STATE OF MICHIGAN

COURT OF APPEALS

In re M. T. ANDERSON, Minor.

UNPUBLISHED
December 12, 2017

No. 338436
Wayne Circuit Court
Family Division
LC No. 16-522449-NA

Before: JANSEN, P.J., and CAVANAGH and CAMERON, JJ.

PER CURIAM.

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

Respondent challenges the trial court's determinations that the statutory grounds were sufficiently proven and that termination was in the child's best interests.

To terminate parental rights, the trial court must find that "one or more of the statutory grounds for termination listed in MCL 712A.19b(3) have been proven by clear and convincing evidence." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). The trial court then must find by a preponderance of the evidence that termination of parental rights is in the child's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5).

Termination of respondent's parental rights was proper under MCL 712A.19b(3)(c)(*i*), (g), and (j) because respondent's untreated mental illness was an issue at the time of the adjudication and continued to be unaddressed by the time of the termination hearing. Respondent's mental health diagnoses interfered with her ability to properly care for her minor child and put him at risk of harm. Respondent suffered from psychotic symptomatology including paranoid delusions, auditory hallucinations, depressed mood, and schizoaffective disorder. She failed to adhere to medical treatment by taking prescribed medication. Her history of mental instability resulted in erratic living arrangements and homelessness. She was not capable of caring for a child and in moments of lucidity recognized this. In fact, at the time of the child's removal, respondent had brought him to the hospital because she knew she was unable to care for him. Petitioner attempted to provide services to respondent, but she refused to

participate in them and was unable to demonstrate that she could care for the child or keep him safe from her compromised mental state.

Respondent argues that the trial court erred because it did not offer her special accommodations as required by the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*., even though she was mentally ill. This claim is unsupported by the trial court's record.

When children are removed from a parent's custody, the agency is required to make reasonable efforts to rectify the conditions that caused the removal by adopting a case service plan. MCL 712A.18f; *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). In making those efforts, petitioner is also obligated under the ADA to "make reasonable accommodations for those individuals with disabilities so that all persons may receive the benefits of public programs and services." *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000). Failure to take a parent's disabilities into account and reasonably accommodate those disabilities by tailoring a service plan to assist a parent will result in a finding that reasonable efforts were not made. *Id.* at 26. A parent who claims that there has been a violation of the ADA must raise the issue in the lower court when the case service plan is adopted or soon thereafter. *Id.* Lack of effort toward reunification may prevent the agency from establishing the statutory grounds for termination. *In re Newman*, 189 Mich App 61, 65-68; 472 NW2d 38 (1991). However, to succeed on a claim that reasonable efforts were not made, a parent must demonstrate that she would have fared better if the agency had offered other services. *In re Fried*, 266 Mich App at 542-543.

The record in this case establishes that petitioner and the trial court were aware of respondent's mental health issues and reasonably accommodated her disability. At the outset of the case respondent was forthcoming to Children's Protective Services about her mental health issues. At her preliminary hearing, respondent was represented by legal counsel and was appointed a guardian ad litem. Respondent participated in a Clinic for Child Study evaluation, which identified many of her deficiencies. In an effort to accommodate respondent's mental health issues, petitioner provided respondent bus tickets to assist her with transportation. Petitioner referred respondent for specialized parenting classes to accommodate parents with special needs, but respondent never participated in these classes. Respondent had multiple meetings with the clinical director and caseworkers where they provided her with contact information for her workers and advised her how to set up services. They also offered to hold services at the agency prior to visits to make it easier for respondent. Despite these efforts respondent refused to sign her treatment plan or participate in therapy. There was no evidence she was taking prescribed medication.

Respondent had a history of protective services involvement dating back to 2015, when she successfully completed Families First services, but respondent appeared to have declined since that time. Moreover, respondent failed to indicate what additional efforts could have been made. Given that she refused to participate in therapy or take medication, it was unlikely she would have been willing to participate in additional or alternative services. There was no indication she would have fared better with other services. To the contrary, the clinic evaluation showed respondent's prognosis was poor, and she was experiencing active psychosis with auditory hallucinations and paranoid delusions that required inpatient hospitalization and adult foster care.

Further, while petitioner had an obligation to ensure that services were provided to respondent, respondent bore a responsibility to participate in the services that were offered. See *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Respondent would not avail herself of the most crucial tools for reunification, those dealing with mental health. If a parent is simply unable to meet the needs of her child, then "the needs of the child must prevail over the needs of the parent." *In re Terry*, 240 Mich App at 28 (citation omitted). The ADA does not require petitioner to provide a parent "with full-time, live-in assistance with her children." *Id*. at 27-28. No violation of the ADA occurred. Because respondent never addressed or overcame her mental health issues, despite accommodation of those issues, termination of her parental rights was proper under MCL 712A.19b(3)(c)(*i*), (g), and (j).

Termination of respondent's parental rights was not proper under MCL 712A.19b(3)(c)(*ii*), however, because there was no new condition that became an issue following adjudication. MCL 712A.19b(3)(c)(*ii*) indicates that other conditions have become known since the initial adjudication. It applies only when these new conditions have not yet been used as a basis for jurisdiction and when the new conditions independently support the court's assertion of jurisdiction. In this case, there was no new information or condition that would have independently supported assertion of jurisdiction over the minor child. Thus, the court's findings under MCL 712A.19b(3)(c)(*ii*) were erroneous. Nevertheless, this was harmless error because the court properly found by clear and convincing evidence that MCL 712A.19b(3)(c)(*i*), (g), and (j) were established, and only one ground needed to be established to support termination. MCL 712A.19b(3); *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Finally, the trial court did not err in its best-interest determination under MCL 712A.19b(5). Termination of parental rights was in the child's best interests given respondent's mental health issues, homelessness, and instability. As the record clearly showed, respondent is unable to care for herself let alone a child. Respondent's mental illness even affected the child during visits because she regularly got upset and yelled at visits, which caused him to cry. The child likely would have been more distressed if left in her care and exposed to frequent bouts of emotional instability and anger. The child deserves to be cared for by a stable caregiver willing and able to address any mental health issues that would compromise him. Respondent is not such a caregiver and cannot meet the child's basic needs or provide an emotionally healthy home environment given her own issues. Thus, the trial court did not err in its best-interest determination.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Thomas C. Cameron