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	UNPUBLISHED September 29, 2011
In the Matter of RODRIGUEZ, Minors.	No. 302645 Cheboygan Circuit Court Family Division LC No. 09-008021-NA
In the Matter of RODRIGUEZ, Minors.	No. 302657 Cheboygan Circuit Court Family Division LC No. 09-008021-NA

Before: SHAPIRO, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to their five minor children under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j), and the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq*. We affirm.

Termination of parental rights under state law is appropriate where petitioner proves one or more grounds for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000); *In re B and J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). This Court reviews the lower court's findings under a clearly erroneous standard. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). In addition, in cases involving Indian children, petitioner must show compliance with the ICWA, including clear and convincing evidence establishing "active efforts" to provide remedial services and rehabilitative programs, 25 USC 1912(d); *In re JL,* 483 Mich 300, 318-319; 770 NW2d 853 (2009), and proof beyond a reasonable doubt that continued custody will likely result in serious emotional or physical damage to the children. 25 USC 1912(f); MCR 3.977(G).

In the present case, respondents argue that the court erred in finding clear and convincing evidence to satisfy the state statutory grounds. We find no clear error in the trial court's determination that MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j) were all proven by clear and convincing evidence. Respondents attended substance abuse treatment and counseling but were discharged for lack of progress. During the pendency of the case, each exhibited "doctor shopping" behavior and tested positive for cocaine plus prescription and nonprescription drugs at unsafe levels. Respondents were also charged with breaking and entering the home of a maternal

aunt in violation of a no-contact order. Respondent mother's psychological assessment showed significant problems with passivity and social avoidance, lack of insight, and difficulty under stress. On a parenting index, she had a high stress level "indicating a high risk for abuse and neglect, primarily neglect." Her prognosis was guarded and risk of relapse was high. Respondent father's assessment placed him at "high risk for neglectful behavior, continued drug abuse and . . . domestic violence" and his prognosis was guarded to poor. Given respondents continued alcohol and drug abuse, residential treatment was recommended, but refused. Respondents failed to complete parenting class and inconsistently attended counseling and drug screens.

Respondents did not improve sufficiently in mental health and anger management and continued to lack stable housing and income.[1] Parents must benefit from services in order to provide a safe, nurturing home. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). Given their history, it was extremely unlikely that either parent would be able to provide proper care for the children, or any of them, within a reasonable time. There was clearly a risk of continued harm, as the trial court found.

We also find no clear error in the trial court's finding that termination was in the children's best interests. MCL 712A.19b(5); MCR 3.977(H)(3); *Trejo*, 462 Mich at 356-357; *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). Respondents clearly loved their children. However, their refusal or inability to deal with their substance abuse and mental health problems meant that the children would continue to be at risk in their care. The children need permanency and stability, which neither parent can provide.

Respondent mother further argues that petitioner did not satisfy the "active efforts" requirement of the ICWA. As provided in 25 USC 1912(d), a party seeking placement outside the home, or termination of parental rights, regarding an Indian child must show "active efforts" to provide "remedial services and rehabilitative programs" to prevent the breakup of the Indian family, and that these efforts were unsuccessful. MCR 3.977(G)(1); *JL*, 483 Mich at 317. "Active efforts" go beyond the "reasonable efforts" required under state law. Taking clients to appointments, arranging transportation, and assisting clients with completing housing applications are examples of "active efforts." *Id*. at 321-323. Here, petitioner did give respondents rides to services and assistance in seeking jobs and housing. Petitioner's efforts went far beyond those in the usual case. The record does not support respondent mother's argument that she was discharged from counseling because she lacked transportation. Instead, she was discharged for failing to complete her goals and to make sufficient progress. Petitioner did provide referrals for starting services when respondent mother moved to Caro. Furthermore,

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[1] Respondents complain that petitioner got them fired from their jobs by reporting suspicions that they were using their four-year-old to steal from motel rooms. We find nothing objectionable about petitioner's behavior. The Department of Human Services (DHS) is charged with protecting children and could hardly ignore statements that respondents were having their child help them steal from motel guests. The situation in *B and J*, 279 Mich App at 12, is distinguishable, as it did not involve alleged use of a child to accomplish a crime.

DHS is "not required to provide reunification services when termination of parental rights is the agency's goal." *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Here, after a year of lack of progress, the agency's goal changed to termination around the time respondent mother moved to Caro. We find that DHS satisfied the "active efforts" requirement of 25 USC 1912(d).

Respondent mother also argues that the trial court erred in finding that 25 USC 1912(f) was satisfied. This provision requires that termination not be ordered "in absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified experts, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." See *JL*, 483 Mich at 310-311; MCR 3.977(G)(2).

In the case at bar, the evidence clearly satisfied the standard of 25 USC 1912(f). Expert testimony was provided by Heidi Cotey, a tribal member and case manager familiar with tribal customs and practices, and also by psychologist Strauss and other witnesses qualified as experts by the trial court. See *In re Elliott*, 218 Mich App 196, 206-207; 554 NW2d 32 (1996); *In re Kreft*, 148 Mich App 682, 689; 384 NW2d 843 (1986). Respondents' domestic violence had occurred in the presence of at least three of the children and they had been harmed by it. Respondents' substance abuse then continued during the pendency of the case. Both were discharged by their doctors for abusing prescription drugs. They did not even begin to understand the effects on their children from their continued drug use, mental health problems, and unstable lifestyles. The trial court findings regarding a risk of serious emotional harm were supported by the evidence. Petitioner satisfied its burden of proof beyond a reasonable doubt under 25 USC 1912(f) and MCR 3.977(G).

Affirmed.

/s/ Douglas B. Shapiro
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray