STATE OF MICHIGAN

COURT OF APPEALS

In re S. HEGGOOD, Minor.

UNPUBLISHED
February 13, 2018

No. 339481
Ingham Circuit Court
Family Division
LC No. 15-000877-NA

Before: RONAYNE KRAUSE, P.J., and FORT HOOD and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights with respect to her minor child pursuant to MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), and (g) (proper care and custody). We affirm.

On July 17, 2015 the court ordered respondent's child into placement with the Department of Health and Human Services ("DHHS"). The action commenced after the child's former guardianship was terminated, leaving her without proper care, and the court took jurisdiction over all of respondent's children under MCL 712A.2(b),[1] based on the statutory grounds of parental abandonment, lack of proper custody, and an unfit home environment. Respondent had a history with Child Protective Services, dating back to 2007, which led to removal of her children in 2008. Additionally, she had a history of mental illness, homelessness, and emotional and intellectual impairments that continued to endure. Throughout the proceedings, respondent was unemployed and living with a man listed on the central registry for physical abuse of his own children.

After undergoing a psychological evaluation in November of 2015, the psychologist observed that respondent would require "at least a six-month period for mood and thought stabilization . . ." in addition to assistance with "day-by-day and hands-on child care supervision and mentoring." The psychologist diagnosed respondent as "an inadequate and dependent personality with antisocial features." Respondent was also said to have "mild mental deficiency with accompanying functional illiteracy." According to the psychologist, "[t]he most appropriate diagnosis would seem to be schizoaffective disorder in remission." The record also reflects that before her parental rights were terminated, respondent received, and benefited from,

[1] Only respondent's rights to SH are at issue in this appeal.

parenting classes, supervised visitation sessions, mental health services and independent living classes. Although respondent lived in and attended services in the Muskegon area, she was also provided bus vouchers to travel to Lansing to visit with the minor child.

I. REASONABLE EFFORTS AT REUNIFICATION

The thrust of respondent's argument with regard to this issue is that she did not receive appropriate accommodations for her disabilities. We disagree.

Because respondent did not raise an issue with the services provided, either at the time the case service plan was adopted or otherwise, the issue is unpreserved. *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000) ("[t]he time for asserting the need for accommodation in services is when the court adopts a service plan, not at the time of a dispositional hearing to terminate parental rights.").[2] Unpreserved issues are reviewed for plain error affecting a substantial right. *Rivette v Rose-Molina*, 278 Mich App 327, 328; 750 NW2d 603 (2008). Forfeiture under the plain error rule is avoided where: (1) error occurred; (2) the error was clear or obvious; and (3) the error affected substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Id.*

"Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). In *In re Hicks*, 500 Mich 79, 86; 893 NW2d 637 (2017), the Michigan Supreme Court stated:

> Absent reasonable modifications to the services or programs offered to a disabled parent, the Department has failed in its duty under the [Americans with Disabilities Act, 42 USC 12101 *et seq*. ("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.

In *In re Hicks*, the Michigan Supreme Court ordered a remand in a termination matter that involved an intellectually disabled parent. *In re Hicks*, 500 Mich at 82-83, 91. However, the facts of that case are distinguishable from those in the case before this Court. In that case, the respondent continuously inquired throughout the proceedings about whether she would receive a service plan through the Neighborhood Services Organization to accommodate her intellectual

[2] While the Michigan Supreme Court expressed its skepticism of this rule in *In re Hicks*, 500 Mich 79; 88-89; 893 NW2d 637 (2017), it left it undisturbed in its ruling.

disability, and while the trial court ordered that such services be provided, they were not in fact provided. *Id*. at 89-90. After the trial court ordered termination of her parental rights, the respondent appealed to this Court, arguing that the petitioner's reunification efforts failed to accommodate her intellectual disability as required under the ADA. *Id*. at 84-85. This Court agreed, vacating the termination order and remanding for the provision of services that would reasonably accommodate the respondent. *In re Hicks*, 315 Mich App 251, 286; 890 NW2d 696 (2016), aff'd in part and vacated in part, *In re Hicks*, 500 Mich at 79. After the case reached the Michigan Supreme Court, that Court ultimately remanded the case to the trial court for further proceedings where the trial court's termination order was "predicated on an incomplete analysis of whether reasonable efforts were made[.]" *Id*. at 90.

Returning to the present case, we acknowledge that respondent's November 17, 2015 psychological evaluation recommended "at least a six-month period for mood and thought stabilization . . ." in addition to assistance with "day-by-day and hands-on child care supervision and mentoring." However, unlike the situation presented in *In re Hicks*, we are not persuaded on this record that petitioner did not reasonably accommodate respondent during the lower court proceedings. As noted previously, respondent asserts in her brief on appeal that she was not properly accommodated where she did not receive "day by day assistance and hands-on child care supervision and mentoring." However, respondent concedes that she did receive "independent skill classes and parenting classes." Notably, the record reflects that respondent's Lansing-based caseworker, Crystal Chaffee, opined that providing respondent with "hands-on child care supervision" would be unrealistic under the circumstances of this case, where respondent resided in Muskegon, and the minor child lived in Lansing. However, Chaffee assured the trial court, "I'm going to try and see what resources we can offer [respondent], or services we can offer [respondent] to address this issue." The record reflects that as of the March 9, 2016 dispositional review hearing, respondent was receiving services for independent living skills and attending a parenting class in Muskegon County. The record also demonstrates that petitioner was well-aware of respondent's disabilities and provided services to assist her. For example, respondent was also receiving individual therapy. At the March 9, 2016 hearing, Chaffee testified that during a conference call with respondent's case manager in Muskegon County, the case manager's supervisor and Chaffee, the Muskegon County case worker informed Chaffee that the caseworker was very optimistic about respondent's ability to care for herself, "and possibly her children[,]" following the provision of services. At a May 11, 2016 dispositional review and permanency planning hearing, respondent was noted to be participating and benefitting from the services petitioner was providing her with, including mental health services through the local community mental health agency. As of the August 3, 2016 dispositional review hearing, Chaffee reported that respondent was working toward acquiring housing, and that she was moving in the direction of transitioning to reunification with her child.

A review of the October 19, 2016 dispositional review hearing transcript confirms that respondent may have stopped taking her medication, leading to an incident where she engaged in "manic behavior, [and] sexual gestures" and was in a physical altercation with her boyfriend in the lobby of the Health West facility. As a result, respondent was later hospitalized and had not yet been stabilized as of the October 19, 2016 hearing. At a subsequent February 1, 2017 dispositional review and permanency planning hearing, Chaffee testified that one of several barriers to respondent's reunification with her child was that she was engaging in substance abuse, specifically marijuana. Respondent had tested positive for use of marijuana while

hospitalized. Chaffee also stated that she would characterize respondent's bond with the minor child as a friendship, rather than "a traditional bond that you would normally see between a mother and a child." As of the April 19, 2017 dispositional review and permanency planning hearing, respondent was on probation for a shoplifting charge.[3] Throughout the lower court proceedings, the record reflects that the trial court considered whether, and ultimately concluded that, petitioner undertook reasonable efforts to reunify respondent with her child.

While respondent contends that the services that she received were not congruent with those recommended in her November 17, 2015 psychological evaluation, we are not persuaded that the record reflects that petitioner did not undertake appropriate efforts to reunite respondent with her child by accommodating her disabilities. As the Michigan Supreme Court noted in *In re Hicks*, "[t]rial courts are in the best position, in the first instance, to determine whether the steps taken by the Department in individual cases are reasonable." *In re Hicks*, 500 Mich at 88 n 6. Additionally, this Court has recognized in *In re Terry*, 240 Mich App at 27-28, that the ADA does not require that petitioner "provide respondent with full-time, live in assistance with her child[ ]." Likewise, where respondent contends that even more assistance from petitioner was needed to manage raising her child, the *Terry* Court stated that such an argument "merely provides additional support for the family court's decision" to terminate parental rights. *Id*. at 28. "[A] parent, whether disabled or not, must demonstrate that she can meet [a child's] basic needs before [the child] will be returned to her care[.]" *Id*.

> If a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent. [*Id*. (citation and quotation marks omitted).]

Further, to the extent that respondent asserts that she was not properly accommodated with respect to transportation, and that miscommunication with her caseworker resulted in multiple missed visits with her child, the record belies this claim. Specifically, the trial court observed that petitioner regularly provided respondent with bus passes to ride the bus from Muskegon to Lansing, and the record also reflects that caseworkers would pick respondent up at the bus station and personally transport her to visit the minor child. Caseworkers would also take respondent and her child to local restaurants to eat during visitation, as well as local grocery stores to purchase items for the child's birthday. Therefore, on this record, we agree with the trial court that petitioner undertook reasonable efforts to reunify respondent with her minor child where petitioner reasonably accommodated respondent's disabilities. *In re Hicks*, 500 Mich at 86.[4]

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[3] Respondent also had a prior domestic violence conviction from April of 2016 where she assaulted her father, but respondent testified at the termination hearing that her father was lying about the incident.

[4] In *In re Hicks*, 315 Mich App 251, 279; 890 NW2d 696 (2016), aff'd in part, vacated in part by *In re Hicks*, 500 Mich at 79, this Court opined that "Michigan jurisprudence has thereby recognized that reasonable accommodations must be tailored to the individual so as to meaningfully enable that person to benefit from services." A review of the record in this case

II. BEST INTERESTS OF THE CHILD

Additionally, respondent argues on appeal that termination of her parental rights was not in the best interests of her child. We disagree.

A trial court's decision regarding the best interests of the child is reviewed for clear error. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "A decision qualifies as clearly erroneous when, 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." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009) (citation and quotation marks omitted).

Under MCL 712A.19b(5), "[i]f 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." "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 192 (2013). In determining the child's best interests, "the court may consider 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 Minors*, 297 Mich App at 41-42 (citations omitted).

Here, the court determined that termination of respondent's parental rights was in the child's best interests, "to ensure . . . a certain level of permanency." The record indicates that before commencement of these proceedings, the child was in a guardianship with a relative, and had lived virtually her entire life outside the custody and care of respondent. She was 10 years old at the time of the final termination hearing, and these proceedings with respondent spanned two years, from July 2015 through July 2017. Therefore, the minor child's need for permanency, stability, and finality were significant as she had spent most of her young life outside respondent's care, and particularly where she was in a new placement, continued efforts at reunification would most likely have resulted in significant disruption to the child's life.

Moreover, the record indicates that respondent lived with a man who was listed on the central registry for abuse of his own children, and that she remained with this man through the duration of the proceedings. Respondent was also convicted of domestic violence involving her father, which she blamed on her father lying about the incident. As recently as October of 2016, the record reflects that respondent had to be hospitalized after she engaged in a physical altercation in a public lobby of a health care facility with her boyfriend, demonstrating manic behavior and sexual gestures. Although the record indicates that the child and respondent were bonded at times, the caseworker described the bond as "[m]ore of a friendship." The minor child was also struggling in school and has special needs, and as noted above, even with reasonable accommodations from petitioner, respondent was unable to fully care for herself, let alone the

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leads us to conclude that petitioner tailored reasonable accommodations to respondent to allow her to meaningfully benefit from the services offered.

minor child. Therefore, we conclude that the trial court correctly determined that termination of parental rights was in the best interests of the minor child.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Karen M. Fort Hood
/s/ Colleen A. O'Brien