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STATE OF MICHIGAN

COURT OF APPEALS

In re L. H. POSNER, Minor.

UNPUBLISHED
December 16, 2021

No. 356953
Manistee Circuit Court
Family Division
LC No. 19-000005-NA

Before: GADOLA, P.J., and SWARTZLE and CAMERON, JJ.

PER CURIAM.

Respondent appeals the trial court's order terminating her parental rights to her minor child, LHP, under MCL 712A.19b(3)(c)(*i*) (failure to rectify conditions of adjudication), (i) (parental rights to one or more children previously terminated), and (j) (reasonable likelihood of harm if returned to parent). We affirm.

I. BACKGROUND

LHP was born on January 22, 2019. On January 23, 2019, the Department of Health and Human Services (DHHS) filed a petition. The petition alleged that respondent had a history of untreated mental health issues and that her parental rights to two other children had been involuntarily terminated as a result. The petition also alleged that respondent had a history of violent behavior and had engaged in self-harm. Petitioner requested that the trial court remove LHP from respondent's care and custody, exercise jurisdiction, and terminate respondent's parental rights. The petition was authorized, LHP was placed in foster care, and respondent was not granted parenting time.

Although petitioner initially sought to terminate respondent's parental rights, the trial court adjourned the termination hearing so that LHP's putative father could undergo genetic testing.[1] Respondent pleaded to certain allegations in the petition in October 2019, and petitioner withdrew

[1] After it was determined that LHP's putative father was her biological father, LHP's father voluntarily surrendered his parental rights.

its request for immediate termination of respondent's parental rights. Respondent was thereafter ordered to participate in and benefit from services.

Respondent submitted to a psychological evaluation with Dr. Wayne Simmons, who diagnosed respondent with a personality disorder and noted that respondent was "functioning in the low average range of intelligence[.]" Dr. Simmons opined that respondent would be unable to effectively parent LHP and that "[n]o reasonable efforts [were] available to render her capable in a time sensitive way." Nonetheless, DHHS continued to offer respondent services and the caseworker provided Dr. Simmons's report to service providers. Respondent's caseworker also spent additional time explaining the case service plan to respondent. Respondent participated in dialectical behavioral therapy, attended a parenting class, acquired part-time employment, maintained appropriate housing, and obtained a motor vehicle. However, respondent refused to submit to a consultation regarding psychotropic medication, would not accept responsibility for LHP or her other children being removed from her care, indicated that she did not require services, and demonstrated an inability to control her emotions. Also, because of respondent's history and behavior and because Dr. Simmons indicated that respondent would be unable to develop appropriate parenting skills, respondent was not permitted to have visitation with LHP, who had special needs.

At a June 30, 2020 statutory review hearing, respondent's counsel reported for the first time that respondent had been previously diagnosed with a chromosomal anomaly that caused her to have cognitive delays. Respondent was referred to Dr. Michael Wolff for a neuropsychological evaluation. At a September 2020 review hearing, Dr. Wolff testified that respondent had a chromosome microdeletion, which made her more susceptible to learning disabilities and social-emotional difficulties. Dr. Wolff recommended that respondent be provided with services tailored to address her needs, such as repetitive instruction and a life skills mentor. Dr. Wolff also recommended that respondent work with someone who could address her history of trauma. Respondent's caseworker referred respondent to a life skills mentor, inquired into whether respondent should engage in trauma-focused therapy, used repetition, and continued to spend extra time with respondent to ensure that respondent understood the case service plan. The caseworker attempted to refer respondent to a specialized parenting class that focused on parents who had survived trauma, but respondent initially refused to comply and repeatedly stated that she did not need assistance with parenting. Respondent also did not want to engage in trauma-focused therapy. Additionally, respondent entered into a relationship with an individual who had a history of substance abuse and domestic violence and had ongoing involvement with Child Protective Services.

In January 2021, petitioner filed a petition to terminate respondent's parental rights. At the end of a two-day hearing, respondent's counsel argued that respondent had not been provided with services to accommodate her disabilities under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*. The trial court disagreed and found that clear and convincing evidence supported terminating respondent's parental rights under MCL 712A.19(3)(c)(*i*), (i), and (j). The trial court also concluded that termination was in LHP's best interests. This appeal followed.

II. ANALYSIS

Respondent argues that petitioner did not make reasonable efforts toward reunification because it did not sufficiently accommodate her disability. We disagree.

"Under Michigan's Probate Code, the [DHHS] has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017). "As part of these reasonable efforts, the [DHHS] must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *Id*. at 85-86. This includes updating the parent's treatment plan throughout the case and giving the parent reasonable time to make changes and benefit from the services before the termination of parental rights. *In re Mason*, 486 Mich 142, 156; 782 NW2d 747 (2010). "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." *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000) (quotation marks and citation omitted).

However, if a parent suffers from a disability under the ADA or suffers from "a known or suspected intellectual, cognitive, or developmental impairment," petitioner has a duty to reasonably accommodate the parent's disability by offering services designed to facilitate the child's return to his or her home. *In re Hicks*, 315 Mich App 251, 281-282; 890 NW2d 696 (2016), vacated in part on other grounds 500 Mich 79 (2017) (emphasis omitted). In *In re Hicks*, 315 Mich App at 282, this Court explained that

> the DHHS must offer evaluations to determine the nature and extent of the parent's disability and to secure recommendations for tailoring necessary reunification services to the individual. The DHHS must then endeavor to locate agencies that can provide services geared toward assisting the parent to overcome obstacles to reunification. If no local agency catering to the needs of such individuals exists, the DHHS must ensure that the available service providers modify or adjust their programs to allow the parent an opportunity to benefit equally to a nondisabled parent.

"[E]fforts at reunification cannot be reasonable . . . if the [DHHS] has failed to modify its standard procedures in ways that are reasonably necessary to accommodate a disability under the ADA." *In re Hicks/Brown*, 500 Mich at 86. However, "[w]hile the [DHHS] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of [the] respondent[] to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

In this case, petitioner modified the services offered to respondent to address her issues after the goal was changed to reunification.[2] In October 2019, respondent was evaluated by Dr. Simmons, who concluded that respondent was "functioning in the low average range of

[2] "Reasonable efforts to reunify the child and family must be made in all cases except if . . . [t]he parent has had rights to the child's siblings involuntarily terminated and the parent has failed to rectify the conditions that led to that termination of parental rights." MCL 712A.19a(2)(c).

intelligence[.]" The report was provided to respondent's dialectical behavioral therapist and caseworkers. One of respondent's caseworkers testified that she "spent a considerable length of time that normally [she] wouldn't with a parent or wouldn't need to with a parent" to ensure that respondent understood the case service plan. The caseworker believed that respondent understood the information that was being presented to her. Respondent presented evidence of her chromosomal anomaly more than six months after LHP had been taken into care, and respondent was immediately referred for a neuropsychological evaluation to determine what effect the chromosomal abnormality had on her abilities.

In August 2020, Dr. Wolff evaluated respondent. Dr. Wolff diagnosed respondent with "a cognitive communication disorder related to [her] chromosomal microdeletion" and noted that respondent had experienced extensive trauma. Dr. Wolff "also recognized that [respondent] had difficulties" with executive functioning, which included problems with "planning, decisionmaking [sic], organizing, learning from mistakes, being able to perform effectively under pressure and response speed in sometimes making decisions." Dr. Wolff noted that this would cause respondent to have "difficulty putting her ideas into words as efficiently as others might anticipate[.]" Dr. Wolff opined that respondent would have difficulty making "the best or informed decision[s]" when under pressure and that respondent required time to "think things through." However, Dr. Wolff agreed that respondent was capable of learning new information so long as she was provided with time to process the information and so long as the service providers repeated the information. He recommended that respondent be provided with a life coach.

Respondent's caseworker at the time distributed copies of Dr. Wolff's report to respondent's service providers and referred respondent to in-home services and to a specialized parenting class for parents who have experienced trauma. Multiple service providers testified that they specifically adapted their services to account for respondent's cognitive delays and trauma. Additionally, respondent's therapist recommended certain video lessons so that respondent would not be required to read lengthy texts, and the therapist and respondent's caseworker used repetition to make sure that respondent understood concepts. In sum, the record is replete with examples of DHHS attempting to tailor services to respondent's specific needs, and there is no evidence that respondent requested additional services.

Moreover, respondent cannot show that she would have fared better in her efforts toward reunification if she had received specialized services earlier in the proceeding. Indeed, respondent refused to participate in some services tailored to address her needs—specifically, therapy to address her past trauma—and she indicated that there was not a need for certain services. Although there is evidence that respondent benefitted from dialectical behavioral therapy, she was no longer participating in dialectical behavioral therapy at the time of termination. Additionally, respondent continued to demonstrate poor decision making skills and a lack of accountability in the time leading up to termination.

Thus, given that respondent failed to uphold her "commensurate responsibility" to engage in and benefit from the services offered by petitioner, see *In re Frey*, 297 Mich App at 248, we are not persuaded that she would have fared better if petitioner had offered other services, see *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005). We therefore conclude that the trial court did not clearly err by determining that petitioner made reasonable efforts to promote reunification.

See *id*. at 541-543 (applying a clear error standard of review to challenge reasonableness of services).[3]

Affirmed.

/s/ Michael F. Gadola
/s/ Brock A. Swartzle
/s/ Thomas C. Cameron

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[3] Although respondent does not explicitly argue that statutory grounds existed to support termination or that it was not in LHP's best interests to terminate respondent's parental rights, we conclude that the trial court did not clearly err by terminating respondent's parental rights.