

STATE OF MICHIGAN  
COURT OF APPEALS

---

*In re* THOMAS/DORTCH, Minors.

UNPUBLISHED  
January 9, 2018

Nos. 338803; 338804  
Wayne Circuit Court  
Family Division  
LC No. 13-511701-NA

---

Before: STEPHENS, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father, V. Dortch, and respondent-mother, A. Thomas, appeal as of right the trial court's orders terminating their parental rights to the minor children, CT and VD, under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

At the time CT was born, respondent-mother was 17 years old and subject to both delinquency and neglect wardships. She had previously been treated for bipolar disorder and oppositional defiant disorder. After CT's birth, respondent-mother and CT were allowed to live together in a community-based placement. In February 2013, respondent-mother exhibited extremely violent and erratic behavior. Petitioner removed CT from respondent-mother's care and filed a petition for temporary wardship over the child. At the time of these events, respondent-mother refused to identify CT's biological father.

After the events in February 2013, respondent-mother participated in services and was admitted to the Capstone Behavioral Modification Program. Because CT could not live with respondent-mother in this program, he was placed in foster care. Eventually, in September 2013, respondent-mother and CT were referred to a mother/child residential program and CT's wardship was terminated.

In the months that followed, Child Protective Services (CPS) received several neglect complaints involving respondent-mother and CT. In August 2014, CT, then 2½ years old, was again removed from respondent-mother's care after he was found wandering alone outside in the dark. CT and respondent-mother were homeless and sleeping in a vacant house. In October 2014, after the court acquired jurisdiction over CT pursuant to respondent-mother's plea of admission, the court adopted a parent-agency agreement and ordered respondent-mother to participate in parenting classes, individual therapy, a psychological evaluation, and parenting time. The court further ordered respondent-mother to obtain and maintain a legal source of income and suitable housing. She was allowed supervised parenting time with CT at the agency.

At a dispositional review hearing in January 2015, the court noted that respondent-mother did not have a state identification card ("ID card"). It would take more than a year before this issue was resolved. The lack of appropriate identification impeded some, but not all, of respondent-mother's treatment referrals. Respondent-mother was still offered parenting time with CT and she visited regularly. She was also referred for parenting classes and a psychological evaluation. Further, respondent-mother regularly attended weekly individual therapy. The lack of a state identification card did not preclude a referral for a parent partner, but respondent-mother's unstable housing was initially a barrier to providing this service.

Respondent-father appeared for the first time at the April 17, 2015 dispositional review hearing. He identified himself as CT's father, but would not sign an affidavit of parentage until September 21, 2015.

After VD was born in October 2015, she was placed with her maternal aunt. Petitioner also sought to make VD a temporary ward of the court. The petition alleged that respondent-mother tested positive for marijuana at the time of VD's birth and that she had failed to complete all aspects of her treatment plan relative to CT's wardship. The petition alleged that respondent-father attempted to remove VD from the hospital without authorization and that he had several convictions, including a felony drug conviction. After both respondents entered pleas of admissions to the allegations in the petition, the court exercised jurisdiction over VD.

In January 2016, the court added drug screens and substance abuse services to respondent-mother's existing treatment plan. The court ordered respondent-father to attend supervised parenting time, individual therapy, parenting classes, and submit regular random drug screens.

Respondent-mother still did not have an ID card by the time of the February 25, 2016 dispositional review hearing. Respondent-father had not yet been referred for any services. The caseworker explained that she had not received the court order that would authorize her to refer respondent-father for services ordered at the January 12, 2016 hearing. By the May 31, 2016 dispositional review hearing, respondent-mother had obtained her ID card, and both respondents had received the necessary referrals. Indeed, respondent-father had been referred for services in March 2016, but re-referrals were necessary because he had been terminated from the earlier referrals for non-compliance.

For the next six months, respondents would never achieve any more than partial compliance with their treatment plans. Consequently, at the conclusion of the November 29, 2016 dispositional review hearing, the court ordered petitioner to file a supplemental petition to terminate respondents' parental rights. However, after acknowledging that there had been a delay in services, the court ordered that respondents be given an additional three months before the pretrial hearing to work on the goals of the treatment plan.

The permanent custody petition was filed on February 24, 2017. After hearings in April and May 2017, the trial court entered orders terminating respondents' parental rights to their two children. These appeals followed.

Both respondents argue that petitioner failed to make reasonable efforts toward reunification. Specifically, respondents argue that as a result of unnecessary delays, petitioner failed to afford them adequate time to work toward the goals of the treatment plan. After reviewing the record, we disagree.

Before a court may contemplate termination of a parent's parental rights, the petitioner must make reasonable efforts to reunite the family. MCL 712A.19a(2). "The adequacy of the [DHHS]'s efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009). However, a respondent also has a responsibility to participate in services offered by petitioner. *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). This Court reviews the trial court's findings of fact, including a finding that petitioner made reasonable efforts toward reunification, for clear error. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been committed. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

We will first address respondent-father's claim that he was not provided an adequate opportunity to work toward reunification. CT was removed from respondent-mother's care on August 27, 2014. At that time, respondent-mother concealed the identity of CT's biological father. Indeed, she identified another man as CT's father. Respondent-father appeared and identified himself as CT's father for the first time at the April 17, 2015 dispositional review hearing. He then waited five months, until September 21, 2015, to sign an affidavit of parentage. After VD was born in October 2015, respondent-father signed an affidavit of parentage while the child was still in the hospital. At the January 12, 2016 dispositional hearing, the court ordered respondent-father to participate in various services. Because the caseworker did not have the court's order, referrals for services were delayed until March 2016. Then, at the conclusion of the November 29, 2016 dispositional review hearing, the court ordered petitioner to file a supplemental permanent custody petition. However, the trial court took into account the delay in providing services and afforded respondents an additional three months to work toward reunification. Thereafter, the permanent custody petition was filed on February 24, 2017, and the termination hearing was concluded on May 22, 2017.

While there were brief periods where petitioner failed to timely provide referrals, even taking these periods into account, respondent-father had 14 consecutive months to participate in services. Contrary to what respondent-father argues, the record establishes that he was provided with the necessary services for a period of time sufficient for him to address and rectify the barriers to reunification.

Similar to respondent-father, respondent-mother argues that petitioner did not allow her a reasonable opportunity to participate in services, and thus failed in its statutory obligation to make reasonable efforts toward reunification. Respondent-mother asserts that because she did not have appropriate identification, referrals for services were delayed for more than a year. She further argues that this delay was directly attributable to petitioner's failure to provide her with the assistance necessary to acquire the appropriate identification.

While it is true that it took more than a year to acquire appropriate identification for respondent-mother, this delay was not attributable to petitioner's lack of effort. The lower court

record repeatedly documents the administrative bureaucracy, related in part to respondent-mother's confusing adoption history, which stood as a significant barrier to acquiring the documentation necessary for respondent-mother to apply for state identification and social security cards. The record also substantiates the persistent efforts taken by petitioner to assist respondent-mother and the lower court's tenacity in insuring that every effort was being expended. Thus, the delay in acquiring identification is not attributable to petitioner. Further, while the lack of adequate identification did impede certain referrals, it is not true that respondent-mother was not provided with any services for an entire year after CT was removed from her care. Respondent-mother was offered parenting time and individual therapy. She was also offered the services of a parent partner.

By May 2016, respondent-mother had acquired appropriate identification. At that time, she was re-referred for a multitude of services, including parenting classes, a psychological evaluation, drug screens, and therapeutic counseling. Although the court then ordered, in November 2016, the filing of the permanent custody petition, it also afforded respondent-mother an additional three months to address the goals of her treatment plan.

The record establishes that petitioner was not the source of the delay in providing services and that the court provided respondent-mother with additional time to comply with the treatment plan. Moreover, some services were available to respondent-mother for nearly 2½ years. The entire range of services was available to respondent-mother for at least 12 months. Under these circumstances, as with respondent-father, the record demonstrates that for a sufficient period of time, respondent-mother was provided the necessary services which, had she fully complied with the treatment plan, would have adequately addressed the barriers to reunification. Accordingly, respondent-mother has not persuasively demonstrated that petitioner failed to make reasonable reunification efforts.

Next respondents both challenge the trial court's finding that there existed statutory grounds to terminate their parental rights. After a review of the record, we conclude that petitioner met its burden of establishing at least one statutory ground for termination by clear and convincing evidence. See *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

Both respondents' parental rights were terminated under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), which provide:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the

conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

\* \* \*

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

\* \* \*

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court did not clearly err when it terminated respondents' parental rights to their children under the foregoing grounds.

CT was removed from respondent-mother's care on August 27, 2014; VD was placed in the care of her maternal aunt immediately after her birth in October 2015. During these proceedings, respondent-father failed to provide weekly random drug screens, failed to participate in substance abuse treatment, and did not comply with individual counseling requirements. He further was unable to obtain and maintain suitable housing and a legal source of income. Respondent-father was arrested and charged with felonies related to delivery of heroin to undercover police officers. These charges were pending at the time of the termination hearing and respondent-father anticipated being incarcerated for at least nine months. Although respondent-father suggested that the paternal grandmother or respondent-mother would be available to care for the children, under the circumstances it was not reasonable to suggest that these individuals would be able to care for the children during respondent-father's lengthy absence.

Respondent-father clearly did not comply with the services provided; to the extent that he did participate in treatment, he clearly did not benefit therefrom. A parent's failure to comply with a service plan is evidence that the parent will not be able to provide a child with proper care and custody and that the child will be harmed if returned to the parent's home. *In re Whilte*, 303 Mich App 701, 710-177; 846 NW2d 61 (2014). Accordingly, there was clear and convincing evidence to terminate respondent-father's parental rights to the children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).

Further, there was clear and convincing evidence to support termination of respondent-mother's parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). CT came into care because respondent-mother lacked suitable housing and failed to properly supervise her toddler. VD came within the court's jurisdiction because respondent-mother tested positive for marijuana at the time of VD's birth and, significantly, respondent-mother had failed to comply with CT's treatment plan. Despite being offered a multitude of services, at the time of the termination hearing, respondent-mother could not demonstrate the ability to appropriately and safely parent her two children. Respondent-mother still lacked suitable stable housing. The

housing she proffered for assessment by petitioner, while structurally suitable, was not stable given the fact that the homeowner had a sizeable unpaid utility bill. Respondent-mother also failed to address her substance abuse issues. She admitted that she smoked marijuana almost every day. More significant, at the time of the termination hearing, respondent-mother revealed that she was pregnant with a third child and that she had continued to smoke marijuana during this pregnancy. The fact that respondent-mother was continuing to smoke marijuana during her pregnancy reflected poorly on her judgment and parenting skills, and further confirmed that she did not benefit from the parenting classes and services designed to address substance abuse issues. There was also evidence that respondent-mother did not benefit from individual counseling. At the time of the termination hearing, she candidly admitted that she only attended therapy because it was court ordered and she did not believe she required mental health treatment. Considering the totality of the evidence, the trial court did not clearly err when it terminated respondent-mother's parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g) and (j). Despite a multitude of services over a 2½-year period, respondent-mother had not adequately addressed the conditions that brought the children into care. As a result of this failure, respondent-mother could not demonstrate that she was in a position to properly parent her children or that she would be able to do so within a reasonable time. Moreover, these unresolved issues would pose a risk of harm to the children if they were returned to respondent-mother's care.

Next, respondent-mother challenges the trial court's finding that termination of her parental rights was in the children's best interests. "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 the parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The court may consider several factors when deciding if termination of parental rights is in a child's best interests, including "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App at 41-42. The court may also consider psychological evaluations, the child's age, involvement in domestic violence, and a parent's history. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

The trial court did not clearly err when it found that termination of respondent-mother's parental rights was in the best interests of the minor children. At the time the court terminated respondent-mother's parental rights, CT had been in care for 2½ years. VD had been in care her entire life, 19 months. During this time, respondent-mother was offered a multitude of services that she either failed to participate in or failed to benefit from. Respondent-mother was simply unable to properly parent her children and adequately provide for their needs.

The need for stability, permanency, and consistency was particularly critical for CT, who clearly had special needs, the scope of which had not fully been determined. In July 2016, CT underwent a psychological evaluation to address his speech development, aggressive behaviors, and feeding difficulties. The psychological evaluation ruled out autism, but confirmed a diagnosis of language disorder. Several services were recommended, including special educational services, private speech and language therapy, behavioral therapy, socialization, and gross and fine motor skills evaluation. Respondent-mother was unable to comply with her own treatment plan; it is inconceivable that she could meet CT's special needs.

Respondent-mother argues that the trial court failed to give due weight to the fact that VD was placed with her maternal aunt. This position is unsupported by the record. Even though placement with a relative weighs against termination, and the fact that a child is living with relatives must be considered, a trial court may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests. *In re Olive/Metts*, 297 Mich App at 43. The record establishes that the court weighed as a factor that VD was in relative placement. It concluded, however, that termination of respondents' parental rights was still warranted in light of the time the children had been in care and their need for permanency. The court specifically ruled out guardianship as an option for VD considering her very young age. The court did not err in this regard. Considering that VD was only 19 months old, a guardianship would not provide the permanency and finality necessary to foster her continued growth and development.

When balancing the best-interest factors, a court may also consider the advantages of a foster home over the parent's home and the possibility of adoption. *In re Olive/Metts*, 297 Mich App at 41-42. At the time of the termination hearing, CT was placed in a non-relative foster home; VD had been placed with her maternal aunt since birth. Both CT and VD were doing well in their placements and the foster parents were addressing their medical and emotional needs. Further, both foster parents had voiced their desire to adopt the child in their care. After having been subject to instability for most, if not all, of their young lives, these children were entitled to stability, consistency, and finality. Accordingly, the trial court did not clearly err when it held that termination of respondent-mother's parental rights was in the children's best interests.

Lastly, we decline to consider respondent-father's challenge to the trial court's best-interest findings. At the close of respondent-father's reasonable-efforts discussion, he makes a conclusory statement that the trial court erred when it found that termination of his parental rights was in the children's best interests. Respondent-father provides no argument or analysis of this issue. Accordingly, any best-interest challenge has been abandoned. "A party cannot simply assert an error or announce a position and then leave it to this Court to discover and rationalize the basis for [her] claims, or unravel and elaborate for [her her] argument, and then search for authority either to sustain or reject [her] position." *In re TK*, 306 Mich App 698, 712; 859 NW2d 208 (2014) (quotation marks and citation omitted).

Affirmed.

/s/ Cynthia Diane Stephens  
/s/ Mark J. Cavanagh  
/s/ Kirsten Frank Kelly