S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

UNPUBLISHED
July19, 2011

In the Matter of FISHER, Minors.

No. 301652
Macomb Circuit Court
Family Division
LC Nos. 08-000701-NA;
08-000702-NA;
08-000703-NA

Before: MURRAY, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

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

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence and that termination was in the best interest of the children. *In re Trejo*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); MCL 712A.19b(5); MCR 3.977(K).

The children were brought into care primarily because of physical neglect. Respondent's psychological testing and evaluation established that she was cognitively impaired. Respondent was provided with a guardian ad litem. Respondent pleaded no contest to the petition, which included allegations that respondent had no control over the children and that her home was in deplorable condition. The petition also alleged that respondent admitted feeling overwhelmed and depressed but did not seek mental health treatment.

Respondent was provided with a case service plan. She made slow but steady progress, and appeared to internalize many of the things that she learned during parenting classes. Her progress was sufficient and, when issues arose regarding the oldest child's relative placement, petitioner recommended that the child be returned to respondent's care. Family reunification services were put into place. Respondent appeared to be doing well, but approximately four months later the child was removed from respondent's care after respondent missed medical visits for the child and failed to reschedule them. Respondent's oldest two children were cognitively impaired, had extensive special needs, and suffered from seizure disorders, making medical treatment and monitoring critical. Respondent's visits with all three children were then changed to a supervised setting. The visits initially went well when respondent visited each child individually, but problems emerged when the two girls began visiting respondent together.

Workers supervising the visits had to increasingly intervene and redirect respondent and the girls. Respondent's visits with her son did not go well either. At times respondent failed to engage the children because she was busy texting, an activity that she was warned repeatedly to avoid during visits.

There is no dispute that respondent made initial strides and complied with her treatment plan to the best of her ability, but as parenting pressures increased she was unable to meet the children's needs. Respondent, a cognitively impaired woman with two cognitively impaired children, was simply unable to effectively parent the children. The conditions of adjudication were that the children were physically neglected and respondent was overwhelmed. Two years later those conditions continued to exist. It did not appear that the conditions would be rectified within a reasonable time, considering the fact that respondent had already received two years of services. Additionally, because of their seizure disorders, the two oldest children were especially at risk of harm if left in respondent's care, as she failed to appreciate their need for continued medical monitoring. Respondent was financially reliant on her own mother, who was also cognitively impaired. In spite of her best efforts, respondent was not able to demonstrate adequate parenting skills.

Having found grounds for terminating respondent's parental rights, the trial court then had to consider whether termination was in the children's best interests. The children had been in care for over two years. The older two children had significant special needs and deserved a caregiver who could attend to those needs. The youngest child had spent most of her life in foster care. There is no doubt that respondent loved the children, and she did her best to comply with her case service plan, but the record clearly reveals that respondent did not have the capacity to parent them. The children are entitled to permanence and stability.

We reject respondent's contention that the agency failed to comply with the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*. A parent who claims that there has been a violation of the ADA must raise the issue in the lower court when the case service plan is adopted or soon thereafter. *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). Contrary to petitioner's assertion, respondent raised the issue of her cognitive delay and need for special services in a timely manner and was appointed a guardian ad litem at the outset of the case; therefore, the issue has been preserved for review. We review for clear error a trial court's finding that the agency has made reasonable reunification efforts. *Id*. at 22.

When children are removed from a parent's custody, the agency is required to make reasonable efforts to rectify the conditions that caused the removal by adopting a case service plan. MCL 712A.18f; *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). In making those efforts, petitioner is also obligated under the ADA to "make reasonable accommodations for those individuals with disabilities. *Terry*, 240 Mich App at 25. Failure to take a parent's disabilities into account and reasonably accommodate those disabilities by tailoring a service plan to assist a parent will result in a finding that reasonable efforts were not made. *Id.* at 26. Lack of effort toward reunification may prevent the agency from establishing the statutory grounds for termination. *In re Newman*, 189 Mich App 61, 67-68; 472 NW2d 38 (1991). However, in order to succeed on a claim that reasonable efforts were not made, a parent must demonstrate that she would have fared better if the agency had offered other services. *Fried*, 266 Mich App at 543.

The record establishes that petitioner and the trial court were aware of respondent's cognitive limitations and reasonably accommodated her disability. At her plea hearing, respondent was represented by legal counsel and was appointed a guardian ad litem. Respondent had an assessment at Community Mental Health (CMH) and qualified for an additional assessment for a day program for adults who had difficulties. While reunification was the goal, respondent's attorney wanted to ensure that the goal was realistic and that compliance with a case service plan would not merely be an "exercise in futility." The foster care worker indicated that she interviewed respondent and developed the case service plan "based on person-centered planning" specifically to meet respondent's needs. Respondent received the services of a special visitation coach in her home, parenting classes, and family reunification services through Judson Center and Warren Community Specialist. Respondent was referred to Disability Network of Oakland and Macomb County as well as Michigan Rehabilitation Services. At the termination hearing, the supervising caseworker indicated that petitioner had looked into all kinds of resources, but additional community services were simply not available. In addition, respondent had received services before this case. Respondent had a history of protective services involvement dating back to 2004, primarily because of physical neglect. The family received Families First services from March 2008 until August 2008, but failed to benefit from those services. The children's guardian ad litem argued that termination was appropriate, not for "lack of effort or lack of good faith on her part, but her ability to comply with the statutory grounds, she's not going to be able to do it."

Respondent received all of the services that petitioner could provide to her to accommodate her cognitive disability, but she still was not able to independently and safely parent her children. If a parent is simply unable to meet the needs of her child, then "the needs of the child must prevail over the needs of the parent." *Terry*, 240 Mich App at 28. The ADA does not require petitioner to provide a parent "with full-time, live-in assistance with her children." *Id*. at 27-28. No violation of the ADA occurred.

Affirmed.

/s/ Christopher M. Murray
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause