# STATE OF MICHIGAN

# COURT OF APPEALS

UNPUBLISHED
November 23, 2010

In the Matter of D. S. DUDLEY, Minor.

No. 298017
Wayne Circuit Court
Family Division
LC No. 90-285489

Before: O'CONNELL, P.J., and BANDSTRA and MURRAY, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

## I. FACTS

The minor child was born prematurely, had surgery to place a tracheostomy, and received oxygen via a tracheostomy mask and tube that were hooked to a ventilator. Five of the child's first seven months of life were spent in the hospital. In February 2008, he was discharged into his mother's custody but was readmitted into the hospital a week later for respiratory distress. During that hospital stay, his mother suffered a stroke and was hospitalized herself. In preparation for the child's projected release from the hospital, he was placed in foster care on a temporary basis while waiting for his mother to recover, and a petition seeking temporary wardship was authorized. This petition's allegation against respondent was that he was unable on his own to provide the 24-hour medical care needed by the child.[1] The child was subsequently discharged from the hospital and placed into specialized foster care. Two weeks later, his mother died and the permanency plan became placement with respondent. The main requirements of respondent's treatment plan were for him to secure the services of an alternate care provider who would assist him in caring for the child, to become trained about the child's specialized needs, and to have suitable housing. Despite efforts to recruit family and friends to be an alternate care provider, respondent was unable to find someone who was willing to provide free around the clock care. In addition, the hospital refused to train respondent about the child's needs unless he first found an alternate care provider who could be simultaneously trained with

[1] A pediatric pulmonologist testified that the child could die if he did not receive appropriate care. Due to the extensive and serious nature of the child's medical needs, he required two care providers around the clock.

him. Lastly, respondent's housing was assessed as unsuitable by the time of the termination hearing.

## II. ANALYSIS

Respondent argues that the petitioner, Department of Human Services, failed to make reasonable efforts to reunify the family and characterizes petitioner's efforts as instructing him to do something that was impossible: find an alternate care provider who was willing essentially to give up his or her life to help care for the child for no pay. In respondent's opinion, the reasonable solution would have been to secure funding to pay an alternate care provider who would have assisted respondent.

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 led to the child's removal, to reunify the family, and to avoid termination of parental rights. *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). The reasonableness of services is relevant to the sufficiency of evidence for termination of the respondent's parental rights. See *In re Newman*, 189 Mich App 61, 66-69; 472 NW2d 38 (1991). To successfully claim a lack of reasonable efforts, a respondent must establish that he would have fared better if the petitioner offered other services. *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005).

Respondent's complaint about petitioner's failure to secure funding to pay for an alternate care provider fails for two reasons. First, respondent does not specify what other funding sources should have been tapped by DHS. Second, there was evidence that potential funding sources were considered during the proceeding but were unavailable to respondent.[2] This evidence indicates that the failure to secure funding for an alternate care provider was not due to a lack of efforts by DHS but, rather, was due to the fact that no funding sources were available to assist in a situation such as this one. DHS is required to make reasonable efforts to reunify a family but is not required to make extraordinary efforts, and it was unreasonable to expect it to find a funding source that did not exist. DHS was also not required to pay for an alternate care provider from its own monies since it is not responsible for providing for a child's needs when that child has a parent. See *In re Beck*, 287 Mich App 400, 402-404; ___ NW2d ___ (2010), lv gtd 486 Mich 936 (2010). As such, the failure to secure funding for an alternate care provider was not attributable to DHS, and the trial court did not clearly err when it found that DHS made reasonable efforts to rectify the conditions that led to the child's removal, to reunify the family, and to avoid termination of parental rights.

Next, respondent argues that he was found to be "unfit" to care for the child because, as an unmarried father, respondent lacked a partner who lived in the house and who would commit

[2] During the September 3, 2009, hearing, there was discussion about funding sources such as Aid to Families with Dependent Children (now known as Temporary Assistance to Needy Families) and supplemental security income for the child, which were both unavailable to respondent because the child was not placed with him. Also during this hearing, the foster care case manager testified that she knew of no agency that could assist respondent in locating an alternate care provider.

to being an alternate care provider. Therefore, respondent claims that he was treated differently than a married father in a similar situation. Respondent bases this claim on the rights afforded him as the child's legal father, and argues that the Due Process and Equal Protection Clauses protected him against having his parental rights terminated "without the same showing of unfitness that would be necessary to terminate the rights of a mother or a married father." See *In re MKK*, 286 Mich App 546, 559 n 5; 781 NW2d 132 (2009). Since respondent did not raise this constitutional claim at the trial level, this Court's review is limited to plain error that affected respondent's substantial rights. *People v Carines*, 460 Mich 750, 761-766; 597 NW2d 130 (1999).

We reject respondent's argument for several reasons. Being married does not assure that a parent has a partner who is able or willing to become an alternate care provider, and being single does not necessarily mean that a parent will be unable to find a relative or friend who is able and willing to serve as an alternate care provider. Moreover, respondent ignores the well-established principle that all parents (no matter what their marital status) are expected to meet "irreducible minimum parental responsibilities." *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000). In this case, the child's needs required that he be attended by at least two care providers around the clock. In requiring respondent to have an alternate care provider, the court asked respondent to do what is necessary for all parents, namely, provide for the needs of their children. Accordingly, there was no plain error that affected respondent's substantial rights.

Next, respondent challenges the sufficiency of evidence. This Court reviews the trial court's decision to terminate parental rights for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). In this case, the adjudicating condition and main barrier to reunification was respondent's inability to care for the child on his own. By the time of the termination hearing, there had been no improvement regarding this issue since respondent had failed to secure an alternate care provider (which in turn prevented him from being trained about the child's needs) and had also failed to secure adequate housing. Based on this evidence, the trial court did not clearly err when it based its termination order on MCL 712A.19b(3)(c)(*i*) and (g). It also did not clearly err when it based its termination order upon MCL 712A.19b(3)(j), in light of the evidence that the child required a sterile environment so as not to endanger his breathing, yet respondent's housing was fire-damaged and in need of repairs.

Finally, the trial court was required to order termination if it found that there were grounds for termination of parental rights and that termination of parental rights was in the child's best interests. MCL 712A.19b(5). A review of the record shows that the child had started to recognize respondent and looked forward to visitations with him but that the bond between them was weak given the fact that respondent had essentially never had custody of the child. The record also clearly showed that the child's medical needs were extensive and that failure to meet those needs could result in the child's death. Despite making efforts, respondent had been unable to secure an alternate care provider who could assist him in safely caring for the child. There was also convincing evidence that the child was "adoptable" despite his extensive needs. As such, the trial court did not clearly err in its best interests determination.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Christopher M. Murray