

Court of Appeals, State of Michigan

ORDER

In re D D Jacobs Minor

Docket No. 302420

LC No. 01-007352-NA

Michael J. Kelly
Presiding Judge

Donald S. Owens

Stephen L. Borrello
Judges

The Court orders that the September 20, 2011 opinion is hereby AMENDED. The opinion contained the following clerical error: the panel line was incorrect; it should be M. J. Kelly, P.J., and Owens and Borrello, JJ.

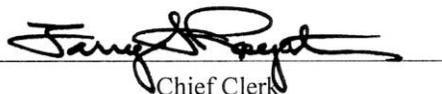
In all other respects, the September 20, 2011 opinion remains unchanged.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

SEP 22 2011

Date


Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 13, 2011

In the Matter of JACOBS, Minor.

No. 302420
Bay Circuit Court
Family Division
LC No. 01-007352-NA

Before: KELLY, P.J., and OWENS and BORRELLO, JJ.

PER CURIAM.

Respondent-appellant appeals as of right the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. MCR 3.977(K); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent had suffered abuse as a child and had a long history of mental health issues, including suicide attempts and self-mutilation. She was 29 years old when the three-year-old minor child was removed from her care in March 2010 pursuant to a referral alleging her home was in deplorable condition and the child had access to lighter fluid and pills, and a second referral and investigation a week later showing her home was even more dirty than previously and the unsupervised child, clothed only in a top and no diaper, was banging for two hours on an upstairs window. When entering foster care, the minor child had open sores from scabies, fluid in both ears, a blistering diaper rash, significant speech and language deficits, slept on the floor in the corner or in a rocking chair instead of on the bed, and had no inhibition about running out the front door and into the street.

Respondent was also the mother of two older children who were subjects of a child protective proceeding between 2001 and 2004. The conditions leading to adjudication in that proceeding were respondent's long-standing mental health issues, hearing voices, depression, a desire to harm the children, and a dirty home. Reunification with respondent and her husband occurred in 2004, but those children were placed in the sole physical and legal custody of their father when he and respondent divorced in 2006, and respondent's visits were required to be supervised.

The conditions leading to adjudication in the present case were a dirty and unstable home environment, lack of supervision, and respondent's long-standing history of bipolar disorder and other mental health issues, all of which constituted her failure to provide the minor child with

proper care and custody. The initial disposition was held June 2, 2010 and more than 182 days elapsed between initial disposition and termination of respondent's parental rights on January 28, 2011.

Respondent argues on appeal that the filthy condition of the home and lack of supervision leading to the minor child's removal was due to a "perfect storm" of facts, including administration of a spinal block in her back for pain that rendered her immobile and unable to clean, and her boyfriend falling asleep. However, evidence presented during the ten-month proceeding showed respondent never rectified the environmentally unsuitable condition of her living environment but continued to live in squalor at the time she was served with the termination petition in December 2010. It also showed respondent remained homeless from June 2010 to the time of termination, and resided for those seven or eight months with various friends, in a tent, and in motels, and did not follow up on her caseworker's housing referrals or comply with the trial court order that she seek safe and appropriate housing and counseling at the Women's Center. Respondent did not attend parenting classes to which she was referred in June 2010 and October 2010, despite provision of transportation, because the sessions conflicted with her appointments at the free health clinic to monitor her blood viscosity following a pulmonary embolism, and she was medically restricted from taking stairs or an elevator to the downstairs parenting classes. She cancelled two psychological evaluations due to illness, and missed a third. Although she remained compliant with her mental health medication, she did not attend counseling to treat her underlying issues at any of the four agencies to which she was referred. Given the complete lack of progress on her treatment plan and continuous homelessness and environmental squalor, the trial court did not err in finding no reasonable expectation she would rectify the conditions leading to adjudication and become able to provide proper care for the minor child within a reasonable time, and that the child would be harmed if returned to her care.

Respondent contends her inability to comply with services was due to the DHS and Lutheran Child and Family Services' (LCFS) failure to accommodate her physical disabilities. She does not assert violation of the Americans with Disabilities Act of 1990 § 2, *et seq.*, 42 USCA § 12101, *et seq.* (ADA) or provide citation or authority for such a claim, and failure to brief an ADA claim effectively abandons it. *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998). Respondent argues the agencies did not provide reasonable reunification efforts, given her medical condition. Whether reasonable reunification efforts were made is a question of fact and the trial court's factual findings are reviewed for clear error. *In re Miller*, 433 Mich at 337. The evidence supported the trial court's finding that respondent exaggerated her medical ailments and used them to avoid services. Medical records showed blood clots in her lungs had dissipated by October 2010 and her physician testified she was under no physical limitation due to the pulmonary embolism. Respondent's physical ailments did not prevent her from attending family reunions and Christmas gatherings, moving repeatedly to new residences, accompanying her boyfriend/caretaker on housing searches, going to the free health clinic for medication, seeing her psychiatrist to obtain psychotropic medication, going to the hospital on numerous occasions during which she likely used elevators or stairs, and obtaining tattoos. Transportation was provided for her by the caseworker, the foster mother, and provision of bus passes. She demonstrated an ability to access the services she wanted, but failed to follow through on reunification services provided by the agencies.

Further, the evidence showed that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Contrary to respondent's assertion on appeal, the evidence did not show she was able to provide the child with safe and proper care but that, although she loved him and they were bonded, respondent had seriously neglected him and was unable to provide proper care within a reasonable time. Evidence showed the minor child thrived in the foster home, where his medical conditions were treated and his speech and language deficits improved.

Respondent admits she was not a model parent, but argues she must be compared only to a statutorily adequate parent and not the foster family with whom the child was placed. The evidence showed she was not statutorily adequate. While the trial court may not consider the advantages of a foster home in deciding statutory grounds for termination, such consideration is appropriate in determining best interests. *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009). The trial court's oral opinion showed it made no comparison of the foster home with respondent's home until making its best interests decision, and then merely noted the foster home provided a stable, organized, consistent environment that allowed the child to learn and develop, which he would not experience in respondent's care. No improper comparison was made, and the evidence supported the trial court's best interests finding.

Affirmed.

/s/ Michael J. Kelly

/s/ Donald S. Owens

/s/ Stephen L. Borrello