

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
August 11, 2011

In the Matter of J. L. GORDON, Minor.

No. 301592  
Oakland Circuit Court  
Family Division  
LC No. 2008-746988-NA

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Before: CAVANAGH, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

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

Before terminating a respondent's parental rights, the trial court must find that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court must order termination of parental rights if it finds that a statutory ground is proven and that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews the trial court's determinations for clear error. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91, 126 n 1; 763 NW2d 587 (2009). To warrant reversal, the trial court's decisions must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

The trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i), (g), and (j) were established by clear and convincing evidence. The conditions that led to adjudication included respondent's unsuitable housing, financial instability, and emotional instability. Respondent had more than two years to provide a suitable home environment, achieve financial and emotional stability, and establish or maintain a parental bond with her son. There was sufficient evidence that petitioner provided respondent with reasonable services to facilitate reunifying the family. Offered services included psychological evaluations, psychiatric evaluation, individual and domestic violence counseling, parenting classes, parenting time, and transportation assistance.

The trial court properly concluded that respondent had not substantially complied with and benefited from her case treatment plan. Specifically, respondent failed to (1) maintain stable, suitable housing, (2) maintain regular, legal, and verifiable employment, (3) consistently attend court-ordered parenting time, and (4) establish or maintain a parental bond with the child. Failure to comply with a court-ordered case service plan is indicative of neglect. *In re Trejo*, 462 Mich 341, 360-361 n 16; 612 NW2d 407 (2000). A parent must benefit from services in order to

provide a safe, nurturing home for the child. *In re JL*, 483 Mich 300, 330-331; 770 NW2d 853 (2009).

Respondent failed to address the issues that led to adjudication. The trial court heard persuasive testimony from the case worker and the clinical psychologist that, despite support services, respondent's behaviors, particularly her poor judgment and decision making, remained unchanged. Additionally, the lawyer-guardian ad litem recommended termination of respondent's parental rights and told the court that she observed many instances where it seemed the child was not respondent's primary focus and interest. Other people and interests misdirected respondent's time, money, and attention away from the child, placing him at risk. There was ample evidence that respondent did not show any insight into what was important for the child. Rather than taking responsibility for problems, respondent blamed someone else. These proofs satisfied all three statutory grounds for termination.

Respondent argues that there was insufficient evidence to warrant termination of her parental rights. Respondent contends that she provided verification of her employment by producing a tax return showing her income. This assertion is not supported by the court record. During several of the dispositional review hearings and the termination hearing, petitioner raised the issue that it had not received written documentation of respondent's income. The case worker testified that, despite numerous requests, respondent had not provided any written verification of her employment with her boyfriend's family. Respondent testified that she was paid by personal check and had a bank account. Respondent provided extensive testimony of all the times that she had purportedly provided petitioner with a copy of her tax returns. Respondent claimed that she did not give a copy of any payment checks or her bank accounts because petitioner never asked for them. Respondent's financial stability was clearly a pivotal issue in this case. A person of at least average intelligence, as respondent was clinically tested to be, would understand that employment could be verified by providing copies of personal checks and bank account statements or even a letter from the employer. Respondent asserts that actual documentation was provided at the termination hearing. However, that document was merely a self-report of income by respondent for food stamp eligibility, not a verification of income by a third party.<sup>1</sup> The lack of any such readily accessible documentation in the court record undercuts respondent's credibility. The trial court reasonably concluded that such documentation did not exist because respondent was not gainfully employed and, thus, remained financially unstable.

Respondent argues that she had complied with the treatment plan by obtaining suitable and stable housing. Respondent admitted that she had moved at least four times within the past year, explaining that each move was to a better place, except for one which was because of a foreclosure on the landlord. There was ample evidence that respondent's housing was unsuitable for a child. At the time of removal, respondent was living with a known gang member in a condemned house without electricity and water. The court had ordered that other people and several pit bull dogs seen in the home were not to be present when the child was visiting. However, there was credible evidence, including the case worker's testimony and the lawyer-

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<sup>1</sup> Respondent did not move to have this document admitted into evidence.

guardian ad litem's statements, that the dogs and other people were present, including respondent's boyfriend who had a pending charge for attempted murder and respondent's mother who had an extensive protective services history. Respondent failed to grasp the risks that aggressive dogs and people with criminal and protective services histories posed on the child's safety and welfare. In the months leading up to the termination hearing, respondent lived in a dwelling that was infested with raccoons and subsequently condemned. Respondent admitted that she postponed weekly visits because she did not have enough food in the house. At the time of the termination hearing, respondent's newly acquired residence lacked the basic necessities for a child. Respondent claimed that the child's belongings were at the previous residence but that she did not have a way of moving them to the new home. The court noted that she had found a way to move her own belongings. The clinical psychologist opined that respondent's pattern of selecting inappropriate housing would likely continue if the child were returned to her care. There was sufficient evidence to support the trial court's finding that respondent had not obtained and maintained suitable housing as required in her treatment plan.

Respondent also contends that reasonable efforts to reunify her with the child were not made. It is well established that petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights. See MCL 712A.18f; MCL 712A.19(7); *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000). Respondent claims that she was not provided with adequate transportation for parenting time. It was undisputed that the foster parent initially transported the child to respondent's home for weekly visits. In early 2010, visitation was changed from unsupervised in respondent's home to supervised visitation at petitioner's Flint office. Respondent acknowledged at the termination hearing that the case worker offered respondent the needed bus passes if she came to the agency. The trial court also noted that respondent was able to find transportation to go to Cedar Point and travel to Detroit to get a dog yet claimed she could not get transportation to petitioner's office. Respondent also argues that petitioner failed to provide respondent with more aggressive treatment for depression, pointing to the clinical psychologist's testimony that respondent would benefit from additional treatment. However, the psychologist also stated that respondent's depression symptoms were not severe at the inception of the case when the psychological evaluation occurred, respondent had already received counseling, and she was taking antidepressants. The trial court properly concluded, during seven dispositional review hearings and at the termination hearing, that petitioner made reasonable efforts to reunify respondent with her child.

Respondent next argues that the trial court erred when it ruled that termination of her parental rights was in the minor child's best interests and improperly relied on highly speculative testimony. See MCL 712A.19b(5). This Court reviews the trial court's determination regarding the child's best interests for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. A trial court may consider evidence on the whole record in making its best interest determination. *Id.*

The trial court record establishes that termination of respondent's parental rights was clearly in the child's best interests. Respondent's inability to provide her child with the basic needs of food, clothing, suitable housing, and medical care led to the adjudication. Respondent's behaviors and circumstances, despite reunification services over two years, remained unchanged. Respondent was still incapable of providing the child with a safe and stable home because of her limited income and continued poor parental judgment.

Respondent claims that the foster parent, respondent's aunt, hated respondent and helped sabotage respondent's relationship with the child. This argument is groundless. At the time of the child's removal, respondent's relationship with the child was tenuous at best. Respondent acknowledged that the foster parent was very cooperative in trying to improve the relationship between respondent and the child, who had spent nearly all of his first year in the foster parent's care. After removal, the child remained in foster care for more than two years, and respondent's contact with him consisted of weekly visits, averaging five to six hours, and a brief time when overnight visitation was permitted. However, in January 2010, respondent began to miss visits or request shorter weekly visits, and she did not maintain consistent telephone contact with the child. Further, the child exhibited troubling behavior shortly after the overnight visitations with respondent began, including fits of rage and urinating and defecating on his toys and around the house despite being toilet trained. These behaviors nearly ceased when the child was no longer in contact with respondent and reemerged when contact with respondent resumed. The court reasonably concluded that the child's distressing behavior was linked to his contact with respondent. The clinical psychologist who evaluated respondent before the best interest hearing concluded that the child and respondent were not bonded and that termination of her parental rights was in the child's best interests and would give him needed permanency. The trial court, weighing the evidence on the whole record and considering the credibility of the witnesses, did not clearly err in finding that it was in the child's best interests to terminate respondent's parental rights.

Respondent asserts that the trial court erred in comparing the foster home to respondent's home in violation of Michigan law. Once a statutory ground for termination is established, a court may consider the advantages of an alternative home for the child in evaluating the child's best interests. *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009). Nothing in the lower court record suggests that the trial court inappropriately weighed the advantages of the foster home against respondent's home when determining whether the statutory grounds for termination had been satisfied. The trial court properly considered the foster parent's testimony when adjudicating the child's best interests.

Respondent argues that the trial court erred when it failed to address respondent's claimed Native American heritage pursuant to the Indian Child Welfare Act of 1978 (ICWA), 25 USC 1901 *et seq.* Issues regarding the interpretation and application of ICWA present questions of law that this Court reviews *de novo*. *In re Fried*, 266 Mich App 535, 538; 702 NW2d 192 (2005). Respondent did not object to the manner in which the ICWA notice was given or to the insufficiency of documentation in the lower court record until this appeal. This Court has previously held that substantial compliance with the notice requirements of the ICWA is sufficient where the trial court record established that the appropriate tribes received actual notice, and that no tribe came forward to intervene in the proceedings. *In re TM (After Remand)*, 245 Mich App 181, 190-191; 628 NW2d 570 (2001). The record in this case shows that petitioner complied with ICWA by sending notice to the appropriate tribe and received an acknowledgment from the tribe that the notice was received. There is ample evidence that the tribe had actual notice of the proceeding. There is no substantiation for respondent's position that the trial court did not adequately adhere to ICWA. Given respondent's own statement in court that she received a response that she and her son were not eligible for tribal membership, the trial court was relieved from embarking on further ICWA tribal notification efforts. Therefore, respondent has failed to show any error requiring remand for further inquiry or reversal.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kurtis T. Wilder

/s/ Donald S. Owens