

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 13, 2011

In the Matter of O. A. HASSAN, Minor.

No. 304165
Wayne Circuit Court
Family Division
LC No. 10-492240

Before: MURPHY, C.J., and JANSEN and OWENS, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interests of the child. MCL 712A.19b(5); *In re Sours Minors*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000). A finding is clearly erroneous if, although there is evidence to support it, the appellate court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller*, 433 Mich at 337.

Termination of parental rights was proper under MCL 712A.19b(3)(a)(ii). From the time the child came into protective care shortly after his birth in January 2010, until the termination hearing in April 2011, respondent never visited him. She admitted that she chose heroin over visiting her son. Although respondent argues that she was precluded from visiting her son, the trial court did not suspend her parenting time until October 14, 2010. Respondent did not participate in her treatment plan, make any attempts to see her child, or pursue custody of him. Thus, the trial court properly terminated parental rights under MCL 712A.19b(3)(a)(ii).

Termination of parental rights was also proper under MCL 712A.19b(3)(c)(i) and (g). At the time of the adjudication, respondent was unable to provide proper care and custody of her child due to her drug use and unstable lifestyle. At the time of the termination hearing, respondent was unable to properly care for her child because she was still using drugs and was without stable housing and income. Although respondent entered a drug treatment program on February 8, 2011, she left the program for three days in March 2011. When she returned, a drug

test was positive for alcohol, which caused her release date from the program to be extended. In the past few years, respondent had completed multiple treatment programs, but relapsed. And, although respondent insisted that she was motivated to change, the testimony established that she entered drug treatment as part of a criminal diversion program to avoid a prison sentence, not to be reunited with her son. Thus, termination of parental rights was proper under MCL 712A.19b(3)(c)(i) and (g).

Termination of parental rights was also proper under MCL 712A.19b(3)(j). Respondent argues that there was no evidence she harmed her child, but this assertion is misleading. The child was removed from respondent's care at birth. Respondent harmed her son by exposing him to illegal drugs while pregnant. Moreover, respondent cannot be an active drug abuser and safeguard her child from harm. Thus, the trial court properly found that the child would be exposed to risk of harm in her care.

Respondent argues that the case was not properly serviced due to high worker turnover. Although it is true that several caseworkers were assigned to service this case, respondent fails to show how this change in workers had any effect on the case or respondent's participation in services. Respondent was referred for services, but chose not to participate or contact petitioner. There is no evidence that proper services were not provided to respondent. The court did not clearly err in terminating respondent's parental rights because she failed to take advantage of the services offered to her. *Trejo Minors*, 462 Mich at 356. Moreover, throughout most of the case, respondent was unavailable by telephone, attempts to reach her were met with no response, and she never contacted petitioner. Further, respondent's counsel never requested specific services for her at any of the hearings. Thus, respondent's contention that petitioner did not provide appropriate services for her is without merit.

Respondent next argues that she was denied the effective assistance of counsel because no attempt was made to determine if she needed additional services under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.* She argues that she would have benefited from accommodations to help her complete her treatment plan and that counsel did not ensure those accommodations.

The ADA requires a public agency to make reasonable accommodations for individuals with disabilities so that all persons may receive the benefits of public programs and services. *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000). Thus, reunification services and programs provided by petitioner must comply with the ADA and must accommodate a respondent's disabilities. *Id.* Even though respondent's counsel did not make an ADA argument in the trial court, petitioner and the court were familiar with respondent's background and history, and there was no indication that an ADA accommodation was necessary. Respondent failed to present any evidence that she had a disability under the ADA. Nevertheless, she was offered appropriate mental health evaluations and therapy, but chose not to attend all evaluations and therapy sessions. Further, specialized training would have been extremely unlikely to produce sufficient changes to enable respondent to appropriately parent the child.

Respondent has not established a reasonable probability that, but for her attorney's allegedly deficient performance, the result of the termination hearing would have been different. *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2001). Respondent failed to suggest a single service or

accommodation that was not provided or would have produced a different outcome. There is nothing in the record to support respondent's claim that she needed additional services or conveyed that need to her attorney. Assuming without deciding that respondent's trial counsel's conduct and assistance fell below an objective standard of reasonableness, there was no reasonable probability that the result of the proceedings would have been different given respondent's inability to avoid drugs and mental health history. *Id.* Thus, respondent failed to meet her burden of proof, and appellate relief is not warranted. *Id.*

Finally, the trial court did not clearly err in its best interest determination. *Trejo Minors*, 462 Mich at 356. Although respondent argues that the evidence demonstrated she can properly care for her child without subjecting him to any risk of harm, this contention was unsupported by the trial court's record. Respondent was unable to care for her son and provide him with stability due to her drug addiction. Moreover, there was no evidence that respondent had the capacity or disposition to provide for the child's basic needs. Respondent had a history of untreated mental health issues. Although respondent's family offered to help financially support her if she were to stay sober and drug free, there was no evidence that she can independently support her child. Likewise, she had not been able to maintain independent, stable housing. Given the young age of this child, who was in need of permanence, and respondent's inability to achieve stability in the near future, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Donald S. Owens