STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JAMES EDWARD ALVORD, Minor.

FAMILY INDEPENDENCE AGENCY

Petitioner-Appellee,

v

DEBRA L. SIPES,

Respondent-Appellant.

UNPUBLISHED
August 14, 1998

No. 206117
Genesee Juvenile Court
LC No. 96-104940

Before: Doctoroff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Respondent appeals as of right from a juvenile court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (j); MSA 27.3178(598.19b)(3)(c)(i) and (j). We affirm.

A two-prong test applies to a juvenile court's decision to terminate parental rights. First, the juvenile court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). Once a statutory ground for termination has been met by clear and convincing evidence, the court shall order termination of parental rights, unless the court finds that termination of parental rights is clearly not in the best interest of the child. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 473; 564 NW2d 156 (1997). The trial court's decision regarding termination is reviewed in its entirety for clear error. *Id.* at 472.

The juvenile court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. The court found that respondent, who is developmentally disabled, might not ever be able to discipline, control, supervise, and care for James' physical and emotional needs, and, even if she could do it, it would not be within a reasonable time considering the

child's age. Further, respondent offered no evidence that termination was not clearly in the best interest of the child. Therefore, the juvenile court did not err in terminating respondent's parental rights.

Respondent argues that the FIA violated the Americans with Disabilities Act, 42 USC 12101 *et seq.*, by failing to modify parenting and life skills classes to accommodate her developmental disability. We disagree. As a matter of law, the ADA is not a defense to termination of parental rights. Termination proceedings are not services, programs, or activities within the meaning of the ADA, 42 USC 12132, and respondent's cause of action, if any, must be pursued under the ADA. As a matter of evidence, the efforts made by the FIA, viewed in light of a respondent's particular disability, may be relevant in an appropriate case in evaluating whether the statutory criteria for termination were proven. However, in this case, respondent did not raise her ADA claim until closing arguments at the termination hearing. This deprived the FIA and the juvenile court of an opportunity to timely address respondent's concerns while the FIA was providing services. While we are sympathetic to respondent's disability, our primary concern when reviewing the termination of parental rights is the best interest of the child. Here, the record supports the trial court's finding by clear and convincing that there is a reasonable likelihood, based on respondent's conduct or capacity, that the child will be harmed if returned to her care, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child. Therefore, termination was proper under MCL 712A.19b(3)(c)(i) and (j); MSA 27.3178(598.19b)(3)(c)(i) and (j).

Affirmed.

/s/ Martin M. Doctoroff
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot