

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 27, 2018

In re I. D. JOHNSON, Minor.

No. 342593
Wayne Circuit Court
Family Division
LC No. 10-494712-NA

Before: O'BRIEN, P.J., and TUKEL and LETICA, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to the minor child, IDJ, under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that child will be harmed if returned to parent). We affirm.

Respondent has two children, TJ and IDJ. During these proceedings, respondent voluntarily relinquished her parental rights to TJ, so only her parental rights to IDJ are at issue in this appeal. Respondent has a lengthy history with Child Protective Services (CPS), dating back at least 10 years. Much of that history, including the events that led respondent to relinquish her rights to TJ, is in the lower court file, but we discuss only those events that are probative of respondent's ability to parent IDJ.

Respondent, who is 29 years old, has suffered from mental health issues since early childhood. She reported experiencing mood swings on and off since she was seven years old. At one point during her childhood, she was hospitalized and administered psychotropic medications.

Respondent gave birth to TJ in 2008. Shortly after his birth, TJ was placed in a guardianship. TJ still resided in this guardianship when respondent gave birth to IDJ in 2010. When IDJ was approximately a month old, the police were dispatched to respondent's apartment to investigate complaints of erratic behavior. When police arrived, they found respondent holding newborn IDJ in her arms while she threw his belongings into the hallway of her apartment building. Respondent admitted that she was not taking her psychotropic medications at that time. IDJ was removed from respondent's care, and respondent was transported to the hospital. Shortly after, petitioner filed a petition requesting that IDJ be made a temporary ward of the court. After respondent admitted to a history of mental illness, multiple psychiatric hospitalizations, unstable housing, and domestic violence issues, the trial court assumed

jurisdiction over IDJ and ordered respondent to participate in a treatment plan. In October 2012, after nearly two years of services, the trial court returned IDJ to respondent's care with continued supervision of the Department of Health and Human Services (DHHS). The trial court ordered intensive family reunification services, and it eventually dismissed jurisdiction in 2013. The court also terminated TJ's guardianship, but, in part because TJ was diagnosed with autism, it ordered TJ to remain with his former guardian.

In February 2014, petitioner filed a petition requesting the court to take temporary custody of IDJ and TJ. The petition alleged that respondent threatened IDJ's safety in a text message to a friend. After respondent admitted to the allegation, the trial court assumed jurisdiction and made both children temporary wards of the court. IDJ was allowed to remain in respondent's care while TJ continued to reside with his former guardian. The trial court ordered respondent to participate in more services.

In the months that followed, respondent made progress with her treatment plan. But that progress did not last. In March 2015, CPS received a complaint that respondent had physically assaulted IDJ during a parenting-time visit with TJ at the Children's Center. When confronted, respondent allegedly became hostile toward the Center's staff and the police. She also left IDJ at the Center. During a forensic interview, IDJ disclosed that respondent had "slammed" him and scratched his face. The trial court authorized petitioner to take IDJ into protective custody, and a petition was filed requesting that the court remove IDJ from respondent's care. The petition alleged, among other things, a deterioration in respondent's mental health. The trial court ordered IDJ removed from respondent's care and ordered respondent to participate in services.

In the months that followed, respondent failed to sufficiently progress with her treatment plan, so petitioner filed a supplemental petition seeking termination of respondent's parental rights to TJ and IDJ. Before the termination hearing began, respondent voluntarily relinquished her parental rights to TJ, so the trial court held a termination hearing only for respondent's rights to IDJ. At the hearing's conclusion in August 2016, the trial court found that, despite petitioner establishing statutory grounds, termination was not in IDJ's best interests. As a result, the trial court granted respondent additional time to work toward reunification.

After nine more months of services, petitioner again concluded that respondent had not adequately addressed her barriers to reunification, and it again filed a petition seeking to terminate respondent's rights. At the conclusion of the second termination hearing, the trial court again found statutory grounds for termination, and, this time, also found that termination was in IDJ's best interests. The trial court ordered respondent's parental rights to IDJ terminated, and this appeal ensued.

Respondent states only a single question presented on appeal, but she appears to raise three arguments in that question: (1) that petitioner failed to make reasonable efforts at reunification, (2) that the trial court clearly erred by finding that petitioner established statutory grounds for termination, and (3) that the trial court clearly erred by finding that termination was in IDJ's best interests. Although respondent failed to properly present the individual issues on appeal, we will address each issue in turn.

Respondent argues that petitioner's efforts at family reunification were not reasonable because it failed to take into consideration her mental health and cognitive issues. We disagree. This Court generally reviews for clear error whether reasonable efforts were made to preserve and reunify the family. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005).

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), and a respondent has a commensurate responsibility to participate in the services offered to facilitate reunification, *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). "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).

The Michigan Supreme Court in *In re Hicks/Brown*, 500 Mich 79; 893 NW2d 637 (2017), considered whether the DHHS made reasonable efforts to reunify an intellectually disabled parent with her children. The Court considered the DHHS's obligations that arise under both the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, and the Michigan Probate Code, MCL 712A.18f(3)(d). Under the Probate Code, "the Department has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights." *Id.* at 85. And under the ADA, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." *Id.* at 86 (quotation marks and citation omitted). The *Hicks/Brown* Court held that the DHHS neglects its duty to reasonably accommodate a disability under the ADA when it fails to implement reasonable modifications to services or programs offered to a disabled parent. *Id.* Similarly, the Court stated 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." *Id.* The Court noted, however, that DHHS cannot accommodate a disability of which it is unaware. *Id.* Keeping in mind the foregoing principles, we conclude that, in this case, the record does not support respondent's argument that petitioner failed to accommodate respondent's mental health and cognitive issues.

The record clearly shows that respondent suffered from severe mental health issues. Respondent reported a history of mental illness and associated hospitalizations dating back over 20 years. Throughout the proceedings, respondent engaged in erratic behavior, angry outbursts, physical aggression toward IDJ, and threatening behavior toward the caseworkers. Respondent was diagnosed with bipolar spectrum disorder, depression, affective disorder, and post-traumatic stress disorder related to her history of childhood trauma. For years, respondent was prescribed several psychotropic medications to stabilize her mood.

On appeal, respondent contends that her mental health issues impaired her ability to comply with her treatment plan. This contention is less clear. Respondent was in special education classes while in school, but she completed the 11th grade. Caseworkers consistently testified that respondent understood what was being asked of her and never indicated that she did not understand her treatment plan. Respondent could read, figure out bus routes, and complete apartment applications. As the caseworkers explained, she was resourceful when she needed to be. Respondent testified multiple times that she secured her own services when she felt like the DHHS was not properly attending to her needs, and her testimony demonstrated an

understanding and comprehension of her treatment plan and services for her children. Respondent's attorney, who had been with respondent through the entire case, reported that respondent was quite capable.

Even ignoring that respondent showed to be a capable individual, the record is clear that petitioner recognized respondent's limitations—particularly her mental health and anger management issues—and tailored a treatment to address respondent's needs. Petitioner requested, and the trial court ordered, that respondent participate in individual therapy, family therapy, psychiatric treatment, substance abuse treatment, drug screens, parenting classes, and parenting time. Respondent was also required to adhere to her medication regimen. Petitioner offered respondent services consistent with the court's orders. At a certain point, the parties recognized that respondent would benefit from a more specialized therapy, so respondent was offered trauma-focused therapy.

Along with this array of services designed to address her mental health issues, the trial court afforded respondent an inordinate amount of time to benefit from her treatment plan. Services were first offered when TJ's guardianship was initiated, and those services, in one form or another, continued for almost the entire eight years since IDJ was born. After the first termination hearing—where the trial court decided not to terminate respondent's rights despite finding statutory grounds to do so—respondent had even more time to participate in services and address her issues. Yet respondent failed to do so.

The failure to take advantage of opportunity was, sadly, pervasive throughout these proceedings. Early on in this case, a caseworker at Assured Family Services “pulled a lot of strings” to get respondent admitted to an inpatient program at New Passages. Once admitted, respondent refused to go. Respondent was also offered multiple referrals for anger management treatment. After respondent eventually complied with a third referral and attended 14 classes, it was recommended that she participate in supplemental sessions. Respondent, however, refused to complete the additional services. After the court denied the first permanent custody petition, it ordered petitioner to provide intensive services to respondent, including inpatient treatment. Consistent with the court's orders, respondent was admitted to the Positive Images program. Respondent did not complete the program and, in fact, left on her own accord. The record clearly shows that petitioner offered respondent numerous services over an eight-year period designed to address her mental health issues and that respondent did not take advantage of her opportunities.

Respondent argues that petitioner failed to refer her to a dual-diagnosis inpatient facility that would accommodate both her and IDJ. Respondent made this same argument in the lower court. Her caseworkers testified that they repeatedly told respondent that it was not feasible to place IDJ with respondent because respondent had not complied with and benefited from the initial treatment plan, and the court had not ordered reunification. After respondent argued to the trial court that she should be referred to a dual-diagnosis inpatient facility, the trial court ordered petitioner to investigate the possibility further. Petitioner did so, and caseworkers testified that they repeatedly told respondent that, to participate in these programs, respondent had to make the initial intake contact with the facility through ACCESS; the DHHS was not allowed to do this for her. Unfortunately, respondent failed to make this initial contact, so the DHHS was unable to refer respondent to a dual-diagnosis inpatient facility.

Along with the already mentioned services aimed at accommodating respondent's cognitive impairment, the trial court ordered the assistance of a parent partner, a CASA volunteer, Wraparound services, and supportive visitation. These services provided respondent with hands-on intensive assistance. Like the other services offered, respondent either rejected the assistance or was terminated from the services for non-compliance. As for addressing respondent's housing problem, the trial court correctly characterized petitioner's efforts as extraordinary. On respondent's behalf, petitioner took the unusual steps of seeking state emergency funds to pay respondent's back rent so she could apply for Section 8 housing. Petitioner then obtained a waiver to secure a state identification card for respondent when that became an impediment to applying for Section 8 housing. Petitioner also successfully negotiated extensions for respondent's Section 8 vouchers.

While respondent faults petitioner for allegedly failing to modify the service plan to accommodate her mental health issues and cognitive challenges, the record demonstrates that it was respondent who failed to cooperate with, and benefit from, the services offered. "While the [DHHS] 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 services that are offered." *In re Frey*, 297 Mich App at 248. Considering respondent's failure to cooperate, petitioner cannot be criticized for failing to take additional measures to accommodate respondent's mental health and cognitive issues. As observed by this Court in *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000):

After her children have come within the jurisdiction of the family court, a parent, whether disabled or not, must demonstrate that she can meet their basic needs before they will be returned to her care. 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. [Quotation marks and citation omitted.]

Next, respondent argues that the trial court erred when it found that petitioner had established statutory grounds for termination by clear and convincing evidence. We disagree. This Court "review[s] for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (g) and (j), which permit termination when:

(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.

* * *

(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.^[1]

* * *

(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.

IDJ came into care because of respondent's severe mental health issues, which impeded her ability to safely parent IDJ. Respondent was ordered to comply with a treatment plan that included participating in parenting classes, parenting time, individual and family therapy, anger management classes, substance abuse treatment, and random weekly drug screens. She was also ordered to comply with her medication regimen, obtain and maintain suitable housing and a legal source of income, attend court hearings, and maintain communication with her caseworker.

A parent's failure to comply with the court-ordered treatment plan is evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well-being. *In re Trejo*, 462 Mich 341, 346 n 3; 612 NW2d 407 (2000); *In re BZ*, 264 Mich App 286, 300; 690 NW2d 505 (2004). It is also evidence that the parent will not be able to provide proper care and custody for a child. *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014).

Reviewing the totality of this case, respondent made no meaningful progress with her treatment plan, and she failed to overcome her barriers to reunification. Most notably, at the time of the termination hearing, respondent had not adequately addressed her mental health or anger management issues. On at least three occasions in 2017, respondent contacted her caseworker saying that she was experiencing a crisis and needed hospitalization. During the termination hearings, the trial court held two emergency hearings because respondent threatened harm to the caseworkers. At one point, parenting time was moved to the police department because respondent was deemed a threat to the workers. Respondent's threats, including some death threats, eventually led to her being arrested, charged, and pleading guilty to at least one criminal charge. Respondent spent more than a month in jail and, at the time of the termination hearing, she was awaiting sentencing. Respondent also readily admitted that she did not consistently take her psychotropic medications. In fact, she frequently denied that she needed

¹ Effective June 12, 2018, MCL 712A.19b(3)(g) was amended by 2018 PA 58 to read that a trial court could terminate a parent's rights if:

The parent, although, in the court's discretion, financially able to do so, 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.

the medication. When the trial court eventually terminated respondent's parental rights, her mental health and anger management issues clearly remained barriers to reunification.

Respondent also lacked suitable housing during nearly the entire time IDJ was in care. On the last day of the termination hearing, respondent admitted that she was homeless and had been homeless for approximately two years. In a similar vein, substance abuse remained an issue throughout this case. Respondent acknowledged continued marijuana use, and she routinely failed to submit to weekly random drug screens.

In the more than 2½ years that IDJ was in care, respondent made no meaningful progress in overcoming these barriers to reunification. For that reason, at the time of the termination hearing, there was no evidence that respondent had achieved or would likely achieve the emotional and mental stability necessary to parent her child. While respondent showed, at times, an ability to progress in her treatment, she never did so for a sustained period. On this record, we cannot conclude that there is any reasonable expectation that respondent will change course in the foreseeable future and be able to overcome her primary barriers to reunification within a reasonable time. The trial court did not clearly err when it found that grounds for termination were established under MCL 712A.19b(3)(c)(i), (g), and (j) by clear and convincing evidence.

Lastly, respondent challenges the trial court's finding that termination of her parental rights was in IDJ's best interests. We again disagree. Whether termination of parental rights is in the child's best interests must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App at 90. We review for clear error a trial court's finding that termination of parental rights is in a child's best interests. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

A 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 35, 42; 823 NW2d 144 (2012). The court may also consider psychological evaluations, the child's age, the parent's continued involvement in domestic violence, and the parent's history. *In re Jones*, 286 Mich App at 131.

At the time of the termination hearing, IDJ was eight years old. He had been in care for almost three years. CPS had been involved with IDJ, in some manner, for the majority of his life. Over the years, IDJ was the subject of multiple petitions and supplemental petitions. During the time IDJ was a court ward, respondent refused to consistently participate in her treatment plan. Consequently, she had not adequately addressed her mental instability. Though respondent claimed that a bond existed between her and IDJ, this is questionable. Respondent regularly attended visitation, but her interactions with IDJ were inconsistent. She would sometimes be completely engaged, but other times would not. It was even reported that respondent fell asleep during a visit. A caseworker, when asked about the bond between respondent and her son, testified that IDJ did "okay" with respondent, they interacted and had a good time at visits, but other than that it was "nothing really."

Even if respondent and IDJ had a strong bond, numerous other factors support the trial court's decision that termination was in IDJ's best interests. IDJ had special needs, and he required medication and weekly therapy. Throughout this case, respondent showed that she

could not consistently treat her own mental health, so it is unlikely that she could manage IDJ's special needs.

There is also an unresolved question of whether IDJ would be safe in respondent's care. Respondent failed to complete her anger management therapy, and anger issues remained a problem through the end of this case. Respondent would become angry with her caseworkers, and would respond by threatening them. Those threats eventually landed respondent in jail. And the threats never stopped; caseworkers reported that respondent was still threatening them in between dates of the second termination hearing. While IDJ was still in respondent's care, respondent became physically violent toward IDJ while they were at the Children's Center. IDJ then disclosed other incidents where respondent would get angry and physically abuse him. These anger issues remain, so IDJ's safety and well-being cannot be reasonably assured if left in respondent's care. This in turn supports the trial court's finding that termination was in IDJ's best interests. See *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011) (holding that the trial court did not clearly err by finding that termination was in the children's best interests because their "safety and well-being could not reasonably be assured").

Although IDJ experienced some continuity in care as he had been placed in the same foster home since September 2016, it was clear that the lack of permanency was taking a toll on him. The foster father testified that IDJ experienced behavioral issues. Most notably, IDJ was disrespectful to his foster mother and had caused significant physical damage to the foster home. At one point, the foster family submitted its 30-day notice, but by the time of the January 2018 termination hearing, circumstances were improving and the 30-day notice had been rescinded. The foster parents were meeting IDJ's physical, educational, and emotional needs. It is apparent that IDJ was placed in a stable home where he was progressing and that this progress could continue as the foster parents had indicated a willingness to provide long-term care.

After having been in care for more than two years, IDJ was entitled to stability, consistency, and finality. Indeed, these were essential to fostering his continued growth and development. After balancing all of these considerations, we conclude that the trial court did not clearly err when it held that termination of respondent's parental rights was in IDJ's best interests.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Jonathan Tukel
/s/ Anica Letica