

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 8, 2011

In the Matter of J.G. ROBERTS, N.M. ROBERTS,
and G.N. ROBERTS, Minors.

No. 304493
Barry Circuit Court
Family Division
LC No. 10-008056-NA

Before: WILDER, P.J., and HOEKSTRA and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right the order of the trial court terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(c)(ii), (g), and (j). For the reasons set forth in this opinion, we affirm.

The record reveals that respondent has a history of mental illness, substance abuse, and suicide attempts. In 2003, she was admitted to a psychiatric hospital after overdosing on medication. In November 2008 she was again admitted to a psychiatric hospital due to a suicide threat involving a knife. In February or March 2010, respondent wrote a suicide note and consumed an unknown amount of pills. On April 5, 2010, respondent consumed alcohol and quarreled with her mother, with whom respondent was living, and then respondent left the children in her mother's care and obtained a knife and a rope. Respondent subsequently called 911 and told authorities that they had until midnight to locate her or she would kill herself. When police located her, she threatened them and herself with the knife resulting in police resorting to the use of a taser to subdue respondent. According to police reports presented during the termination proceedings, respondent had a blood alcohol level of .095 during that incident.

Following the April 5, 2010 incident, respondent's children were removed from her care. During a preliminary hearing on this matter, respondent admitted that she had a history of substance abuse and noncompliance with substance abuse services as well as a history of mental and emotional instability. Respondent also admitted that she had received psychiatric care and substance abuse counseling, but that she was not able to control her anxiety levels sufficiently to participate in programs necessary to receive public assistance. After the children were removed from her care, respondent was given a parent agency treatment plan to work toward reunification but did not comply with most aspects of the plan. Specifically, respondent did not consistently take her psychiatric medication, did not consistently attend AA/NA, repeatedly tested positive for prohibited substances, and eventually refused to participate in substance screens. Though respondent had been directed not to associate with people who used drugs and alcohol, she

continued to live with her mother who smoked marijuana with respondent in the home. Respondent completed an anger management class, but did not appear to benefit from the class and continued to exhibit extreme hostility and inappropriate anger. Respondent also had financial difficulties as she was unable to work due to anxiety. Four months before the termination hearing, respondent stopped her contact with the foster care worker and shortly before the termination hearing, respondent informed the foster care worker that she no longer wished to participate in services.

While the case was pending before the trial court, respondent was arrested for operating a motor vehicle while intoxicated and was sentenced to nine months' probation and fines, as well as alcohol assessment, counseling, and outpatient treatment. Respondent did not pay the required fine, did not attend the alcohol assessment and therefore did not receive counseling, and used marijuana.

At the conclusion of the termination hearing on May 26, 2011, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (likelihood that child will be harmed if returned to parent).¹ The trial court further found that termination was in the best interests of the children. This appeal ensued.

Respondent first contends that petitioner failed to provide reasonable services to her for reunification with the children. This Court reviews the trial court's findings of fact for clear error. MCR 3.977(K); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *Id.*

When a child is removed from a parent's custody, the agency charged with the care of a child is required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child. See *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). Before the trial court enters an order of disposition, it is required to state whether reasonable efforts have been made to prevent the child's removal from the home or to rectify the conditions that caused the child to be removed from the home. MCL 712A.18f(1)(b). Services are not mandated in all situations, but the statute requires the agency to justify the decision not to provide services. *In re Terry*, 240 Mich App 14, 26 n 4; 610 NW2d 563 (2000).

¹ The trial court did not specify the statutory subsections under which it was ruling when it terminated respondent's parental rights. Instead, the trial court ruled from the bench that ". . . I do find that each and every one of the allegations contained in the uh -- supplemental petition requesting termination has been found and -- and is by much more than a clear and convincing standard uh -- to be true except with regards to the substance abuse evaluation. . . ." The Supplemental Petition sought termination generally pursuant to MCL 712A.19b(3)(a)-(n). At the termination hearing, however, petitioner clarified that termination was being sought pursuant to three grounds, being (3)(c)(ii), (g), and (j).

In this case, respondent argues that she was denied a substance abuse evaluation because she was unable to pay for it, and that the lack of the substance abuse evaluation caused her to be unable to properly participate in services. Respondent's basis for this argument is misplaced as the trial court indicated that in light of the confusion on this issue, it was not attributing the lack of a substance abuse evaluation to respondent but found that petitioner nonetheless had demonstrated grounds for termination with other evidence.

Assessing that other evidence in the light most favorable to the respondent, we cannot conclude that respondent was denied services. In this case, respondent was offered numerous services but failed or refused to participate fully in the services. After the children were removed from her care, respondent was given a parent agency treatment plan to work toward reunification. Pursuant to the treatment plan, respondent participated in a neuropsychological evaluation, but did not participate in the required psychiatric consultation because she was unable to pass the prerequisite drug screen for the consultation. The treatment plan also required respondent to participate in counseling, parenting education, drug screening, attendance at Alcoholics Anonymous/Narcotics Anonymous, to take her prescribed medication, and to refrain from association with people who use drugs or alcohol.

Respondent, however, did not consistently take her psychiatric medication, did not consistently attend AA/NA, repeatedly tested positive for substances, and eventually refused to participate in substance screens. Though respondent had been directed to not associate with people who used drugs and alcohol, respondent continued to live with her mother who smoked marijuana with respondent in the home. Respondent completed an anger management class, but continued to exhibit extreme hostility and inappropriate anger. After respondent was arrested in October 2011 for operating a motor vehicle while intoxicated, respondent was offered further alcohol assessment through her probation, but did not participate, and therefore did not receive any additional counseling possible through probation.

Respondent also contends that she was denied services because two months before the termination hearing, petitioner stopped providing transportation for visitation which respondent contends precluded her from visiting the children. At trial, the foster care worker testified that typically she provided transportation for parents for the first six months, and thereafter expected parents to have worked out a transportation solution. Here, the foster care worker provided respondent with transportation for 11 months, until late March 2011, at which point respondent assured the worker that respondent had the use of a vehicle for visitation. Shortly thereafter, respondent told the foster care worker that she no longer wished to participate in any services.

Under these circumstances, the denial of transportation was not tantamount to a denial of services. Further, there is no indication that respondent's failure to visit the children in the two months before termination was a determinative factor for the trial court or that she would have fared better in the trial court's assessment had she received transportation for visitation from late March 2011 until April 2011 when respondent requested that all services be stopped.

In sum, respondent was offered numerous services but failed or refused to participate fully in the services. Respondent continued to exhibit symptoms of mental illness, extreme hostility, and inappropriate anger. We conclude that the trial court did not clearly err in

determining that reasonable efforts had been exerted by the agency toward reunifying respondent with the children.

For the same reasons, we also conclude that the trial court did not clearly err in determining that termination of respondent's parental rights was in the best interests of the children. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000).

Affirmed.

/s/ Kurtis T. Wilder

/s/ Joel P. Hoekstra

/s/ Stephen L. Borrello