

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOYNER/MILAM, Minors.

UNPUBLISHED
March 25, 2014

No. 316070
Bay Circuit Court
Family Division
LC No. 10-010739-NA

Before: RONAYNE KRAUSE, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

Respondent appeals as of right the trial court’s order terminating her parental rights to her children under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist) and MCL 712A.19b(3)(g). We affirm.

The trial court initially assumed jurisdiction of respondent’s children after it was discovered that they were living in an extremely filthy house. The children were removed, and respondent was offered services by the Department of Human Services (DHS) with the stated goal of reunification. Following lengthy attempts at reunification, and the filing of a petition to terminate respondent’s rights, the trial court found that respondent failed to benefit from the services provided to her. Respondent was also incarcerated for a period of approximately three months, and upon her release from confinement, was able to get a short-term employment, from which she was shortly released. In addition, respondent failed to obtain adequate housing during the majority of the time that this case was pending, which was approximately two and a half years. She missed many appointments geared toward improving her parenting skills and mental health assistance for her.

Respondent argues first that DHS failed to make reasonable efforts to reunify respondent with her children in violation of the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, given her mental deficiencies. We disagree. Although respondent raised the general issue of reasonable efforts before the trial court, she did not specifically invoke the ADA. Therefore, this issue is unpreserved. *Klapp v United Ins Group Agency (On Remand)*, 259 Mich App 467, 475; 674 NW2d 736 (2003). “Review of an unpreserved error is limited to determining whether a plain error occurred that affected substantial rights.” *Rivette v Rose-Molina*, 278 Mich App 327, 328; 750 NW2d 603 (2008) (citing *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000)).

“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), citing MCL 712A.18f(1), (2), and (4). Respondent contends that “[r]easonable efforts here revolve around the issue of the parents disabilities under the [ADA] . . .” Respondent asserts that DHS did not adequately accommodate her mental deficiencies as documented in a psychological evaluation. Assuming that the ADA would have been applicable in this case, this Court has held that if a respondent believes that her rights under the ADA are being violated, she should bring this to the court’s attention in a timely manner, “either when a service plan is adopted or soon afterward.” *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). Where a respondent fails to do so, the issue is waived. *Id.* at 26 n 5.

Here, counsel for another parent discussed the ADA and its application to the case during a review hearing. However, during the pendency of the case, respondent did not claim that petitioner was not making adequate accommodation to her disabilities, but instead offered repeated explanations of why respondent was not yet ready to fully parent the children without DHS assistance and asked for more time. Thus, in this case, respondent’s failure to timely assert a violation of the ADA constituted a waiver of the issue, and “her sole remedy is to commence a separate action for discrimination under the ADA.” *In re Terry*, 240 Mich App at 26.

Moreover, even were we to find this issue not waived, we would find respondent’s claim without merit. The trial court repeatedly and thoroughly admonished petitioner that it would have to provide more extensive services to respondent due to her lower level of functioning, and due to her mental health difficulties. Throughout the proceedings below, the trial court also repeatedly questioned petitioner’s caseworkers about their level of involvement and the services provided, and much testimony was given concerning the types of services offered. The trial court also repeatedly gave respondent additional time in which to avail herself of these services. After reviewing the testimony, we find that petitioner made reasonable efforts to reunify respondent with her children.

Respondent argues next that the trial court erred in finding that the statutory grounds for termination were established and that termination was in the best interests of the child.

We review for clear error a trial court’s determination that statutory grounds for termination have been established by clear and convincing evidence, *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009), as well as the court’s determination that termination of parental rights is in the best interests of the child. *Id.*; *In re Moss Minors*, 301 Mich App 76, 90; 836 NW2d 182 (2013). “A finding is ‘clearly erroneous’ [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re Rood*, 483 Mich at 91 (citation omitted).

We find that the trial court clearly erred in determining that MCL 712A.19b(3)(c)(i) (the conditions that led to adjudication continue to exist with no reasonable likelihood that they will be rectified within a reasonable time) was established, because the additional time provided to respondent to find housing, employment, and continue parenting classes indicates that there were efforts undertaken to rectify the harmful conditions. We do find, however, that the trial court did not clearly err in determining that MCL 712A.19b(3)(g) (failure to provide proper care and custody) was established by clear and convincing evidence. Because only one statutory ground is required to terminate parental rights, the trial court’s errors were harmless. *In re Olive/Metts*

Minors, 297 Mich App 35, 41; 823 NW2d 144 (2012). We will only address the court’s findings with respect to MCL 712A.19b(3)(g).

MCL 712A.19b(3)(g) provides:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

It is undisputed that during the pendency of the proceedings below, which lasted approximately two and a half years, respondent was unable to find employment or suitable housing for any substantial length of time. During the short time when respondent was employed, had suitable housing, and was allowed unsupervised overnight visits with her children, referrals to child protective services were made and she tested positive for marijuana. “Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). The trial court found that respondent failed to take advantage of housing opportunities offered by DHS. It also found that although respondent had been offered multiple services by DHS, she failed to progress as a parent. Although there was testimony given by a social worker and a parenting instructor indicating that respondent did progress and was capable of parenting appropriately, the trial court credited testimony establishing specific instances of poor parenting by respondent. The court found that respondent “for the first six months of the case . . . refused to attend any services or visits that were scheduled before noon because she prefers to sleep late,” “deliberately ignored feeding instructions for her infant,” and “refused to diaper the children during visitations, and argued with her partner . . . about whose responsibility it was to clean the children up during visits.” Given these considerations, we find that the trial court’s decision was appropriate.

We also find that the trial court did not clearly err in determining that termination was in the best interest of the children. After a trial court determines that one or more statutory grounds for termination exist, it must find that termination is in the best interest of the child. MCL 712A.19b(5). “In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted).

In addition to the facts establishing MCL 712A.19b(3)(g), the trial court credited the testimony of the foster mother, who testified that the oldest child would get “worked up” before visits with respondent to the point that he would often “throw[] up,” and that he would severely

misbehave following visits with respondent. The foster mother also testified that the children were thriving in foster care. The trial court found that although respondent had successfully completed a parenting class, “there was no ability to translate that into adequate care for her children.” Given these considerations, we find that the trial court did not clearly err in finding that termination of respondent’s parental rights was in the children’s best interest.

Affirmed.

/s/ Amy Ronayne Krause

/s/ E. Thomas Fitzgerald

/s/ William C. Whitbeck