STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
February 15, 2011

In the Matter of M. G. STAUFFER, Minor.

No. 298405
Otsego Circuit Court
Family Division
LC No. 08-000161-NA

Before: MURPHY, C.J., and WHITBECK and MURRAY, JJ.

PER CURIAM.

Respondent appeals by right the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(*ii*) and (g). We reverse and remand for proceedings consistent with this opinion.

Respondent contends that the trial court clearly erred in terminating his parental rights where the court denied his motions for reunification services. We agree. On appeal from termination of parental rights proceedings, this Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(K); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005). A claim that the respondent was not provided reasonable services directed toward reunification is relevant to the sufficiency of the evidence for termination of parental rights. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005); *In re Newman*, 189 Mich App 61, 66-69; 472 NW2d 38 (1991).

The Department of Human Services (DHS) refused to provide reunification services based on its policy to not offer reunification services to a parent who had a criminal sexual conduct conviction, absent a court order. Respondent filed two motions requesting that the court order reunification services, which the court denied. In *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), the Court addressed the DHS policies regarding reunification services:

> In this case, once again, the DHS's efforts focused exclusively on the custodial mother and essentially ignored the father. "Reasonable efforts to reunify the child and the family must be made in *all* cases" except those involving aggravated circumstances not present in this case. MCL 712A.19a(2) (emphasis added). Here, because the DHS and the court failed to adhere to court rules and statutes, respondent was not afforded a meaningful and adequate opportunity to participate. Therefore, termination of his parental rights was premature.

Conviction of CSC against a person who is not the minor child or a sibling of the minor child is not one of the exceptions under MCL 712A.19a(2) or MCL 722.638, which is incorporated by reference in MCL 712A.19a(2)(a). Neither the DHS nor the guardian ad litem argue that MCL 712A.19a(2) or MCL 722.638 was implicated in this case.

The *Mason* Court found that the DHS and the court "directly violated their statutory duties" to prepare initial and updated service plans with a schedule of services to be provided and reviews of services to the respondent who was incarcerated during the case. *Mason*, 486 Mich at 156. In the present case, no case service plan was prepared for respondent. As in *Mason*, "neither [the caseworker] nor the court ever facilitated respondent's access to services and agencies or discussed updating the plan." *Id*. at 157. We find petitioner's reliance on the DHS's Children's Foster Care Manual misplaced. MCL 712A.19a(2) requires that "[r]easonable efforts to reunify the child and the family *must be made in all* cases, except" those involving the circumstances specifically set forth in that statute or in MCL 722.638. (Emphasis added.) These aggravated circumstances do not include a CSC conviction against a person who is not the minor child or a sibling of the minor child.

We further find that the enumerated "services" provided by the DHS were not sufficient to satisfy the statutory requirements or to overcome *Mason*. In its opinion, the court stated that respondent was provided services, which included supervised parenting time, random drug screens, offers of transportation, team decision meetings, food assistance, specialty agency relief, and a psychological evaluation and sex offender assessment by a psychologist. However, none of these "services" addressed or provided assistance in overcoming respondent's drug and alcohol dependency, housing and employment problems, criminal sexual propensities, or his parenting limitations, and none were aimed at reunification, as a decision was made not to pursue reunification efforts, nor provide reunification services. In support of termination, the trial court cited lack of housing, substance abuse, failure to exercise parenting time, criminality, and lack of adequate employment. And, consistent with *Mason* and MCL 712A.19a(2), respondent was entitled to reasonable reunification efforts and services to tackle these issues prior to termination. We also note that, on the issue of criminality and respondent's past incarceration, the *Mason* Court stated that "[i]ncarceration alone is not a sufficient reason for termination of parental rights." *Mason*, 486 Mich at 146.

In *Mason*, *id.* at 159, n 9, the Court pointed out that, in formulating its decision whether to return the child to the parent or move for termination, the trial court must consider a parent's compliance with the case service plan, as required by MCL 712A.19a(5). The *Mason* Court cited *In re Rood*, 483 Mich 73; 763 NW2d 587 (2009):

> As we observed in *In re Rood*, a court may not terminate parental rights on the basis of "circumstances and missing information directly attributable to respondent's lack of meaningful prior participation." *In re Rood*, 483 Mich 73, 119; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.); see also *id*. at 127 (YOUNG, J., concurring in part) (stating that, as a result of the respondent's inability to participate, "there is a 'hole' in the evidence on which the trial court based its termination decision"). [*Mason*, 486 Mich at 159-160.]

The evidence is clear that respondent was not an ideal parent. However, as the Court held in *Rood*, 483 Mich at 76:

> [R]espondent behaved as a "less-than-ideal parent" and "shares responsibility" for his lack of communication with the DHS and the court. But the "fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982). Accordingly, "[w]hen the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." [Some citations omitted.]

Finally, the *Mason* Court held:

> The overriding error in this case is the failure - of the court, the DHS, and indeed respondent's attorney - to acknowledge and honor respondent's right to participate. Although respondent must take responsibility for his own past failures, the court's largely uninformed presumption of his unfitness is not a sufficient basis for termination. The court may again conclude on remand, after respondent is given a full opportunity to participate, that termination is appropriate. But it must do so by making proper findings of fact based on respondent's participation in the proceedings. [*Mason*, 486 Mich at 168.]

In conclusion, we hold that the DHS clearly erred in failing to make reunification efforts and in failing to provide actual reunification services. The trial court clearly erred by denying respondent's motions for reunification services and in terminating his parental rights when he did not have "a meaningful opportunity to comply with a case service plan" and where the court did not consider the effect of the child's placement with his family. *Mason*, 486 Mich at 169 (stating that MCL 712A.19a[6][a] establishes that termination proceedings are not required when children are being cared for by relatives, even though a parent is not personally able to be the primary caregiver for the children).

Accordingly, we reverse the order of the circuit court terminating respondent's parental rights and remand this case to the circuit court for further proceedings consistent with this opinion. In addition, the court may consider respondent's request to remain a non-custodial parent with weekly supervised visitation, which the child had also requested, and which may be in the child's best interests because he is placed with relatives and shares a strong bond with his father, respondent.

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ William C. Whitbeck
/s/ Christopher M. Murray