STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of GABRIEL TRUITT and JAMES TRUITT, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

AUTUMN TRUITT ELLSWORTH,

Respondent-Appellant.

UNPUBLISHED
April 23, 2009

No. 287439
Hillsdale Circuit Court
Family Division
LC No. 05-000530-NA

Before: Saad, C.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Respondent appeals the trial court's order that terminated her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent claims that, as a matter of law, the trial court improperly and prematurely terminated her parental rights because she did not receive adequate services to accommodate her cognitive disabilities. We disagree. At the outset of this case, petitioner's plan for this family was reunification, and therefore petitioner was required to make reasonable efforts to rectify the conditions that caused the children's removal. MCL 712A.18f; *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005); *In re Terry*, 240 Mich App 14, 24, 25-26; 610 NW2d 563 (2000). In making those efforts, petitioner was required to comply with the Americans with Disabilities Act (ADA) and to "make reasonable accommodations for those individuals with disabilities." *Terry*, *supra* at 25. If petitioner failed "to take into account [respondent's] 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. We review a trial court's determination that petitioner made reasonable efforts to reunify the family for clear error. *Id.* at 22.

The record reveals that petitioner accounted for and reasonably accommodated respondent's cognitive disabilities because petitioner provided multiple, intense services over several years and tailored services to support her limitations. Petitioner provided hands-on and verbal instruction, parental modeling, demonstration, repetitive instruction, immediate feedback, and assistance with reading. *Id.* at 26. Unfortunately, despite these efforts, it was evident that respondent remained unable to parent her children. We find noteworthy the opinions of service providers who directly assisted respondent with parenting for a significant time during the

proceedings, and which were largely corroborated by the "experts" who assessed respondent. The testimony revealed that respondent lacked the capacity to carry out parenting responsibilities, respond to her children's needs, or provide them with a safe environment, and she would need constant "24-hour" support and assistance to parent the children in her home. Regardless of a parent's disability, the parent must still be able to attain the minimum parental skills necessary to meet the children's needs. *Id.* at 28. "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." *Id.* (citation omitted). Further, "[t]he ADA does not require petitioner to provide respondent with full-time, live-in assistance with her children." *Id.* at 27-28 (citation omitted). Therefore, the trial court did not clearly err in finding that petition made reasonable efforts at reunification.

Respondent says that her expert was critical of the services provided and felt that respondent might someday be able to parent the children with appropriate services. However, multiple service providers testified regarding the intensity of services individually tailored to account for respondent's cognitive disabilities, her lack of any significant benefit from the services over several years, and her poor prognoses regarding her future ability to parent the children without constant support and assistance. Therefore, we cannot disagree with the court's finding that any shortcoming in services identified by her expert did not detrimentally affect respondent's ability to become an effective parent because there was "no way" that she could care for her children. It was reasonable for the court to find the service providers' testimony concerning her parenting ability, or lack thereof, to be convincing, especially given that the expert who provided a critical assessment of the services provided to respondent never met, observed, or evaluated respondent or the children, but based her assessment solely on a review of the case record. In light of the conflicting testimony concerning the appropriateness of services and the trial court's special opportunity to judge the credibility of the witnesses before it, *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), we find no clear error in the court's finding that petitioner made reasonable efforts to reunify the family. *Terry, supra* at 22. We further find that the evidence clearly supported the court's findings that respondent would not be able to rectify her parenting deficiencies in the near future, her future expectation of being able to care for the children was very low, and she could not provide a safe environment for the children to support statutory grounds for termination under MCL 712A.19b(3)(c)(i), (g), and (j).

Respondent contends that the trial court clearly erred in its best interest determination under MCL 712A.19b(5). Under MCL 712A.19b(5), "[i]f the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." We review the trial court's determination regarding the children's best interests for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

While the record reflects that respondent expressed love for her children and a desire to care for them in the future, we find no clear error in the trial court's refusal to further delay the children's permanency and stability. The children, who were very young, had been outside of respondent's care for a substantial amount of time and they exhibited problems with bonding, attachment, and trust because of the ongoing lack of permanency. Testimony by service providers indicated that the children needed permanency and a caregiver who could meet their

needs and provide a safe, structured, and stable environment, which respondent clearly could not do as evidenced by testimony regarding her serious and ongoing parenting deficiencies. The children's therapists indicated that the children had recently made progress toward addressing their problems, had formed a close attachment with their foster parents, and felt safe and secure in their current placement. Given the children's recent progress, respondent's ongoing inability to provide them with the home environment they needed, the uncertainty surrounding when and if she might be able to someday parent the children, and the "expert" opinions supporting current permanency for the children, it would be unfair to upset the children's recent stability or further delay their permanency while respondent continued to work toward reunification. On this record, we find no clear error in the trial court's determination that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5).

Respondent also says that the trial court erred by failing to consider the petitions for a guardianship filed by her trial counsel following the termination hearing. Respondent waived this issue because she failed to cite any authority in support of her argument. *Badiee v Brighton Area Sch*, 265 Mich App 343, 379; 695 NW2d 521 (2005), citing *Conlin v Scio Twp*, 262 Mich App 379, 384; 686 NW2d 16 (2004). Nonetheless, we hold that the trial court did not err in rejecting the petitions for guardianship. Under MCL 712A.19c(2), a court may establish a post-termination guardianship under the Juvenile Code if the court determines that such a guardianship is in the child's best interests. Here, the court found that, under the circumstances, a guardianship would not be in the best interests of the children because the petitions did not present a guardianship plan or name a potential guardian, and there were no appropriate family members available to act as guardians. The evidence established that permanency and stability were paramount to the children's well being, and no evidence established that a guardianship would provide structure to create permanency for the children. Therefore, we find no error in the court's rejection of the guardianship petitions.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra