STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
June 23, 2011

In the Matter of COLEMAN-FUQUA, COLEMAN, and COLEMAN-STUBBS, Minors.

No. 300960
Genesee Circuit Court
Family Division
LC No. 06-121095-NA

Before: FITZGERALD, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her minor children under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j). We affirm.

Respondent argues first that petitioner failed to reasonably accommodate her mental disability. Violation of the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*., is not a defense to termination of parental rights; however, if the petitioner did not take into consideration a respondent's disabilities and make reasonable accommodations, it has not made reasonable efforts to reunify the family. *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000). In the present case, respondent claimed a disability based on her psychological evaluation test scores. However, the lower court did not err when it found that her scores alone were insufficient to establish a disability requiring special accommodations. Further, a respondent should raise this issue when the service plan is adopted, or soon after. *Id*. at 26 & n 5. Respondent did not raise the issue until a review hearing more than a year after her children were removed, seven months after she completed parenting classes and stopped participating in substance abuse treatment, and three months after petitioner filed for permanent custody. Contrary to respondent's assertions on appeal, the lower court did find that the issue was not timely raised and did not find that petitioner was on notice the ADA applied. The court merely treated the issue as having been raised at the review hearing because it found respondent was not served with the order that corrected a mistake on the written referee recommendation.

Respondent argues next that the lower court erred when it denied her request to place the children in guardianship with their great-aunt and uncle. When children are removed from their homes, petitioner and the courts should place children in the most family-like setting possible, MCL 712A.13a(10); MCL 712A.18f(3), giving preference to fit relatives who can meet the children's needs when in the children's best interests, MCL 722.954a(5). Children may be placed with relative guardians as an alternative to terminating their parents' rights if it is in the children's best interests, MCL 712A.19a(6)(a); MCL 712A.19a(7)(c). However, policies favoring families do not require courts to place children with relative guardians if it is in the

children's best interests to instead terminate parental rights. *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999); *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991).

Respondent claims on appeal that a positive marijuana test was the only reason the children were not placed with relatives to whom they were bonded. However, petitioner and the lower court cited several other important considerations. The great-uncle had significant child support arrearages, the great-aunt's credibility was questionable, and they believed the children should not have been removed from respondent's home. They claimed a close relationship with the children; yet, they failed to recognize the inappropriate and unsafe circumstances the children had been living in. The court appointed special advocate recommended against guardianship based on the stories the children told about their lives, including calling these relatives when they were hungry and had no food. The lower court did not err when it held that placing the children with their great-aunt and uncle was not in their best interests.

Respondent also challenges the lower court's findings regarding the statutory grounds for terminating her parental rights. A petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence. *In re JK*, 468 Mich at 210. In the present case, respondent's parental rights were terminated under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j), which provide:

> (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:
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> (*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.
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> (*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> (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,
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> * * *
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> (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.

Respondent argues that she completed every service except those related to substance abuse, and that this fact provided evidence that she could provide proper care for the children. Compliance with the parent-agency agreement is evidence that a respondent will be able to provide proper care in a reasonable time. *In re JK*, 468 Mich at 214. However, the respondent must benefit from treatment, not merely go through the motions. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). Respondent completed parenting classes. However, the foster care worker testified that respondent did not benefit from her parenting classes given her behavior at visits, including asking her sons for money. She also reportedly missed many visits, and she missed the termination hearings in August 2010, September 2010, and October 2010, without explanation. This evidence reflected respondent's inability or unwillingness to take the steps necessary to regain custody of her children.

Further, respondent's substance abuse was a significant barrier to reunification. She tested positive for cocaine, and her baby was born positive for cocaine. She did not show she stopped using cocaine by submitting the random drug screens petitioner requested. She stopped attending substance abuse treatment in September 2009 and offered no evidence that she obtained any other treatment or assistance. Respondent also did not obtain independent housing or income, and she did not maintain contact with the worker. Respondent was also arrested for assaulting her very ill partner, Kevin.

The conditions leading to adjudication were substance abuse and inappropriate living conditions. All evidence indicated that respondent was still abusing substances and still had not obtained her own stable home. Respondent's substance abuse was not likely to be rectified in a reasonable time because she stopped attending treatment and made no effort to show that she was trying to regain custody by attending the termination hearings and maintaining contact with the worker. Therefore, the lower court did not err when it found clear and convincing evidence of a statutory ground for termination under MCL 712A.19b(3)(c)(*i*).[1]

The same evidence supported the lower court's finding that respondent failed to provide proper care and custody and was not reasonably likely to in a reasonable time, MCL 712A.19b(3)(g). Respondent conceded in her jurisdictional plea that the children's living environment was not appropriate. Based on the evidence presented, she did not address her cocaine use or obtain her own home and she did not demonstrate she would make the effort necessary to regain custody of her children.

Respondent also argues that the lower court's finding that the children were likely to be harmed if returned, MCL 712A.19b(j), was erroneous, quoting the statement in *In re Boursaw*, 239 Mich App 161, 169; 607 NW2d 408 (1999), that "we are most puzzled by the court's reliance on subsection 19b(3)(j). There is no evidence in the record that respondent ever struck

[1] The lower court's bench opinion does not specify what "other conditions," MCL 712A.19b(3)(c)(*ii*), caused the children to come within the court's jurisdiction (although the court states that the domestic violence issue had not been addressed), and respondent makes no argument regarding new conditions. Regardless, we will affirm the lower court's decision if we find clear and convincing evidence of any statutory ground. *In re Huisman*, 230 Mich App 372, 384-385; 485 NW2d 349 (1998).

or purposefully harmed the child in any way" (Respondent's brief on appeal, 44). This Court then discussed that the lower court's finding was based on the respondent likely repeating past potentially harmful behaviors, like medical neglect and smoking in the child's presence, but this Court found the respondent was less likely to repeat those behaviors because she was making a constructive effort in counseling and found employment. *In re Boursaw*, 239 Mich App at 169-172. This Court did not hold that MCL 712A.19b(3)(j) required evidence that the respondent struck or purposefully harmed her children.

In the present case, the risk of harm related to lack of food and medical and dental care and other harm that could occur when the custodial parent is not supervising and parenting her children. The lower court did not err when it found clear and convincing evidence that the children would likely be harmed if returned to respondent, MCL 712A.19b(3)(j).

Finally, respondent argues that termination was not in the children's best interests. MCL 712A.19b(5). However, respondent gave no indication she was willing and able to do what was necessary to provide the children with a safe, appropriate home. It was not in their best interests to place them with the only relatives seeking guardianship. Children require permanency and stability. See *In re McIntyre*, 192 Mich App at 52. Therefore, the lower court did not err when it held that terminating respondent's parental rights was in the children's best interests.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Jane M. Beckering