

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MATTHEW HANSEL, NICOLE
HANSEL, and DUSTIN HANSEL, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JON HANSEL and DONNA HEFLIN,

Respondents-Appellants.

UNPUBLISHED

September 30, 2004

No. 254508

Jackson Circuit Court

Family Division

LC No. 02-006177-NA

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Respondents appeal as of right from the termination of their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The minor children were removed from respondents' care after respondents left the children alone in a pick-up truck with no heat in ten-degree weather, the conditions of their home were found to be unclean and unsafe for the minor children, and it appeared that the minor children were being neglected. While respondents complied with all of the terms of the parent agency agreement, they were unable to follow through in order to appropriately parent their children and maintain a safe and sanitary home.

Respondents argue that the services offered to them were inadequate because they did not address their cognitive limitations, and the services did not comply with the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.* Respondents did not raise this issue before the trial court and cannot raise it as a defense on appeal. *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000). Moreover, accommodations were made to assist respondents in complying with the parent agency agreement by adjusting all of the services to address their limited cognitive functioning. Despite the accommodations, respondents did not benefit from the services, and none of the professionals could come up with any other services that would benefit respondents.

With regard to respondents argument that their friend Judy VanEpps should have been used as a twenty-four hour person to assist in the care of the minor children, the trial court addressed that in detail. The court had major concerns with Ms. Van Epps' own abilities because

she was aware that the minor children were left unattended in an unheated truck, was in the house in front of which the truck was parked, and did nothing to intervene on the children's behalf. In addition, while respondents did better when they lived with her, Ms. VanEpps herself stated that she was with respondents "ninety-nine percent" of the time and did not see the unclean conditions that the workers observed on many occasions. Finally, the court stated that while Ms. VanEpps could assist in the tasks, respondents would still have difficulty making important decisions for the minor children and the court did not feel that respondents had demonstrated that they could make appropriate decisions. This very clearly had been addressed by the court and rejected as a viable alternative.

The trial court did not clearly err in finding that statutory grounds for termination were established by clear and convincing evidence. Services were provided to respondents to address the issues that caused the minor children to come within the custody of the court and, while respondents participated in most of the services, they did not benefit. The services offered involved both classes and in-home modeling of parenting and housekeeping on a weekly basis and were appropriate for the intellectual limitations of respondents. While respondents seemed to understand what they learned in class and what was modeled for them, they had difficulty following through on a consistent basis with feeding their children appropriately, meeting their developmental needs, and providing them with a safe and sanitary living situation. There appeared to be no reasonable likelihood that these conditions would be rectified or that respondents would be able to provide appropriate care and custody within a reasonable time. After close to a year of a variety of services being offered to respondents, they were in no better position to provide a safe and sanitary place for the minor children to live nor could they appropriately address their developmental needs. Therefore, the court also correctly found that there was a reasonable likelihood that the minor children would be harmed if returned to respondents' home.

Furthermore, the court did not clearly err in determining that termination of respondents' parental rights would not be contrary to the best interests of the minor children. MCL 712A.19b(5). The minor children are young and in need of permanency and stability, which it was clear respondents could not provide.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood