

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRANDY BOVEE, NICHOLE
BOVEE, and BENJAMIN BOVEE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DIANE KIENUTSKE,

Respondent-Appellant,

and

GORDON BOVEE,

Respondent.

UNPUBLISHED
November 4, 2004

No. 255624
Genesee Circuit Court
Family Division
LC No. 02-115013-NA

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

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). The principal condition that led to adjudication was respondent-appellant's continued drug abuse. Although respondent-appellant completed the required drug treatment program, she continued to test positive for marijuana even two years after the original order placing the children under the trial court's jurisdiction. In addition, respondent-appellant continued to portray improper behavior at visitation, which hampered the children's therapy. Respondent-appellant seemed unwilling to change her inappropriate and destructive behavior for the sake of her children. The children are now teenagers, and there appears no reasonable expectation that respondent-appellant will be able to provide the proper care and custody for the children within a reasonable amount of time.

Next, respondent-appellant argues that she suffers from a disability and that the FIA did not make sufficient accommodations for her under the Americans With Disabilities Act, 42 USC 12101 *et seq.*, as required by *In re Terry*, 240 Mich App 14; 610 NW2d 563 (2000). A

psychological report indicated that respondent-appellant has an attention span that is in the dull to normal range and is borderline to mildly retarded. Even if these disabilities do require accommodations, respondent-appellant did not timely make a claim for accommodations. Under *Terry*, a claim for accommodations must be made when a service plan is adopted or soon thereafter. *Id.* at 26-27. Here, respondent-appellant did not make an accommodations claim until the termination trial. Testimony from the caseworkers established that respondent-appellant never asked for help and never stated that she did not understand a matter. Furthermore, some accommodations were made for her by the caseworkers involved. Finally, the trial court correctly determined that respondent-appellant's limitations would not affect her ability to cease using drugs, which was the primary reason for termination of her parental rights.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski