STATE OF MICHIGAN

COURT OF APPEALS

In re JOHNSON/JONES, Minors.

UNPUBLISHED
March 15, 2018

No. 339338
Wayne Circuit Court
Family Division
LC No. 15-518938-NA

Before: MURRAY, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to her children pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody). We affirm.

I. BACKGROUND

In this case the trial court terminated respondent's parental rights under MCL 712A.19b(3)(g) because respondent was unable to provide proper care of her children, and there was no reasonable expectation that respondent would be able to do so within a reasonable time given the age of the children. Respondent had significant unaddressed mental health issues that interfered with her emotional stability. Respondent was diagnosed with a mood disorder, anxiety disorder, borderline intellectual functioning, and being narcissistic with paranoid and schizoid personality features, which she failed to treat despite many recommendations to do so. Although respondent was meeting with her therapist regularly, she did not benefit from therapy. Respondent's therapist indicated that she was unable to parlay participation in therapeutic activities into favorable outcomes in her life, primarily because she also needed psychiatric care so that she could get medication to treat her mental health conditions. Respondent delayed pursuing recommended psychiatric care and when she did get psychiatric care she did not attend appointments consistently or take medication as prescribed. Respondent's emotional volatility was seen at visits with the children where she displayed hostility, emotional outbursts, verbal aggression and anger which frightened the children. She also reported feeling suicidal and needing help during the lower court proceedings.

Respondent's mental health issues also interfered with her ability to maintain employment or housing for any significant length of time. She worked at multiple jobs but was unable to maintain any of them. Her employment was terminated from one job because she was crying at work, due to emotional instability. She moved seven times in 28 months and the housing she had at the time of the termination hearing was unsuitable. It was roach infested and

lacked appliances and furniture. In addition to her mental health issues, respondent's parenting skills were also lacking. Although she completed parenting classes in June 2016, there was no evidence she benefited from those classes given her interactions with the children. Her oldest daughter, a young teenager, acted as the caregiver during visits instead of respondent. Respondent also used profane language and was verbally aggressive in front of the children at visits. At the June 29, 2017 termination hearing, respondent's caseworker, Lindsey McNamara, recounted that respondent was aware that she was not in a position at that time to care for her children.

II. ANALYSIS

On appeal, respondent argues that the petitioner failed to make reasonable efforts to provide services. The thrust of respondent's arguments on appeal is that petitioner did not provide services to accommodate respondent's mental illness. We disagree.

To the extent that respondent's arguments implicate the trial court's factual findings with respect to whether petitioner made reasonable efforts to provide respondent with services and to reunify her with her children, we review the trial court's factual findings for clear error. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005).

Generally, when a child is removed from the custody of the parents, the Department of Health and Human Services (DHHS) is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan, if reunification is the goal. See MCL 712A.18f(1), (2), and (4); see also MCL 712A.19a(2). In *In re Hicks*, 500 Mich 79, 86; 893 NW2d 637 (2017), the Michigan Supreme Court recently discussed the interplay between the requirements of MCL 712A.18f and MCL 712A.19a(2) and the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*.

> Absent reasonable modifications to the services or programs offered to a disabled parent, the Department has failed in its duty under the ADA to reasonably accommodate a disability. In turn, the Department has failed in its duty under the Probate Code to offer services designed to facilitate the child's return to his or her home, see MCL 712A.18f(3)(d), and has, therefore, failed in its duty to make reasonable efforts at reunification under MCL 712A.19a(2). As a result, we conclude that efforts at reunification cannot be reasonable under the Probate Code if the Department has failed to modify its standard procedures in ways that are reasonably necessary to accommodate a disability under the ADA.

However, although the Department "has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

Respondent's claim that petitioner did not make reasonable efforts at reunification, essentially challenging whether it properly accommodated respondent's mental illness, is without merit. The record shows that respondent received multiple services and referrals, including ongoing case management, parenting classes, a parenting partner, housing and shelter referrals,

supervised parenting time, counseling services, and mental health services. Specifically regarding respondent's mental health treatment, the record reflects that McNamara repeatedly encouraged respondent to pursue psychiatric care and take prescribed medication, and that respondent was provided with, and at times during the lower court proceedings, benefitted from, a structured mental health program. For example, respondent had been in therapy for two years with the same therapist who repeatedly recommended to respondent that she obtain psychiatric care. McNamara referred respondent for psychiatric care multiple times. Specifically, McNamara advised respondent that she could seek psychiatric care without referral through Community Mental Health. McNamara continuously reminded respondent that pursuing psychiatric care was a priority. However, respondent exhibited significant resistance to receiving psychiatric care, at one point informing McNamara that she refused to take medication unless the trial court ordered her to do so. Respondent also told McNamara that her therapist did not think that she needed to take medication, but when McNamara consulted with the therapist herself, she was informed that this information was not accurate, and that the therapist had been recommending for a year that respondent pursue taking medication to assist in the treatment of her mental illness. Respondent also delayed scheduling a psychiatric evaluation appointment in spite of McNamara's repeated attempts to follow up with respondent to ascertain whether she had made the necessary appointment. As McNamara acknowledged in her testimony during the bench trial on July 12, 2016, respondent was given many opportunities and avenues to pursue to address her mental illness, but she had not availed herself of them. Additionally, it cannot go unnoticed that in July 2016, the trial court denied the original petition seeking termination of respondent's parental rights to allow respondent additional time to pursue and benefit from psychiatric care, and respondent's parental rights were not terminated until June 2017.

Following the bench trial that took place in July 2016, respondent's inattention to her mental health continued. While she first started consulting with a psychiatrist in the fall of 2016, during a November 2, 2016 hearing, the trial court was informed that respondent was resistant to taking her medication because she did not like it, and her psychiatrist expressed concern that respondent was regressing with her mental health issues. In December 2016, the trial court was informed that respondent had missed an appointment with her psychiatrist on November 11, 2016. As of the March 7, 2017 dispositional review and permanency planning hearing, respondent's therapist observed that she was not progressing in therapy, and lacked insight into her mental illness. Respondent decided, of her own volition, to change her psychiatrist after her existing physician provided the trial court with what respondent thought was a negative report about her, and as of the June 29, 2017 termination hearing, respondent had missed an initial appointment with a new psychiatrist, and was therefore no longer taking her medication. Respondent's primary barriers to reunification as of the June 29, 2017 termination hearing were her lack of housing and medication compliance, and McNamara observed that respondent had not rectified either of these conditions in the two and a half years since the children were originally taken into foster care. The record reflects that petitioner prioritized medication for respondent because it was necessary for her to achieve emotional stability to allow her to progress with her parenting skills and to obtain proper housing and employment. Where respondent was provided with ample services, but failed to satisfy her obligation to participate in the services offered to her, the record supports the trial court's finding that petitioner engaged in reasonable reunification efforts, but that respondent did not demonstrate a benefit from those services. *In re Frey*, 297 Mich App at 248.

III. CONCLUSION

The trial court did not clearly err in concluding that reasonable efforts were made to reunify respondent with her children.[1]

Affirmed.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood

[1] On appeal, respondent does not challenge the trial court's determination with respect to whether statutory grounds to warrant termination existed, or whether its best interest analysis was correct.