STATE OF MICHIGAN

COURT OF APPEALS

In re G. M. RICHARDS-PURKEY, Minor.	UNPUBLISHED February 13, 2018
	No. 339114 Monroe Circuit Court Family Division LC No. 16-023471-NA

Before: TALBOT, C.J., and METER and TUKEL, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights to his minor child pursuant to MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood the child would be harmed if returned due to the conduct or capacity of the parent). We affirm.

Respondent was incarcerated throughout the pendency of the proceedings. He argues on appeal that the trial court clearly erred in finding that petitioner made reasonable efforts to reunite respondent and his child. A trial court's factual findings in termination proceedings are reviewed for clear error.[1] "A finding is clearly erroneous [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made."[2] Deference is granted to the trial court's "special opportunity to judge the credibility of witnesses."[3]

When a child is removed from the custody of his or her parent, petitioner, the Department of Health and Human Services, is required to make "reasonable efforts to rectify the conditions that caused the child's removal . . . ."[4] Reasonable efforts include creating "a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court

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[1] *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009).

[2] *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010) (quotation marks and citation omitted) (alteration in original).

[3] *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008).

[4] *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005), citing MCL 712A.18f(1), (2), and (4).

involvement and to achieve reunification."[5] Reasonable efforts are not defined by statute but include "making a referral for services and attempt[ing] to engage the family in services[.]"[6]

The trial court found that petitioner had made reasonable efforts:

> Furthermore, the Court finds that the Department of Health and Human Services have complied with their reasonable efforts as well to en—engage the father in not only participation, but in services that he could avail himself of while he was in prison. So in light of In re Mason requirements, the Court does not find any of the egregious lapses on the part of the Department as cited by In re Mason. The father has been fully engaged.

In *In re Mason*, cited by the trial court, the Court found that the petitioner failed to properly include an incarcerated father in child protection proceedings and that the trial court made factual errors and errors of law, all of which the Court attributed to the fact that the father was incarcerated.[7] The Court was unsure whether the father had been presented with his case services plan, and the father was not afforded an opportunity to participate, telephonically or otherwise, in the majority of the proceedings leading up to the termination hearing.[8] Additionally, there was no evidence that the petitioner had facilitated the father's access to services in any manner, reviewed or updated the father's case service plan, or even communicated directly with a prison social worker.[9] The instant case is readily distinguishable from *In re Mason*, as respondent participated in each stage of the proceedings, acknowledged receipt of his service plan, and evidence was taken concerning petitioner's communications with the prison staff.

Nonetheless, respondent argues that petitioner failed to provide adequate assistance to enable him to fulfill the requirements of his case service plan. Specifically, respondent argues that his second case worker, Abigail Leightner, did not provide him with postage-paid envelopes or paper; she did not arrange video conferencing as an alternative form of communication; she did not assist respondent in developing a plan for the child's care upon his release from prison; and she did not facilitate parenting classes or a psychological evaluation. According to respondent, the fact that his first case worker, Katelyn Desjardins, had taken some of these actions demonstrates that Leightner's failure to do so was unreasonable. We disagree.

The minor child was removed from her mother's care shortly after her birth, at which point in time respondent was already incarcerated. The trial court assumed jurisdiction of respondent's case after he established his paternity several months later, and directed petitioner

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[5] *In re Hicks*, 500 Mich 79, 85-86; 893 NW2d 637 (2017), citing MCL 712A.18f(3)(d).

[6] *In re JL*, 483 Mich 300, 322 n 15; 770 NW2d 853 (2009).

[7] *In re Mason*, 486 Mich at 160.

[8] *Id*. at 155-157.

[9] *Id*. at 157.

to contact respondent to develop a case service plan. Petitioner complied and respondent agreed to a service plan that included keeping petitioner informed of any changes in his living arrangements or contact information; maintaining weekly contact with petitioner "to assure adequate communication regarding services"; signing all necessary release forms to enable petitioner to secure and monitor appropriate services; and continuing to seek services that were available through the prison.[10]

At a review hearing held on August 9, 2016, Desjardins testified that she communicated with respondent by mail and that he had reached out to her by phone. However, her attempts to communicate with the prison staff concerning respondent's participation in various services were unsuccessful because he had yet to execute a release form. Based on respondent's reports to her, she believed he was on a wait list for various classes offered in the prison. Desjardins presented a status report at the hearing, which included a copy of an August 2, 2016 letter to respondent, reminding him to execute a release form and noting that she had recently sent him postage-paid envelopes and blank paper so he could write to petitioner as needed. Desjardins also observed that respondent had attempted to call her two or three times, but she was not available to take the calls because they were made between 8:00 and 9:00 p.m.

On October 13, 2016, respondent asked for in-person visitation with the child. The court ordered that petitioner could continue to exercise its discretion to determine if visitation was appropriate, but agreed to revisit the issue later. At the next hearing, Desjardins expressed concern about respondent's previous request for visitation because respondent had no bond with the child and had subsequently stated, off the record, that he did not want the child to visit. With respect to respondent's compliance with his case services plan, respondent told Desjardins he attended substance abuse counseling, "Thinking for a Change," and employment readiness classes. However, she could not confirm his participation or progress because respondent had still not executed a release of information.

On January 5, 2017, Desjardins confirmed that she initiated contact with respondent and the prison at least once a month to keep them apprised of the status of the case. Desjardins also agreed to make arrangements for respondent to participate in a family team meeting by video conference. Desjardins explained that because respondent had to initiate all phone calls, he was free to contact the child, who was residing with a paternal relative, by phone at his leisure. To the best of Desjardin's knowledge, the relative was allowing respondent to speak to the child by phone. According to her written report, respondent had executed the required release of information, but was not actively participating in services because the required classes were not available at the time.

Respondent's second case worker, Leightner, began working with respondent in March 2017. Leightner testified that respondent was eligible to participate in substance abuse and culinary arts classes, but had not started them yet. Leightner had not received any letters, phone calls, or requests for information from respondent and did not believe he had been in contact

[10] The service plan also called for a variety of other steps to be taken by respondent upon release from prison.

with the child. Respondent argued that Leightner might not have received accurate information from the warden's office and maintained that the parole board recommended substance abuse and vocational services for which he was on a wait list.

At the next hearing on April 27, 2017, petitioner filed a supplemental petition to terminate respondent's parental right. Leightner explained that although respondent was on a wait list for various services, he had not remained in contact with her and had lost his job in prison for not following orders. Leightner agreed that respondent sent an Easter card to the child, but was concerned that he had not addressed his substance abuse problem or attempted to nurture a bond with the child. The termination petition was authorized on May 4, 2017.

At the June 23, 2017 termination hearing, Leightner reiterated that she had not received significant contact from respondent. In fact, he had only communicated with her once, in June 2017, and had not referred to having any contact with the child since Leightner began working on the case in March. However, she understood that petitioner had sent the child several cards and a letter after petitioner changed its permanency goal to adoption. A video conference had been coordinated by Desjardins to take place in May 2017, but did not occur because the foster care provider had confused the dates. Respondent was also unable to participate in the April 2017 family team meeting because Leightner could not reach him at the prison phone number that had been provided. By May 2017, respondent was involved in Narcotics Anonymous, Alcoholics Anonymous, and food technology education programs through the prison, and he was on a wait list for advanced substance abuse classes.

Respondent's cousin, LaTonya, testified that respondent's child was living with her. LaTonya reported that respondent called her occasionally when the child first arrived, but he had never spoken to the child[11] and declined her offer to try to arrange an in-person visit at the prison. LaTonya testified that respondent called her twice in April 2017, but she was unable to speak with him at the time, and she believed they last spoke in December 2016. According to respondent, he attempted to call LaTonya four or five times by having a friend initiate a three-way call, but was not successful. Respondent agreed that he violated prison rules by attempting to make a three-way call. Respondent explained that he began trying to communicate with the child in writing when he could not reach LaTonya by phone.

On this record, we disagree with respondent's contention that petitioner failed in its duty to take reasonable efforts to facilitate reunification. Respondent takes issue with Leightner's failure to provide prepaid envelopes and paper or to arrange video conference meetings, but there is no indication that respondent ever asked for such assistance. Desjardins had previously provided envelopes and paper to respondent for his use, and absent a request for additional supplies, Leightner would have no reason to continue sending those items to respondent. Moreover, the record suggests that a lack of supplies did not, in fact, hamper respondent's ability to communicate with the child or petitioner, as his only communications with them after March 2017 were accomplished in writing. With respect to respondent's ability to communicate with the child or participate in the family team meeting by video conference, it is evident that

[11] At the time of the termination hearing, the child was approximately 18 months old.

petitioner took reasonable steps to facilitate that option, and that the scheduled video conferences did not take place through no fault of petitioner.

Respondent suggests that his service plan requirement of maintaining regular contact with the child by phone or mail was unreasonable because it was not appropriate for him to be calling the child late at night. However, respondent testified that he had access to the prison phone all day, every day, as long as the yard was open. Thus, it seems that the timing of his phone calls was within his control, and the service plan did not place any limitations on the times during which he was permitted to contact the child. And to the extent that his attempts to contact the child by phone were thwarted by LaTonya's availability, again, we cannot fault petitioner for matters outside of its control.

Next, respondent argues that petitioner did not employ reasonable efforts to help him develop a plan for the child's care upon his release from prison. Respondent asserts that petitioner could have facilitated "[k]nowledge of what respondent father needed to formulate a plan . . . ." This position is disingenuous, at best, considering the actual requirements of his case services plan, which provided that respondent must "[f]ormulate a written plan for the care of his daughter upon release from incarceration which should include, but not be limited to, plans for: (1) repair of the parent-child bond, (2) housing, (3) income, (4) childcare, and (5) medical care, dental care and insurance coverage." As this requirement clearly related to respondent's personal intentions upon his release from prison, we reject any suggestion that petitioner failed in its statutory duties by not communicating with respondent about how it could help him to develop such a plan.

Lastly, respondent argues that petitioner did not undertake reasonable efforts toward reunification because it did not arrange parenting classes or a psychological evaluation that could be completed in prison. Petitioner's case workers maintained regular contact with the correctional facility in order to arrange respondent's participation in as many services as possible. Petitioner's difficulty in arranging services was caused by respondent's failure to promptly execute a release form and the simple reality that the availability of those services in prison is limited. In any event, respondent was able to participate in substance abuse classes, vocational training, and a class designed to improve social-development and problem-solving skills. Respondent does not suggest, nor do we see, what additional steps petitioner should have taken under these circumstances. Accordingly, we cannot conclude that the trial court clearly erred by finding that petitioner made reasonable efforts to reunify the family.

Moreover, we find the trial court's conclusion in this regard particularly persuasive in light of the evidence concerning respondent's own efforts to comply with and benefit from the case services plan. Along with petitioner's responsibility to extend "reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of [the] respondents to participate in the services that are offered."[12] The respondent must demonstrate sufficient compliance with and progress from services provided to impact the

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[12] *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

problem addressed by those services.[13] Here, respondent failed to comply with several of the requirements of his case services plan. The plan required respondent to "maintain weekly contact" with petitioner, but Leightner reported that she received only one communication from respondent between March 2017 and June 2017. The case services plan required respondent to "comply with all rules and regulations of the correctional institution," but respondent acknowledged that he violated the prison's policy by making third-party calls. The case services plan required respondent to "obtain employment" and "refrain from engaging in any conduct that would jeopardize his employment," but he was terminated from his prison employment after disobeying an order. On a related note, the case services plan required respondent to report "disciplinary infractions" to petitioner within one week of receipt, but respondent did not inform Leightner of his job loss. And, as already noted, the case services plan required respondent to "formulate a written plan for the care of his daughter," but respondent did not develop any such plan. Importantly, each of these failed responsibilities was entirely within respondent's control and did not depend on assistance from petitioner to accomplish. In light of respondent's own failure to satisfy his obligations under the case services plan, the efforts expended by petitioner in this case appear eminently reasonable.

Affirmed.

/s/ Michael J. Talbot
/s/ Patrick M. Meter
/s/ Jonathan Tukel

[13] *Id*.