

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 21, 2010

In the Matter of VALES, Minors.

No. 295669
Wayne Circuit Court
Family Division
LC No. 98-373991-NA

Before: WILDER, P.J., and CAVANAGH and M. J. KELLY, JJ.

PER CURIAM.

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

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. Once the petitioner has established a statutory ground for termination by clear and convincing evidence, and the court finds that termination is in the children's best interests, the trial court must order termination of parental rights. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2007). There is an exception to this rule; the court is not required to terminate parental rights if the petitioner has not made reasonable efforts to reunify the child with the parents. *In re Rood*, 483 Mich 73, 105; 763 NW2d 587 (2009). The trial court's decision, including the best interest determination, is reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Rood*, 483 Mich at 90-91. The determination that petitioner has made reasonable efforts to reunify the family is reviewed under the same standard. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

We find that the trial court did not clearly err when it concluded that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence and that termination of respondent's parental rights was in the children's best interests. There was clear and convincing evidence that the conditions that led to adjudication continued to exist and that respondent failed to provide proper care and custody for her children and would be unable to do so within a reasonable time. The children came into care after respondent left them without proper provisions in the care of their maternal grandmother. Thereafter, respondent failed to check into their well being for over two months, which prompted the grandmother to contact protective services. At the time of removal, respondent had abandoned her children and physically and medically neglected them. After the children came into care, respondent was

provided a multitude of services, which included individual counseling, housing assistance, psychological and psychiatric evaluation, parenting classes, life skills training, a parent partner, and visitation. Although respondent participated in most of these services, it was abundantly clear that she did not benefit from the services offered. After two years of services, respondent was in no better position to parent her children than when they were originally removed from her care.

At the time of the termination hearing, respondent was unable to demonstrate the emotional stability necessary to parent her children. She still had significant anger management issues and was unable to model appropriate behavior for her children. She further lacked the parenting skills necessary to care for her special needs children.

Respondent also was unable to establish that she possessed safe and suitable housing for her children. Respondent was clearly the victim of domestic abuse. She was provided treatment to address this issue. Despite this treatment, respondent continued to pursue a relationship with her abuser. Respondent admitted that she was unable to protect herself from the abuser. Therefore, it was highly unlikely that she could protect her children. Because respondent continued to permit violent individuals to come into her home, that home could not by any means be deemed safe and suitable.

The evidence further supported a finding that the conditions would not be rectified within a reasonable time. Respondent had been provided services for two years and she had not, in that time, been able to make significant changes in her life. Furthermore, there was credible evidence that respondent, at the time of the termination hearing, continued to blame others, including her mother and the agency workers, for the removal of her children. Respondent had not taken any responsibility for her circumstances. Because respondent lacked insight into the cause of her problems, it was highly unlikely that she would be able to rectify conditions that she refused to perceive or acknowledge.

With respect to the children's best interests, there was clear and convincing evidence to conclude that termination of parental rights would best service these children. There did not appear to be a strong bond between respondent and her children. The older children indicated that they did not want to return to their mother's care. Respondent had not demonstrated improved parenting skills or the stability and consistency necessary to parent her children.

Respondent contends that petitioner failed to make reasonable efforts to assist with reunification, and, therefore, it was error to terminate her parental rights. As a related issue, respondent contends that her caseworker was biased against respondent, and that the worker did not provide the required services. We disagree that petitioner failed to make reasonable efforts and the record does not support respondent's position that the caseworker was biased.

When a child is removed from the parent's custody, the petitioner is required to make reasonable efforts to reunite the child and family. *In re Rood*, 483 Mich at 99-100. Contrary to respondent's argument, the evidence showed that petitioner provided respondent with a service plan that included a multitude of services. Indeed, with respect to individual therapy, respondent was referred and re-referred, despite respondent's failure to attend, denial of the need for

services, and extremely hostile attitude toward the therapist. Contrary to respondent's assertions, the record establishes that petitioner's efforts toward reunification were reasonable.

Respondent also suggests that the service plan was not individualized enough to address respondent's limitations. Psychological testing indicated that respondent had an IQ score of 70, which was in the borderline range of intellectual functioning. Although not specifically argued, to the extent that respondent contends that petitioner failed to accommodate her intellectual limitations in violation of the Americans with Disabilities Act, this Court has stated that any claim that the agency violated the ADA must be raised in a timely manner so that reasonable accommodations can be made. *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000). This Court explained, "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." *Id.* at 26 n 5. Thus, assuming respondent is indirectly presenting an ADA claim, this issue is being raised for the first time on appeal, and therefore is waived.

In any event, respondent's ADA argument, to the extent it is raised, lacks merit. The caseworker testified that respondent was able to understand things explained to her. Respondent was also told that if she did not understand something, the workers were available to explain and clarify. In addition, none of the service providers indicated that respondent required specialized assistance or parenting classes because she did not understand what was being presented. The record does not support respondent's contention that her intellectual limitations were not being considered.

Respondent next argues that she was not offered domestic violence services. This assertion is unsupported by the record. First, when her case worker learned that Dudley was abusing her, she interviewed Dudley and referred respondent to a women's shelter. The case worker also was aware that respondent had obtained a PPO against Dudley. Respondent also sought independently the assistance from a social worker, and domestic violence issues were addressed during respondent's individual therapy. Indeed, respondent testified that she talked every week with her therapist about domestic violence. Despite these interventions, respondent secretly maintained contact with Dudley. Respondent's contention that she was not offered necessary services to address the issues of domestic violence is unsupported by the record.

Respondent contends that her caseworker was biased against her, and relies in support of this contention in part on the caseworker's alleged testimony that she did not necessarily agree with the psychiatrist's diagnosis for respondent. However, respondent mischaracterized the caseworker's testimony. In fact, the worker did not necessarily disagree with the psychiatrist's diagnosis; she simply felt that it was incomplete.

Respondent's assertion that, because the worker disagreed in part with the diagnosis she could not objectively service the client is misplaced, because there simply is no evidence that the worker was biased against respondent. The worker specifically testified that the services she recommended for respondent were based upon the clinical diagnosis. Further, the worker affirmed that her opinion with respect to respondent's diagnosis did not affect the way she referred respondent for services. Moreover, a review of the hearing testimony supports a finding that the referrals were consistent with the diagnosis and recommendations given by the

psychiatrist. The record does not support respondent's position that, because of the worker's bias, respondent was denied services.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly