

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 13, 2012

In the Matter of B.J. CARL, Minor.

No. 308920
Ingham Circuit Court
Family Division
LC No. 10-001161-NA

Before: TALBOT, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Respondent mother appeals by right the circuit court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). Because we conclude there were no errors warranting relief, we affirm.

Respondent first challenges the trial court's finding that clear and convincing evidence supported the grounds for termination of her parental rights under MCL 712A.19b(3)(c)(i). See MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The conditions that led to adjudication were Respondent's history of prostitution, long-term history of substance abuse, inability to maintain stable housing, and lack of medical attention given to the minor child.¹ During the 19 months that this case was open, Respondent failed to obtain stable housing and continued to engage in prostitution and use marijuana. Although Respondent managed to secure housing for five months, during the other 14 months, she lived in 11 different locations and was homeless twice. Additionally, three months prior to the termination hearing, Respondent was arrested for "commercializing sex." Respondent is currently awaiting trial on a 2009 solicitation charge and owes court costs from a 2009 solicitation plea. Moreover, even though Respondent admitted that using marijuana is counterproductive to her mental health, she continued to smoke marijuana until a week before the trial. Therefore, on this record, there was clear and convincing evidence that most of the conditions that led to adjudication remained and that there was no reasonable likelihood the conditions would be rectified within a reasonable time considering the child's age. MCL 712A.19b(3)(c)(i); *In re Trejo Minors*, 462 Mich at 356-357. And, the record shows that the trial court did not clearly err in finding that termination was in the child's best interests. MCL 712A.19b(5).

¹ The allegation that Respondent's boyfriend had sexually abused the minor child was also a condition that led to the initial adjudication, but the allegation was not found to warrant prosecution.

Respondent next challenges the trial court's finding that MCL 712A.19b(3)(g) and (j) were both established by clear and convincing evidence. Because the trial court properly found that termination was warranted under MCL 712A.19b(3)(c)(i), any error with respect to additional statutory grounds would be harmless. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Thus, we need not address this additional claim of error.

Finally, Respondent argues that the trial court erred in terminating her rights because she was not offered reasonable accommodations in light of her bipolar disorder and severe psychosis, which constituted a violation of the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.* This Court has held that the Department must make reasonable accommodations for parents with disabilities, but it has also stated that "a parent may not raise violations of the ADA as a defense to [the] termination of parental rights" *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000). Rather, an aggrieved parent must timely raise the failure to accommodate when the "service plan is adopted or soon afterward." *Id.* at 26. Where, as here, a parent has not timely raised the issue, her sole remedy for an alleged failure to provide reasonable accommodations is "to commence a separate action under the ADA." *Id.*

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Michael J. Kelly