

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 13, 2011

In the Matter of TENYUQUE/PAUWELS,
Minors.

No. 304400
Bay Circuit Court
Family Division
LC No. 10-010668-NA

Before: MARKEY, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

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

Respondent has given birth to nine children. In 2003, respondent's parental rights to three of her five oldest children were terminated after child protection proceedings were initiated in Maryland. Only respondent's parental rights to her four youngest children are at issue in this appeal.

Respondent has a long history of alcohol abuse and criminal convictions that have interfered with her ability to care for her children. Frequently, respondent's children were passed from relative to relative in Michigan, New York, and Maryland. At times, they would go for months without being in school, and there are credible allegations that the children were physically and sexually abused at the hands of some of these relatives. Because of this lack of stability, the children came to the attention of the child welfare systems in both Maryland and Michigan. In May 2010, respondent was arrested and placed in the Bay County Jail. She pleaded guilty to aggravated domestic violence and was sentenced to time served; however, she remained incarcerated during the entire protective proceedings on parole violations. In June 2010 Children's Protect Services (CPS) received a neglect referral wherein it was alleged that respondent was in jail and the children were unsupervised in a home lacking basic utilities. An investigation revealed that the four children were living in respondent's home under the care and supervision of their 18-year-old sibling who had no authority to act on the children's behalf. Thereafter, a petition was filed and the lower court eventually terminated respondent's parental rights in May 2011.

Relying on the Supreme Court's decision in *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), respondent first argues that the trial court clearly erred by terminating her parental rights before she was given a chance to meaningfully participate in a case service plan. Respondent's reliance on *Mason* is misplaced.

In *Mason*, the Department of Human Services (DHS) and the court knew that the respondent-father was incarcerated but did not include him in hearings, even by telephone, until the last permanency planning hearing and the termination hearing. The record established that, before his incarceration, the respondent supported his family and shared in the child's care, and he had arranged for work and housing after his release. His parental rights were terminated in part upon a finding that he had not personally cared for his child for two years and that his incarceration precluded him from participating in services offered by the DHS. The Supreme Court concluded that the trial court had primarily terminated the respondent's parental rights because of his incarceration. *Mason*, 486 Mich at 160. In reversing the termination of the respondent's parental rights, the Supreme Court articulated several principles that must be considered when terminating the parental rights of an incarcerated parent.

First, the *Mason* Court noted that "the state is not relieved of its duties to engage an absent parent merely because that parent is incarcerated." *Mason*, 486 Mich at 152. "Reasonable efforts to reunify the child and family must be made in all cases except those involving aggravated circumstances." *Id.* Further, "the mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination." *Id.* at 160. Noting that the trial court "failed to evaluate respondent's parenting skills or facilitate his access to services," the Court found that the trial court clearly erred when it concluded, based on the unsupported opinion of the caseworker, that it would take at least six months for the respondent to be ready to care for his children after he was released from prison. *Id.* at 162. Consequently, the Supreme Court found that the trial court's "conclusion that respondent could not care for his children within a reasonable time in the future was improperly rooted in 'circumstances and missing information directly attributable to respondent's lack of meaningful prior participation (citation omitted).'" *Id.*

In the present case, the trial court did not violate the principles articulated in *Mason*. Unlike in *Mason*, the trial court and DHS more than adequately facilitated respondent's participation in the proceedings. Respondent, while incarcerated in the local county jail, was physically present at the first two hearings. Thereafter, when transferred to other facilities, respondent participated in the hearings via telephone. Indeed, respondent was present telephonically at two of the three permanency planning conferences.

Furthermore, considering the circumstances, petitioner made reasonable efforts to reunify the family. Petitioner prepared a parent-agency agreement that contemplated the services that might be available to respondent while incarcerated and upon her release. This plan was discussed with respondent at the jail. Respondent's own conduct, an altercation while at Lake County Re-Entry Facility, was ultimately the action that delayed her services. What could have been an incarceration of less than six months turned into a 15-month incarceration due to respondent's conduct. In addition, respondent's caseworker frequently sent correspondence to respondent informing her of the children's progress and well-being, as well as advising her of services she should attempt to pursue through the prison system. While incarcerated, respondent completed a two-session parenting class and a seven-week 12-step program, and she was one test away from earning her GED. Upon the advice of her caseworker, respondent secured her name on the waitlist for substance abuse treatment. Although respondent takes great issue with the fact that she did not find out until later in the proceedings that parenting classes and individual counseling were also available to her if she would request placement on the waitlist, the

caseworker testified that she made repeated attempts to get information from the prison staff, to no avail. Further, respondent's length of incarceration was uncertain for a significant period, and this affected the services that could be made available to respondent. In addition, the caseworker requested that respondent's prison services be expedited but was informed that such action was not permissible. Thus, while all the services were not immediately available to respondent, respondent did participate in some comparable services in prison and was afforded meaningful participation in her treatment plan.

Next, unlike the trial court in *Mason*, the court in this case did not terminate respondent's parental rights primarily because she was incarcerated. Instead, the court considered respondent's long history of endangering her children by leaving them with inappropriate caregivers, her 25-year history of alcohol abuse and criminal activity, and her failure to plan for her children during her most recent incarceration. The court also considered respondent's considerable protective services history involving all nine of her children. Thus, it is clear that the trial court terminated respondent's parental rights because there was overwhelming evidence that respondent had failed for her children's entire lives to provide them with the proper care, custody, and emotional support expected of a parent.

Finally, the trial court did not rely on respondent's lack of participation in the parent-agency agreement when it concluded that respondent would not be able to parent her children within a reasonable time. Instead, the court considered all of the circumstances that would contribute to respondent's readiness to parent her children. Obviously, the court considered the length of time respondent would require to participate in services after her release. In addition, the court heard testimony from two therapists that the children's progress in working through the damage and trauma caused by the neglect and abuse would be impaired if efforts at reunification were pursued prematurely, or at all.

Next, respondent contends that she voluntarily relinquished her parental rights to her three middle children in Maryland pursuant to that state's adoption code, not following protective services proceedings. Because of this, respondent argues, the court erred when it relied upon MCL 712A.19b(3)(l) as a ground for termination of her parental rights. We disagree.

MCL 712A.19b(3)(l) applies only to prior terminations under the Michigan juvenile code or a similar law of another state. "It does not apply to a voluntary termination under the Adoption Code." *In re Jones*, 286 Mich App 126, 128; 777 NW2d 728 (2009). Respondent testified that Maryland protective services requested that she participate in services and that, despite participating in services, "they terminated" her parental rights. Respondent later testified that she decided to voluntarily relinquish her rights after Maryland protective services became involved because she was told that her children would be separated if her rights were involuntarily terminated. The only documentation provided to the trial court from Maryland was a correspondence from Maryland Child Welfare Services, wherein the author wrote: "Our department completed a neglect investigation in May of 2003. This investigation was indicated. The rights of the parents with regards to the three youngest children . . . were terminated and the children were adopted." Based upon the foregoing evidence, we conclude that the trial court did not clearly err when it found that the prior termination of parental rights was a result of proceedings "under section 2(b) of this chapter or a similar law of another state." There was

simply no evidence, other than respondent's contradictory testimony, that respondent voluntarily terminated her parental rights pursuant to a provision of Maryland's adoption code.

Finally, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5); *In re Jenks*, 281 Mich App 514, 516; 760 NW2d 297 (2008). The children's treating counselors both testified that the children were significantly traumatized by the abuse and neglect directly related to respondent's failure to provide them with a stable and nurturing environment and that efforts at reunification would be detrimental to their progress. The two older children had repeatedly articulated a desire that they not be reunited with their mother, and the two younger children expressed little interest in their relationship with respondent. Considering this evidence, the trial court did not clearly err when it concluded that termination of respondent's parental right was in the children's best interests.

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello