

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED

October 12, 2010

In the Matter of V. E. ALVARENGA, Minor.

No. 296169

Wayne Circuit Court

Family Division

LC No. 04-437256-NA

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Before: ZAHRA, P.J., and TALBOT and METER, JJ.

PER CURIAM.

K.E. Rios contests the termination of her parental rights<sup>1</sup> asserting she successfully addressed the requirements of her treatment plan and that the Department of Human Services failed to provide her with the necessary support and services to maintain her progress and achieve reunification. We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination<sup>2</sup> has been met by clear and convincing evidence and that termination is in the best interests of the child.<sup>3</sup> The decision of a trial court to terminate parental rights is reviewed for clear error.<sup>4</sup> A finding is clearly erroneous if, although there is evidence to support it, this Court “is left with a definite and firm conviction that a mistake has been made.”<sup>5</sup> Regard

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<sup>1</sup> Rios’ parental rights were terminated in accordance with MCL 712A.19b(3)(c)(i) [conditions leading to the adjudication continue to exist] and (g) [failure to provide proper care and custody]. While in its oral findings of fact the trial court referenced MCL 712A.19b(3)(j) [likelihood of harm to child on return to parent] as a ground to terminate parental rights, this factor was not identified in the trial court’s written findings of fact.

<sup>2</sup> MCL 712A.19b(3).

<sup>3</sup> MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999).

<sup>4</sup> MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *Sours*, 459 Mich at 633.

<sup>5</sup> *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989).

is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.<sup>6</sup>

Termination of parental rights was proper because the conditions that led to the adjudication continued to exist and Rios was unable to provide proper care and custody of the child. At the time of the adjudication Rios was a minor and a neglect ward of the court and was unable to provide for her child's basic needs. Rios continued to be incapable of providing for the minor child despite the elapse of five years between the initial adjudication and the permanent custody hearing. During the five years that the child was in foster care, Rios failed to consistently demonstrate an ability to provide the child with a stable home. Rios moved numerous times during the proceedings. Although Rios contends that each residence change improved her home environment, the moves were, in actuality, motivated by neighborhood crime. In one instance, Rios' had to move because her home address was being used for Medicaid fraud. Her most recent residence lacked a bed for the minor child. Rather than demonstrating a lifestyle improvement, Rios' repetitive residence changes indicated an inability to provide a stable and consistent home environment for her child.

Rios also never successfully demonstrated an independent ability to financially support her child. Although she claimed to occasionally receive child support from her younger child's father and that her boyfriend provided financial assistance, such means of support did not necessarily comprise a reliable or long-term option. Rios contends that she was rarely unemployed, but the trial court record shows that she never demonstrated an ability to retain employment for a substantial time period. Rios was often fired from jobs due to lack of transportation and experience and was frequently only able to secure part-time employment.

Rios also was never fully in compliance with her treatment plan, which required her to attend counseling. Although Rios contends that she attended therapy until she no longer found it to be beneficial, the trial court's record indicates that she prematurely terminated her counseling sessions in November 2007, despite evaluation by the caseworker that Rios continued to demonstrate issues based on her immaturity.

Rios' ability to provide proper care for her child was further called into question by her refusal to regularly visit and participate with the child in her therapy. Rios neglected to regularly telephone to check on her child when she was unable to attend visits. Rios missed half of the visits offered to her in the last two years and attributed the missed visits to a lack of transportation. Contrary to Rios' attributing her failure to visit the child to the failure of the DHS to assist her with transportation, the trial court's record indicates that Rios never requested transportation assistance from the caseworker. Significantly, in an effort to assist respondent with visitation, the trial court made a referral to CASA but Rios failed to cooperate in scheduling a meeting with the representative of that organization. Visits with the child at her home were precluded due to Rios failing to allow the caseworker access to the residence to evaluate its suitability.

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<sup>6</sup> MCR 2.613(C); *Miller*, 433 Mich at 337.

Rios asserts that the DHS failed to provide her with the services necessary to enable her to maintain progress on her treatment goals. The record indicates to the contrary. Every effort was made to assist Rios, including the extension of the proceedings over five years. Counseling was provided to Rios, but she prematurely terminated the service. Contrary to her assertion that the delay in initiating play therapy negatively impacted her, this service was ordered by the trial court on July 1, 2008, and the DHS made a referral for play therapy by August 2008. There is no evidence that the DHS failed to make reasonable efforts in facilitating the procurement of play therapy. To the contrary, the trial court's record indicates that Rios ignored the therapist's attempts to contact her and include her in therapy sessions with the child.

Rios has also not provided legal authority to establish that the petitioner's failure to make reasonable efforts alone establishes a basis for relief.<sup>7</sup> Rather, the absence of reasonable efforts on the part of a petitioner has only been relevant to assessing whether the statutory grounds for termination were established.<sup>8</sup> When considering Rios' allegations concerning the lack of effort by the DHS in the context of statutory grounds for termination of her parental rights, the court did not clearly err in terminating respondent's parental rights under two, separate statutory bases, neither of which was a result of the failure to offer services. Contrary to Rios' assertion, she was offered services but failed to take advantage of what was provided.

Finally, the evidence showed that termination of respondent's parental rights was clearly in the best interests of the child.<sup>9</sup> There is no evidence of a strong bond between Rios and the child. In fact, the evidence showed that the child did not want to participate in visits and needed therapy to address aggressive and inappropriate behaviors she displayed before and after visits.

Rios has not been able to maintain consistent employment or housing. Her failure to participate in counseling and regularly visit her child demonstrates her deficiencies as a caregiver. "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."<sup>10</sup>

Affirmed.

/s/ Brian K. Zahra  
/s/ Michael J. Talbot  
/s/ Patrick M. Meter

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<sup>7</sup> MCL 712A.18f(4).

<sup>8</sup> See, e.g., *In re Newman*, 189 Mich App 61, 65-68; 472 NW2d 38 (1991).

<sup>9</sup> MCL 712A.19b(5).

<sup>10</sup> *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000) (citation omitted).