

STATE OF MICHIGAN  
COURT OF APPEALS

---

UNPUBLISHED  
June 16, 2011

In the Matter of SANKEY, HARRIS, WARLICK,  
and JOHNSON, Minors.

No. 301594  
Washtenaw Circuit Court  
Family Division  
LC No. 2009-000018-NA  
2009-000019-NA  
2009-000020-NA  
2009-000021-NA  
2009-000028-NA

---

Before: MURRAY, P.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Respondent mother appeals as of right from the order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue), (c)(ii) (other conditions arise and are not rectified), (g) (failure to provide proper care or custody), and (j) (reasonable risk of harm if children return to parent's home). We affirm.

Respondent first argues that the trial court erred in terminating her rights to the children because the Department of Human Services failed to take reasonable measures to reunite respondent and the children. The validity of procedures followed in child protective proceedings is a question of law subject to de novo review. *In re CR*, 250 Mich App 185, 200; 646 NW2d 506 (2002).

Reasonable efforts to reunify parents and children must be made "in all cases" except those involving aggravated circumstances not present here. MCL 712A.19a(2); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). See also MCL 712A.18f(3)(d), stating that a case service plan (CSP) must include a "[s]chedule of services to be provided to the parent . . . to facilitate the child's return . . . home or facilitate the child's permanent placement." Here, a CSP/Parent Agency Agreement was drafted and services provided to respondent. These included several parenting classes, a psychological evaluation, individual therapy, domestic violence and anger management classes/therapy, drug screens, and visitations.

We disagree with respondent's argument that the services were insufficient to enable her to reunite with the children. Instead, the evidence revealed both that respondent was provided services and that she did not take advantage of many of the services offered. Carla Hines, the

children's therapist, did not offer respondent specialized training in Post-Traumatic Stress Disorder because she felt such training would more properly be provided by respondent's own therapist. But respondent was terminated from individual therapy for nonparticipation and was not "engaging" in the therapy before this. As the referee noted, Hines would have incorporated respondent in the children's treatment if respondent had been engaged in her own treatment. Hines also feared re-traumatizing the children by allowing respondent to join in their therapy when respondent had not progressed sufficiently in her own. The older three children had tremendous problems and Hines's fears in this regard were reasonable.

Respondent also implies that her conditions of a low IQ, ADHD, and mental health issues should have required further services. However, to claim the protections of the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, a parent must raise the claim when the service plan is adopted or soon afterward. *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). Here, respondent did not make an ADA argument in the trial court. And, despite the fact that petitioner and the court were familiar with respondent's background and history, they did not see the need for any ADA accommodation. Respondent has also not presented any evidence that she had a disability under the ADA. Additionally, respondent was provided with extensive services, including therapy and three parenting classes. Further specialized training would have been extremely unlikely to produce sufficient changes to enable respondent to appropriately parent the children. The court did not err reversibly in this regard.

The next argument put forth by respondent is that there was no clear and convincing evidence that would warrant the trial court terminating her parental rights. As this argument makes clear, termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000); *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). This Court reviews the lower court's findings under the clearly erroneous standard. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *B and J*, 279 Mich App at 17. A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses. *Mason*, 486 Mich at 152; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

\* \* \*

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

\* \* \*

(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.

\* \* \*

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Clear and convincing evidence supported termination of respondent's parental rights under the above grounds. The children were removed in March 2009. Respondent admitted material allegations of the petition, including that her boyfriend, James Johnson, was shot at the home, that she permitted Johnson to be in her home despite a no-contact order issued for domestic violence, that she had been neglectful in leaving S home alone, and that D had been with her grandmother for approximately four months. Respondent was required to comply with her CSP and show she benefited from that compliance.

The trial court did not clearly err in finding that respondent did not substantially comply with her CSP. Failure to comply with a court ordered CSP is evidence of neglect. *Trejo*, 462 Mich at 360-361 n 16. As the trial court concluded, respondent did not finish her psychological evaluation and dropped out of counseling and domestic violence classes. These were services she clearly needed; she frequently became irate, loud, and hostile with the worker and appeared "dazed" in court and at her psychological evaluation. She had neglected the children, and she and some of the children suffered abuse from Johnson. Respondent allowed the children to be in harm's way, and never acknowledged that deficiency. While respondent attended parenting classes, she did not benefit sufficiently. She was unable to control the children or respond to their needs at visitations. A parent must benefit from services in order to provide a nurturing home. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). Respondent also did not stay in contact regarding D or attend all visits offered when D came to Michigan. Respondent was arrested and incarcerated during the pendency of the case, and was unable to accept any responsibility for her problems or the children's issues. The referee found

respondent's demeanor "dazed and withdrawn and unapologetic in any context." Clear and convincing evidence supported termination of respondent's parental rights.<sup>1</sup>

The final argument presented on appeal is that the trial court erred in finding that termination was in the children's best interests. Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights if termination is in the children's best interests. MCR 3.977(H)(3); MCL 712A.19b(5). The trial court's decision on the best interests question is reviewed for clear error. MCR 3.977(K); *Trejo*, 462 Mich at 356-357; *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

Clear and convincing evidence supported the court's best interests ruling. The older children suffered abuse and neglect in respondent's care. N, S, and A have severe special needs that respondent is not equipped to handle. Offered services that might have improved her chances, respondent chose not to participate sufficiently. While the older children did have a bond with respondent, she could not control them, keep them safe, or offer an appropriate home. The younger children, J and D, had never formed or not maintained a bond with respondent but had formed bonds with their caregivers. The court did not clearly err finding termination to be in the children's best interests.

Affirmed.

/s/ Christopher M. Murray  
/s/ Joel P. Hoekstra  
/s/ Cynthia Diane Stephens

---

<sup>1</sup> Respondent also argues that the trial court lacked jurisdiction over D because she was residing with a relative in another state. In doing so, however, respondent cites no authority directly supporting her position, except to note that a jurisdictional defect renders all family court proceedings void. *In re Atkins*, 237 Mich App 249, 250-251; 602 NW2d 594 (1999). *Atkins* dealt with service of process on a parent and not a child living out of state when the petition is filed, so that one cite is not supportive of respondent's position. Consequently, because of a failure to provide any statutory or judicial authority, and because respondent's trial counsel conceded that the court had jurisdiction over D, we need not address the issue. In any event, jurisdiction "refers to the probate court's authority to hear and decide the case on the basis of a finding of fact that the child belongs to a class of children over whom the court has the power to act." *In re Hatcher*, 443 Mich 426, 433; 505 NW2d 834 (1993). Even if the court did not specifically make such a finding of fact in this case, the basis for it existed, and D clearly fit within this definition. Respondent's act of moving D to another state did not defeat the court's jurisdiction.