STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of I. M. and M. M., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellant,

v

DEBORAH ANN-ARNITA MILLSAP, a/k/a DEBORAH ANN MILLSAP,

Respondent-Appellant,

and

ISAAC M. SPILLMAN,

Respondent.

UNPUBLISHED
May 20, 2010

No. 295092
Wayne Circuit Court
Family Division
LC No. 07-471223

Before: MURPHY, C.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

Respondent-mother appeals as of right from the trial court's order terminating her parental rights to the minor children, I.M. and M.M., under MCL 712A.19b(3)(a)(*ii*), (c)(*i*), (g), (j), and (l). We affirm the trial court's decision with regard to M.M. and conditionally affirm the trial court's decision with regard to I.M. and remand for further proceedings.

I. REUNIFICATION EFFORTS

Respondent first argues that petitioner failed to provide her with adequate reunification services to accommodate her mental illness in violation of the Americans with Disabilities Act, 42 USC 12101. See also MCL 712A.18f. For this reason, plaintiff contends, termination of her parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j) was improper. We disagree. At the outset, we note that respondent did not timely raise her argument as it relates to the ADA and thus it is waived. See *In re Terry*, 240 Mich App 14, 26-27; 610 NW2d 563 (2000).

Nonetheless, the record establishes that efforts by petitioner and respondent's mental health provider reasonably accommodated her mental illness. Petitioner was aware that

respondent's mental health issues were a priority and it made significant efforts to work with her on addressing her mental health needs and ensuring that she received appropriate mental health treatment. The record shows that petitioner formulated several Parent/Agency Agreement tailored to respondent's mental instability, followed up with and maintained regular contact with respondent's mental health service provider, and made significant efforts to ensure that respondent was given ample time and opportunity to address her mental health issues.[1] Although respondent's treatment plan did not specifically require petitioner to verify her medication monitoring as her appellate attorney would have preferred, it is evident that her mental health treatment, including her medication, was monitored by her mental health provider, who provided comprehensive mental health services, as well as by the caseworker, who followed up with and maintained contact with her mental health providers throughout the proceedings. Further, despite an interruption in respondent's counseling services during the proceedings, it is evident that the caseworker made timely efforts to re-engage respondent in counseling by providing her with another therapist. Respondent, however, disengaged from those therapeutic services. Under the circumstances, petitioner's efforts were reasonable.

II. GROUNDS FOR TERMINATION

Respondent next argues that the trial court erred by finding that clear and convincing evidence supported its conclusion that grounds for termination existed. We disagree. We review for clear error the trial court's determination whether statutory grounds for termination existed. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). "If 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." MCL 712A.19b(5).[2]

Here, the trial court found that clear and convincing evidence supported termination under MCL 712A.19b(3)(l), which provides that a trial court may terminate a respondent's parental rights if clear and convincing evidence establishes that "[t]he parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state." Record testimony reveals that the State of Arkansas terminated respondent's parental rights to another child in 2004 after the child was removed from respondent's care and neglect proceedings were initiated. Thus, we cannot conclude that the trial court clearly erred by finding that grounds for termination existed under MCL 712A.19b(3)(l). Further, because petitioner established at least one ground for termination by clear and convincing evidence, it is not necessary for us to consider whether the trial court erred with

[1] The caseworker testified that respondent was given more time to work toward reunification than normal because of her mental illness.

[2] Respondent does not contest on appeal the trial court's best interests finding.

regard to the other grounds for termination. See *In re Trejo*, 462 Mich at 354 n 12. The trial court did not clearly err by terminating respondent's rights to the minor children.

III. INDIAN CHILD WELFARE ACT

Respondent also asserts, and petitioner agrees, that the trial court failed to comply with the notice provisions of the Indian Child Welfare Act, (ICWA), 25 USC 1901, *et seq*. "The ICWA provides specific procedures and standards that apply where states are involved in removing Indian children from their families." *In re TM*, 245 Mich App 181, 186; 628 NW2d 570 (2001). The ICWA includes a notice provision, which provides in pertinent part:

> In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary [of the Interior] in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. [25 USC 1912(a).]

"Once notice is provided to the appropriate tribe, it is for the tribe to decide if the minor child qualifies as an 'Indian child.'" *In re TM*, 245 Mich App at 187.

In the present matter, the father[3] of I.M. informed the trial court at the preliminary hearing that I.M. could be of Sioux or Blackfoot Indian heritages. Thereafter, the trial court entered an order indicating that I.M. was a member of, or eligible, for membership in the Blackfoot tribe. However, there is no indication in the record that the court complied with the notice requirements of the ICWA or otherwise determined that the ICWA did not apply. Thus, the trial court failed to comply with the notice requirements of the ICWA. See *In re Maynard*, 233 Mich App 438, 445-447; 592 NW2d 751 (1999).

Having concluded that respondent's parental rights were otherwise properly terminated, we conditionally affirm the trial court's termination order regarding I.M., but remand for further proceedings to ensure compliance with the notice provisions of the ICWA and to determine whether the ICWA is applicable. See *id*. at 449-450. On remand, if the trial court determines that appropriate notice was provided and the ICWA does not apply, the termination order may stand. *Id*. However, if the court determines that the ICWA does apply, the court should conduct further proceedings consistent with its provisions. *Id*.

We affirm the order terminating respondent's parental rights to M.M. and conditionally affirm the order terminating respondent's parental rights to I.M., but remand for the purpose of

[3] At the time of the preliminary hearing, I.M.'s father had not yet established parentage, but did so later in the proceedings. He never established parentage with regards to M.M., and thus, the provisions of the ICWA do not apply to M.M. 25 USC 1903(9).

providing proper notice to the appropriate tribe consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Kirsten Frank Kelly
/s/ Cynthia Diane Stephens