July 1999, testimony included that respondent had a new residence, had not attended a substance abuse program, had no telephone, and no contact with the FIA worker. The court reminded respondent that she was required to call the FIA worker on a regular basis. At the dispositional review hearing in September 1999, the FIA worker's testimony included that respondent had been attending parenting classes, maintained suitable housing, but "wasn't communicating with me." The FIA worker also agreed to permit respondent's relatives to attend meetings between her and respondent.

At the dispositional review hearing in December 1999, the FIA worker testified that respondent was receiving counseling but that she had not received documentation regarding the completion of parenting classes. She also had not received documentation indicating that respondent had any physical limitations, was not aware that respondent was receiving Social Security Income (SSI) for a disability, and had not been provided documentation of the same. The worker testified that weekly drug screens were not being completed because respondent claimed she could not take a bus to the necessary location. The court ordered respondent to provide the FIA worker with documentation regarding her receipt of SSI and that she submit to weekly drug screens.

At the dispositional review hearing in March 2000, testimony from the FIA worker included that respondent had been evicted from her house, that she did not know where respondent was living, that respondent called her "every now and then," and that she had not completed any drug screens. Respondent did not attend the hearing and the court ordered that all visits with the minor child be supervised at the FIA agency. At the permanency planning hearing in June 2000, the court recommended that the FIA file a petition to terminate respondent's rights for continued non-compliance. Respondent did not attend the hearing and could not be located.

In September 2000, a pretrial on the petition requesting permanent custody was held. The FIA worker testified that she last had contact with respondent on March 31, 2000, and several attempts to locate her were unsuccessful. Further, she checked the FIA computer to determine whether the respondent received SSI or funds from the agency and found no such information. The court ordered substituted service by publication.

A trial on the petition requesting permanent custody began in October 2000. A foster care worker from the FIA testified that she had been assigned the case in September 2000 and she had not been able to locate respondent, respondent had not contacted the agency, and she had no knowledge of respondent providing financial support for the minor or of respondent visiting the minor.

The trial continued in November 2000, at which time the FIA worker assigned to the case from May 1999 through July 2000 testified. The testimony included that she had made several referrals for parenting classes, a psychological evaluation, counseling, substance abuse treatment, and random drug screens. Although respondent attended some parenting classes, the worker had not received a certificate of completion. Respondent did not appear for a scheduled psychological evaluation. Although respondent received some counseling, which was provided at her home, when respondent was evicted, the counseling stopped and respondent never contacted her with a current residence. Respondent did not provide the worker with any proof of medical disabilities or a legal source of income, including SSI income, and the worker's investigation indicated that respondent was not receiving SSI. Respondent never visited the minor at the FIA agency as ordered by the court. Respondent did not attempt substance abuse treatment and only submitted to three drug screens; two of which, in March and April of 2000, were positive for cocaine.

Respondent testified at the trial that she sometimes had problems understanding and remembering some things because of a stroke she had three or four years ago. She testified that she had not informed the FIA worker that she had any mental limitations. She further testified that she received SSI but never gave the FIA worker such proof and did not bring proof of that income to court. Respondent testified that she did not receive substance abuse treatment, but did attend some parenting classes and drug screens. Respondent further testified that, although she knew she was not permitted to visit the minor at her sister's house, she did.

At the conclusion of the trial, after noting that the issue of respondent allegedly requiring specialized treatment pursuant to the Americans with Disabilities Act was never raised, the court recommended respondent's parental rights be terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). At the subsequent hearing for review of the referee's recommendation in January 2001, respondent argued that she should have been given specialized assistance because of her mental health problems. After indicating that respondent had never raised the issue before trial and did not submit to a psychological evaluation, the court held that there was clear and convincing evidence justifying termination and affirmed the referee's recommendation of termination.

We agree with the trial court that the asserted statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. The evidence established that respondent failed to: maintain a drug free lifestyle, submit to weekly drug screens, attend a substance abuse treatment program, complete parenting classes, undergo psychological evaluation, and maintain suitable income, housing, and contact with the FIA workers and the minor child through supervised visits on a consistent basis at the FIA agency. Further, respondent's housing arrangements were transient in nature, she consistently failed to substantiate any alleged disability or source of income, failed to provide financial support to the minor while she was in foster care, continued to use cocaine during the pendency of these proceedings, and made no appreciable effort to provide proper care of the minor in a suitable,

stable, and safe environment. In sum, the court's findings were not clearly erroneous and the court properly concluded that the asserted grounds for termination were established by clear and convincing evidence.

Next, respondent argues that the FIA failed to offer services to respondent that met the requirements of the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.* We disagree.

Although violations of the ADA may not be raised as a defense to termination of parental rights, the FIA is required to make reasonable accommodations for individuals with disabilities. *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000). However, the respondent must raise an ADA violation claim, i.e., that the services provided are inadequate to meet her particular needs, either when the service plan is adopted or soon afterward and such claim cannot be raised at a dispositional hearing. *Id.* at 26.

In this case, respondent argues that the court was "alerted" in March 1999 that respondent had previously suffered a stroke and had residual problems as a consequence; therefore, she should have been provided reasonable accommodations. However, respondent never claimed a violation of her rights under the ADA and only indirectly suggested such a claim during closing arguments at the trial regarding the petition to terminate her parental rights. Further, respondent did not submit to a psychological evaluation and did not substantiate any claim of disability, despite repeated requests for such information. Consequently, respondent's alleged ADA violation claim was untimely. See *Id.* at 27. In addition, even if the claim had been timely asserted, it is unsupported by the record.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Janet T. Neff
/s/ Barbara B. MacKenzie