

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KITANA DYE and JASON DYE,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

BEATRICE SCOTT,

Respondent-Appellant.

UNPUBLISHED

September 21, 2006

No. 267809

Clinton Circuit Court

Family Division

LC No. 04-017395-NA

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), (i), (j), and (m). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err by finding that statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Throughout these proceedings and at the time of the termination trial, respondent continued to live with her paternal uncle, Glenn Scott, who had a conviction for criminal sexual conduct against a person under the age of 13. This unacceptable condition of adjudication continued to exist, MCL 712A.19b(3)(c)(i), and the court correctly found there was no reasonable likelihood that the condition would be rectified within a reasonable time considering the ages of the children. *Id.*

The trial testimony of nurse psychiatrist Susan Michalowski indicated that respondent's agoraphobia and panic disorders are barriers to her obtaining independent housing, as are her inadequate finances. Ms. Michalowski testified that the most optimistic estimate as to when respondent might be financially able to provide housing for the children was five or six months. However, the record indicates that respondent remained dependent on Scott and continued to live with him after more than a year of proceedings. There is significant evidence¹ to suggest that

¹ For example, respondent allowed the children to speak with Scott on the telephone during a
(continued...)

respondent did not understand the risk that Scott posed to her children and lacked the ability to protect them from him.

Given these facts, the trial court correctly found that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the ages of the children; termination of respondent's parental rights under MCL 712A.19b(3)(c)(i) was therefore not clearly erroneous.²

Respondent also argues that the agency failed to provide reasonable services to assist her with reunification. The agency is required to make reasonable efforts to reunify a child and family. See MCL 712A.19a(2). This Court has found that making a reasonable effort includes "tak[ing] into account the parents' limitations or disabilities and mak[ing] any reasonable accommodations." *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). Respondent contends in particular that she received inadequate assistance in obtaining housing, citing testimony that, because of her psychiatric conditions, simply handing her a list of resources for housing would amount to no assistance at all. Ms. Michalowski testified that effective assistance for respondent would consist of things such as providing a driver, going with respondent, setting up her appointments, and completing or reviewing forms.

We note first that in *Terry, supra*, this Court stated that "[a]ny 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." At 26, n5. Although respondent's claim that the agency failed to provide sufficient services to assist her would likely therefore fail because it was not timely made, in this case it would also fail because the record suggests the agency did make reasonable efforts to accommodate respondent's mental illness.

The record reflects that respondent's therapist, Dolores Sneed, did set up appointments, complete paperwork, and provide bus tokens for respondent. She set up respondent's psychiatric evaluation and helped her obtain medication. She arranged a shelter stay for a specific date, so that respondent could qualify for a Salvation Army program to obtain adequate housing. Respondent did not stay at the shelter, apparently because of her panic disorder. The agency also pursued other avenues to obtain housing. Foster care worker Kiplynn Roundtree testified that respondent had a \$1,300 rent bill that precluded her from obtaining low rent housing. She addressed with respondent how to seek state emergency relief. Respondent applied for relief, which was denied. Ms. Bunch, the second foster care worker in this matter, testified that she inquired within her department to see if any other money was available to pay part of respondent's rent arrearage, but no funds were available. The record thus indicated that

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visit. On another visit respondent gave Kitana a card and gift of pajamas from Scott. Respondent has consistently stated that she does not believe that Scott committed the criminal sexual conduct of which he was convicted.

² The record does not indicate that a new condition arose that would cause the children to come within the jurisdiction of the court, MCL 712A.19b(3)(c)(ii), and no such circumstance was specified in the opinion of the trial court. Therefore, we do not rely on this statutory subsection in affirming the termination of respondent's parental rights.

petitioner pursued low rent housing for respondent, albeit unsuccessfully. The agency continuously encouraged respondent to stay in a shelter so that she could receive housing assistance through the Salvation Army, and Ms. Sneed offered her concrete assistance in arranging a stay. Respondent finally did stay at the shelter, but only after she lost her job, rendering her ineligible for the Salvation Army program. Respondent's difficulty in getting and keeping a job was due to her anxiety, according to Ms. Michalowski. Respondent received both medication and therapy presumably addressing this barrier.³ We conclude that the petitioner's efforts, as well as those of other service providers, reasonably accommodated respondent mother's mental conditions. Unfortunately, respondent was not able to overcome the barriers to reunification even with the accommodation of the agency.

The trial court also did not clearly err by terminating respondent's parental rights under MCL 712A.19b(3)(g) and (j). Respondent failed to provide proper care and custody for the children by allowing them to reside in a hotel room with a person convicted of criminal sexual conduct against a child, and by allowing them to be in the care of her parents even though her father had sexually abused respondent as a child. The same evidence that indicates that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time equally demonstrates that there is no reasonable likelihood that respondent will be able to provide proper care and custody for the children within a reasonable time, MCL 712A.19b(3)(g), and that there is a reasonable likelihood that the children would be harmed if returned to her care, MCL 712A.19b(3)(j).

We conclude that the trial court erroneously relied upon MCL 712A.19b(3)(i) to terminate respondent's parental rights, since the record does not demonstrate that respondent's parental rights to another child were terminated due to serious and chronic neglect or physical or sexual abuse. *Id.* However, the trial court did not clearly err by relying on statutory subsection (m), as the record indicates that respondent's parental rights to an older child were voluntarily terminated following the initiation of child protective proceedings. MCL 712A.19b(3)(m).

Finally, the trial court correctly found that termination of respondent's parental rights was not clearly contrary to the best interests of the children. MCL 712A.19b(5). Despite evidence of a loving bond between respondent and the children, it is unfortunately clear that she lacks the ability to provide for them and to protect them. The children are currently doing well in the care

³ In addition to therapy and medication, respondent received other extensive services, some self-referred and some through referrals of service providers. Respondent initially referred herself for counseling, anger management, and parenting classes, all of which were provided through the Cristo Rey agency. The Cristo Rey agency made an appointment for respondent mother to see a psychiatrist, but she did not show for the appointment. Respondent mother did receive a psychiatric evaluation in April 2005. When Ms. Sneed left the Cristo Rey Agency, she referred respondent mother to a new therapist at Sparrow Behavioral Health.

of their father. Under these circumstances, we agree with the trial court that termination was not clearly contrary to the best interests of the children. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Jessica R. Cooper