

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 18, 2012

In the Matter of WILLIAMS/OUSLEY, Minors.

No. 309366
Wayne Circuit Court
Family Division
LC No. 04-436763-NA

Before: OWENS, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

Respondent, M. Ryder, appeals as of right the trial court’s order terminating her parental rights to the minor children, J. Williams and M. Ousley, pursuant to MCL 712A.19b(3)(c)(i) and MCL 712.19b(3)(g).¹ We affirm.

Respondent first argues that petitioner failed to establish, by clear and convincing evidence, that there was a statutory basis to terminate her parental rights. We disagree.

“This Court reviews for clear error the trial court’s ruling that a statutory ground for termination has been established” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011), citing *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). “A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.” *In re Hudson*, 294 Mich App at 264, citing *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

¹ The order terminating parental rights also cites to MCL 712A.19b(3)(a)(i), (a)(ii), and c(ii), as statutory grounds for termination. MCL 712A.19b(3)(a)(i) and (ii) apply to a parent who is unidentifiable or has deserted the child. Based on respondent’s participation in the court proceedings and parent/agency treatment plan, these provisions clearly do not apply to her, but rather, to the children’s fathers, who are not part of this appeal. MCL 712A.19b(3)(c)(ii) applies when “[o]ther conditions exist that cause the child to come within the jurisdiction of the court.” It is unclear from the court’s opinion what those conditions were, making it difficult for us to review this ground for termination. Furthermore, only one statutory ground needs to be established by clear and convincing evidence to terminate parental rights. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Therefore, we limit our discussion to the grounds of MCL 712A.19b(3)(c)(i) and (g), which clearly apply here.

“To terminate parental rights, a trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence.” *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). “Only one statutory ground need be established by clear and convincing evidence to terminate a respondent’s parental rights, even if the court erroneously found sufficient evidence under other statutory grounds.” *Id.* If a statutory ground for termination is established and the court finds that termination is in the child’s best interests, the court must order termination of the parent’s rights and that no further efforts for reunification are made. *Id.* at 32-33. In this case, the court terminated respondent’s parental rights to J. Williams and M. Ousley pursuant to MCL 712A.19b(3)(c)(i) and (g). MCL 712A.19b(3)(c)(i) and (g) 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.

* * *

(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.

The trial court did not clearly err in finding clear and convincing evidence in support of the statutory grounds of MCL 712A.19b(3)(c)(i) and (g). With respect to MCL 712A.19b(3)(c)(i), more than 182 days passed between the date of the initial dispositional order and the order of termination. In fact, approximately two and a half years had passed. The court originally took jurisdiction over J. Williams and M. Ousley after finding that there was a substantial risk of harm to the children’s mental well-being and the children were living in an unfit home environment, “by reason of neglect, cruelty, drunkenness, criminality, or depravity.” See MCL 712A.2(b)(1) and (2). Some of the harm to J. Williams and M. Ousley came from the conduct of respondent’s adult son.² However, there was also evidence that the children were living in unhealthy conditions, and there was insufficient food in the house. In addition,

² By the termination hearing, this adult son was no longer living with respondent. Respondent testified that she had not spoken with him recently and did not know where he was living.

respondent had failed to take M. Ousley and another minor child, P. Ryder, to multiple appointments following surgery they both had on their legs.

The facts show that these problems of physical and medical neglect continued to exist at the time of the termination hearing. The same facts demonstrate clear and convincing evidence of the statutory grounds of MCL 712A.19b(3)(g) – that respondent failed to provide proper care or custody for J. Williams and M. Ousley and there is no reasonable expectation that respondent will be able to provide proper care and custody within a reasonable time considering the children’s ages.

After two and a half years of receiving services, there was still no evidence that respondent could provide proper care for J. Williams and M. Ousley. Respondent failed to benefit from parenting classes; the instructor recommended that she retake them. She also did not complete individual therapy. At some point in late 2011 or early 2012, respondent admitted to her therapist that she was still using marijuana. But at the termination hearing in February of 2012, she testified that she had not used marijuana during the past year and a half. Respondent failed to complete the three drug screenings the court ordered.

At the termination hearing on February 10, 2012, respondent claimed that she had obtained housing and paid a security deposit. However, respondent did not have a lease or key to this alleged home, and was unable to provide the street address. There was also no evidence that respondent would keep that house in a better condition than her previous home, which was considered unlivable and lacked sufficient food.

Respondent attended parenting time with her children about one third of the time. As of January 2010, respondent had not attended any of her children’s medical appointments. She also testified that J. Williams has no special needs, and M. Ousley’s only special need is that he requires transportation to and from therapy. Other testimony showed that J. Williams had cognitive impairments and ADHD and required medication and therapy. M. Ousley has cerebral palsy, cognitive impairments, and is nonverbal. Each week he attends occupational therapy, physical therapy, behavioral management programs, and speech therapy. He also is fitted for leg braces every six months and receives Botox treatments every three months. He requires transportation for most of these therapies and treatments. M. Ousley’s foster parent helps with bathing, eating, and sometimes using the bathroom. If respondent thought M. Ousley’s only special need was transportation to therapy, then he would be neglected in the many other services he receives and in the extra assistance he needs for bathing, eating, and sometimes using the bathroom. In addition, respondent was unable to transport herself to many of the parenting time sessions, therapy sessions, parenting classes, and other appointments related to her parent/agency treatment plan. She also testified that she had missed several of M. Ousley’s and P. Ryder’s medical appointments in 2009 because she lacked transportation. Respondent did not show how she would be able to transport J. Williams and M. Ousley to their many therapies, programs, and medical appointments. Thus, the evidence shows that after two and a half years, respondent has not benefitted from the services provided, the conditions that led to the adjudication continue to exist, and respondent will not be able to provide proper care for J. Williams and M. Ousley considering their ages.

Next, respondent claims that petitioner violated the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, by failing to provide her with reasonable accommodations in the completion of her parent/agency treatment plan. We disagree.

A respondent must assert her right to reasonable accommodations under the ADA when the service plan is adopted. *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000). Because the court and DHS were made aware that respondent had severe kidney failure, was on dialysis, and may have problems with transportation at the initial disposition hearing, we conclude that this issue is sufficiently preserved. “Whether the ADA has any effect on termination of parental rights proceedings . . . presents a question of law that we review *de novo*.” *In re Terry*, 240 Mich App at 23-24.

The ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subject to discrimination in any such entity.” 42 USC 12132. The ADA cannot be used as a defense to the termination of parental rights, and termination proceedings are not “services, programs, or activities” that are covered by the ADA. *In re Terry*, 240 Mich App at 25. However, the ADA does apply to the public programs and services provided by DHS. *Id.* If DHS “fails to take into account the parents’ limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family.” *Id.*

We note that respondent never provided DHS with medical documentation of her disability, limitations from her disability, or accommodations she required. However, DHS was made aware, at different points during the proceedings, that respondent had kidney failure, was receiving dialysis three times each week, had several surgeries, was often fatigued, and had difficulty travelling long distances. Even though DHS was never given medical documentation of respondent’s disability, DHS took many steps to accommodate respondent.

DHS moved the location of parenting time closer to respondent’s house so it would be easier for respondent to get to. Respondent still missed parenting time sessions. Respondent also said that she did not move to the east side of Detroit, where it was harder for her to get to the agency for parenting time, until October of 2011. Nonetheless, she missed many visits from June of 2009 to October of 2011. Respondent was given numerous referrals for parenting classes, individual therapy, and drug screenings. DHS specifically provided respondent with referrals that were close to her home and accepted Medicaid. When respondent protested that one referral for parenting classes was too far from her home, she was given a referral for a parent mentoring place closer to where she lived. Respondent was also given two and a half years to complete her treatment plan. Despite these accommodations, respondent failed to complete her treatment plan. She has not demonstrated that she is able to provide proper care for M. Ousley and J. Williams with accommodations or without.

Affirmed.

/s/ Donald S. Owens
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder