STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DAVID JEREMIAH OZARK, CHRISTOPHER ROBIN OZARK, JONATHON STANLEY OZARK, and MARIAH LYNN OZARK, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DEBORAH ANN OZARK and DAVID ALAN OZARK,

Respondents-Appellants.

UNPUBLISHED
December 16, 2004

No. 256851
Saginaw Circuit Court
Family Division
LC No. 02-027974-NA

Before: O'Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Respondents appeal as of right from the trial court order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). Because the ADA and PWDCRA did not require any further accommodation due to respondents' disabilities, and because the trial court did not clearly err in determining that termination was not against the children's best interests, we affirm.

Respondents argue that the trial court committed clear error in terminating their parental rights while they were complying with services and making progress rather than allowing them to continue to comply with service and be reunited at a later time. Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the court shall terminate parental rights unless it finds that the termination is clearly not in the best interests of the children. *Trejo, supra*, 462 Mich 353. This Court reviews the lower court's findings under the clearly erroneous standard. MCR 3.977(J); *In re Sours Minors*, 459 Mich 624, 633; 592 NW2d 520 (1999). A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). A decision must be more than maybe or probably wrong to be clearly erroneous. *Sours, supra*, 459 Mich 633.

We first address respondents' arguments concerning the Americans With Disabilities Act (ADA) and Persons With Disabilities Civil Rights Act (PWDCRA). Because these arguments concern questions of law, we will review them de novo. *In re CR*, 250 Mich App 185, 200; 646 NW2d 506 (2002).

Respondents maintain that the ADA, 24 USC 1311 *et seq.*, and the PWDCRA, MCL 37.1101 *et seq.*, required accommodations for their disabilities that FIA did not provide. The ADA provides in pertinent part in 42 USC 12132:

> [N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

The parallel Michigan provision in the PWDCRA, MCL 37.1302, states in relevant part:

> Except where permitted by law, a person shall not:
>
> (a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation or public service because of a disability that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by an individual of adaptive devices or aids.

"Public service" is defined in MCL 37.1301(b) as "a public facility, department, agency, board, or commission owned, operated, or managed by or on behalf of this state or a subdivision of this state, a county, city, village, township, or independent or regional district in this state or a tax exempt private agency established to provide services to the public . . . ."

In *In re Terry*, *supra*, 240 Mich App 26, this Court held that if a parent believes FIA is unreasonably refusing to accommodate a disability, the parent must make a timely claim for accommodations. The claim should be made when a service plan is adopted or soon afterward. The *Terry* Court dealt with a mentally retarded claimant. Mental retardation is a disability under the ADA. While holding that termination of parental rights proceedings were not services or programs under 42 USC 12132, the *Terry* Court held that the ADA does require FIA, as a public agency, to make reasonable accommodations for individuals with disabilities, and that "the reunification services and programs provided by the FIA must comply with the ADA." *Id.* at 25. However, the Court stated that requiring FIA to make "reasonable efforts" to reunite a family was consistent with the ADA's accommodation requirement. *Id.* at 25-26. If FIA "fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family." *Id.* at 26. The *Terry* Court then went on to review the respondent's belated ADA claim, that was made during closing argument. The Court discussed the issue as follows:

> Even if respondent had timely raised this issue, the record does not support her claim that petitioner did not reasonably accommodate her disability. It

> is undisputed that respondent was provided with extensive services, and there is no evidence that she was denied any services that are available to parents with greater cognitive abilities. The caseworkers were aware of respondent's intellectual limitations and would repeat instructions multiple times and remind her when tasks had to be completed. Respondent received assistance through GCCMH to address both personal and parenting problems in a program that was tailored to developmentally disabled persons. An arrangement under which respondent lived in the children's foster home was attempted but proved unsuccessful. Petitioner had no other services available that would address respondent's deficiencies while allowing her to keep her children. The ADA does not require petitioner to provide respondent with full-time, live-in assistance with her children. See *Bartell v Lohiser*; 12 F Supp 2d 640, 650 (ED Mich, 1998).
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> Respondent's contention that she needed even more assistance from petitioner to properly care for her children merely provides additional support for the family court's decision to terminate her parental rights. Cf. *id.* After her children have come within the jurisdiction of the family court, a parent, whether disabled or not, must demonstrate that she can meet their basic needs before they will be returned to her care. 'If a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent.' *In re AP*, 728 A2d 375, 379 (Pa Super, 1999). [*Id.* at 27-28.]

In the case at bar, respondents both receive SSI payments for developmental or learning disabilities and probably would be found to suffer from a "disability" under the ADA. However, FIA did provide very extensive services, including counseling, Families First, one-on-one housekeeping and parenting skills training in the home, transportation, and assistance with budgeting and financial planning over an extended period. Thus, like *Terry, supra*, the record does not support respondents' claim that FIA did not reasonably accommodate their disabilities under the ADA.

We likewise reject respondents' claim under the PWDCRA, formerly the Handicappers Civil Rights Act (HCRA) as the result is the same. In *Chmielewski v Zermac, Inc*, 457 Mich 593, 604 n 11; 580 NW2d 817 (1998), the Supreme Court noted that HCRA's definition of "handicap" mirrored the ADA's definition of "disability." The PWDCRA now uses the term "disability" and its definition in MCL 37.1103(d) is also similar to the ADA's. The two acts have the same purpose and use similar definitions and analyses, and Michigan courts rely on the ADA in interpreting the PWDCRA.[1] The record displays that the court did return the children to respondents in accord with their stated desires because they were progressing. On both occasions FIA provided wide-ranging services to help respondents regain custody of their children. The record reflects that respondents were unable to benefit from the multitude of FIA's services, and could not properly care for the children. Therefore, the PWDCRA claim fails.

[1] This Court is not required to follow federal precedent in interpreting state law. *Chiles v Machine Shop, Inc*, 238 Mich App 462, 472-473; 606 NW2d 398 (1999).

Respondents' claim of insufficient evidence to satisfy the statutory standards in MCL 712A.19b(3)(c)(i), (g), and (j) also fails. Under subsection (c)(i), more than 182 days elapsed and the conditions of adjudication were virtually unchanged, as the trial court found. The conditions of the home and children were deplorable. Termination of parental rights is appropriate where parents fail to provide a proper living environment for the children. *In re King*, 186 Mich App 458, 464; 565 NW2d 1 (1990); *In re Webster*, 170 Mich App 100, 110; 427 NW2d 596 (1998). Here, the evidence showed an unsanitary living environment. The older two children suffered from developmental delays in their eating habits and social skills. The children repeatedly sustained injuries and were not properly supervised by respondents.

The evidence was also clear and convincing to satisfy the statutory standards under subsections (g) and (j). Respondents failed to provide proper care and custody for the children and there was a reasonable likelihood that the children would suffer harm if returned to respondents' home. In addition to the physical evidence of neglect, respondent father tested positive for cocaine on four occasions. Respondent father clearly had a problem with anger and anxiety, and could not control his behavior despite many months of therapy. Respondent mother was unable to learn proper hygiene, child supervision, and housekeeping skills. The evidence showed it quite likely that continuation of services would not have helped sufficiently. Unannounced visits by workers found the home and children in unsanitary, unhealthy conditions. Respondents' behavior was having an adverse effect on the children, and the evidence showed that this situation would probably continue regardless of assistance by FIA.

Respondents also argue that the trial court clearly erred in finding termination of their parental rights not clearly contrary to the children's best interests. Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights unless it finds from the whole record that termination clearly is not in the child's best interests. MCL 712A.19b(5); *Trejo, supra*, 462 Mich 353. The trial court's decision on the best interests question is reviewed for clear error. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *Trejo, supra*, 462 Mich 356-357.

The record displays that there is a bond between respondents and the older three children. The children did express love for their parents and both parents clearly love the children. However, because of respondents' history of very serious and chronic neglect and their failure to benefit sufficiently from services, it is very likely that any return of the children would not be permanent. Less than a month after the children were returned in 2003, there were reports of neglect, lack of supervision, and poor home conditions. Respondents did not seem to grasp or were unwilling to make the changes necessary to effectively parent the children. In light of the fact that respondents would not be able to assume care of the children within a reasonable time, termination of parental rights was not clearly contrary to the children's best interests.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio