

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 20, 2012

In the Matter of SMITH/BROWN, Minors.

No. 309511
Wayne Circuit Court
Family Division
LC No. 10-492754-NA

Before: JANSEN, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right the termination of her parental rights to her two minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. FACTUAL BACKGROUND

Respondent and her two minor children came to the attention of the authorities when one of the minors walked to the police station and reported that respondent was physically abusing him, threatened to kill him, and was physically abusing the other minor. Respondent's mother corroborated the physical abuse of one of the minors and testified that respondent had been diagnosed with schizophrenia when she was a teenager. The trial court exercised jurisdiction over the minor children. The court stated that the goal was reunification. A treatment plan was instituted for respondent and included a psychiatric evaluation, a psychological evaluation, participation in individual therapy, participation in parenting classes, participation in a child study, participation in family therapy, receiving mental health services, and maintaining contact with the foster care worker.

More than a year passed with respondent following portions of the plan, but only sporadically attending individual therapy sessions and behaving aggressively toward foster care workers. Respondent was diagnosed with bipolar disorder, a low functioning IQ, and scored low on parent's awareness skills. Moreover, an incident occurred where respondent attempted to take one of the minors from her mother's home, the police were called, and respondent left. Respondent returned to the home less than an hour later with two males, the two males fought with one of the minor children, and respondent took the other minor child from the home. Respondent and the minor child were eventually located by the police and respondent was arrested. Respondent denied any wrongdoing and testified that her mother had made false allegations. A clinical therapist at the termination hearing testified that over the course of the 16

months that she saw respondent, respondent never accepted responsibility for the fact that her children were in the court's custody. Respondent's parental rights for both minor children were terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Respondent now appeals.

II. REUNIFICATION

A. Standard of Review

Respondent contends that petitioner failed to make reasonable efforts to reunite respondent with her minor children.¹ "However, because respondent failed to raise this issue before the trial court, it has not been properly preserved for appellate review." *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). Accordingly, "[o]ur review is therefore limited to plain error affecting substantial rights." *Id.*

B. Analysis

"In general, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). Pursuant to MCL 712A.19a(2), "[r]easonable efforts to reunify the child and family must be made in all cases" except in circumstances nonexistent in this case.

Petitioner's plan for respondent and the minor children was reunification. Petitioner offered respondent mental health services, psychiatric and psychological evaluations, and participation in individual therapy, parenting classes, family therapy, and a child study. Petitioner also assigned different workers to respondent because she complained that she could not work with them. Respondent has failed to indicate what more petitioner could have done in order to rectify the conditions that caused the minor children's removal and to reunite respondent with her minor children. Rather than a lack of services, it was respondent's steadfast refusal to admit any responsibility for the conditions that brought her children into the court's temporary custody that prevented reunification and a resolution to the underlying problems that led to the removal. Hence, the court did not err in finding that petitioner made reasonable efforts toward reunification.

Respondent also argues that petitioner failed to offer her a treatment plan that accommodated her special needs, which violated the Americans with Disabilities Act, 42 USC

¹ While respondent makes a passing reference that the grounds for termination were not supported by clear and convincing evidence, "[t]his issue was not preserved for appeal because it was not set forth in [respondent's] statement of the questions involved." *Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781 (1995); See also MCR 7.212(C)(5) (stating that an appellant's brief must include "[a] statement of questions involved, stating concisely and without repetition the questions involved in the appeal. Each question must be expressed and numbered separately . . .").

12101 *et seq.* (ADA). Respondent has waived this issue. “Any claim that the parent’s rights under the ADA were violated must be raised well before a dispositional hearing regarding whether to terminate her parental rights, and the failure to timely raise the issue constitutes a waiver.” *In re Terry*, 240 Mich App 14, 26 n 5; 610 NW2d 563 (2000); see also *In re AMB*, 248 Mich App 144, 194-195; 640 NW2d 262 (2001). In this case, respondent failed to raise this claim in a timely manner, which precluded the possibility “that any reasonable accommodations [could] be made.” *In re Terry*, 240 Mich App at 26. Accordingly, respondent has waived any claim based on ADA in these proceedings.

III. CONCLUSION

Respondent has failed to demonstrate that petitioner did not make reasonable efforts to reunite her with the minor children. We affirm.

/s/ Kathleen Jansen
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan