STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of YAHAIRA WOODALL, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

VERNELLE BOOKER,

Respondent-Appellant.

UNPUBLISHED
October 21, 2008

No. 283185
Oakland Circuit Court
Family Division
LC No. 06-725962-NA

Before: Schuette, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(g). We reverse and remand for further proceedings.

This case came to the attention of the Department of Human Services in June 2006, when the minor child was approximately 14 months old. Respondent had suffered two strokes after the birth of the minor child, leaving her with impaired speech, weakness on one side of her body, and short-term memory loss. Although the child was born in Illinois, respondent mother at the initiation of this case was living with her adult daughter, Sheila McKenzie,[1] in Pontiac, Michigan. Ms. McKenzie was the primary caretaker of the minor child, while employed at two part-time jobs. The difficulties that gave rise to the court's jurisdiction were the child's failure to thrive, attributed to insufficient caloric intake, and the unsuitable condition of the residence, a one-bedroom apartment inhabited by six persons, including the minor child and her teenaged brother, Demetris. Early in these proceedings, respondent was placed under Ms. McKenzie's guardianship. A parent-agency agreement was provided, pursuant to which respondent was to address her medical limitations, attend all medical appointments, and provide documentation of completion or progress. Ms. McKenzie, as a prospective primary caretaker of the child, was directed to participate in parenting classes, counseling, and a psychological evaluation.

[1] Ms. McKenzie's first name is variously spelled "Sheila" and "Shelia" throughout the lower court record.

On appeal, respondent asserts that the evidence was not sufficient to establish that there is no reasonable likelihood or expectation that she will be able to provide proper care and custody for the child within a reasonable time considering the child's age. MCL 712A.19b(3)(g). We agree. We note initially that it is clear that at present respondent is unable to care for a small child. According to her psychological evaluation, undertaken around the time of the termination trial, respondent suffered from moderate cognitive impairment. Except for "yes" and "no" she is unable to communicate with language. However, apart from a vague hearsay statement, the record is totally lacking in evidence concerning respondent's prognosis for the future. We agree with the psychological evaluator that it is at this time unclear to what extent recovery or significant rehabilitation would be possible if respondent were to participate in appropriate stroke rehabilitation services. Medical input and evidence, in the context of this case, is essential to determine whether respondent will be able to provide proper care and custody for the child within a reasonable time. MCL 712A.19b(3)(g).[2]

In general, when a child is removed from the custody of the parents, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f(1), (2), (4); *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000). In this case, it appears that the agency utterly failed in its duty to assist respondent in rehabilitative efforts, and furthermore that this failure is the reason for the agency's lack of information other than vague hearsay concerning respondent's prognosis. Kimberly Dehaven, the foster care worker for the family, testified that the agency did not assist respondent in her primary assignment under the parent agency agreement: to obtain medical treatment for her condition. Although the agency expected Ms. McKenzie to assist respondent in this area, it also appears that the agency did not offer Ms. McKenzie any assistance in doing so. The agency cited respondent's absence from the state of Michigan to explain its lack of efforts, but this is only a partial excuse. Respondent resided with Ms. McKenzie from the time of removal in September 2006 through the January 2007 adjudication and March 2007 disposition. From the record provided on appeal, it appears that respondent moved to Illinois to live with her aunt and uncle on or around May 10, 2007, approximately two months after the initial disposition, yet in that two months no services were provided. The adequacy of the agency's

[2] We note that at one time the law in Michigan was that parental rights could "not be terminated on the basis of a parent's physical incapacity in the absence of culpable neglect." *In re McDuel*, 142 Mich App 479, 481; 369 NW2d 912 (1985). *McDuel* involved a mother who became permanently disabled when she was inflicted with multiple sclerosis shortly after the birth of her child, which confined her to a wheelchair and made it impossible for her to physically care for her child. This Court stated that the mother's "condition is an unfortunate and unavoidable tragedy[, and] [w]e refuse to compound that tragedy by forever severing her bonds with her only child, perhaps her main source of comfort." *Id.* at 490. However, as stated subsequently by our Supreme Court in *In re Jacobs*, 433 Mich 24, 37; 444 NW2d 789 (1989), the Legislature amended the statute after *McDuel* by providing for termination for failure to provide proper care or custody "without regard to intent," which is the language currently employed in MCL 712A.19b(3)(g). Therefore, *McDuel* is no longer of any relevance. Thus, termination can occur here, but first services must be provided, rehabilitation explored, and medical evidence on prognosis be submitted. The fact that a guardianship exists, reflecting a current finding of incapacity, does not necessarily mean that respondent will remain in such a state in the future.

efforts toward reunification is relevant to the sufficiency of the evidence to establish a statutory ground for the termination of parental rights. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). Where respondent's potential for stroke rehabilitation has not been explored or examined, and no assistance has been offered in this area, we conclude that the trial court lacked any basis for a conclusion concerning the likelihood that she could provide proper care for the child, with or without assistance, within a reasonable time.

A significant factor in this case is the supportive family of respondent, notably her adult daughter, who was to be provided with services as the prospective primary caretaker of Yahaira. This also did not occur, in large part because of respondent's relocation to Illinois during a portion of the proceedings below. While the agency is not obligated to provide live-in support or lifelong services for a disabled parent, *In re Terry*, *supra* at 27-28, reasonable efforts toward reunification under these circumstances could certainly encompass assistance and support to a relative who may be willing to do so. Thus we again agree with the psychological evaluator who recommended a renewed psychological evaluation of Ms. McKenzie and noted that her commitment to engaging in services could assist in determining her level of commitment to the minor child.

Reversed and remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Bill Schuette
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald