

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
August 23, 2012

In the Matter of Brooks, Minors.

No. 308513
Wayne Circuit Court
Family Division
LC No. 06-454630-NA

Before: SAAD, P.J., and SAWYER and CAVANAGH, JJ.

PER CURIAM.

Respondent, R. Brooks, appeals as of right the trial court’s order terminating her parental rights to her minor children, S.G.B., S.R.B., and S.S.B., pursuant to MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(g), MCL 712A.19b(3)(j), and MCL 712A.19b(5). We affirm.

Respondent first argues, pursuant to the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, the Department of Human Services (DHS) should have provided her with specialized services, including specialized parenting classes, because she suffers from low cognitive functioning and mental health problems. We disagree.

“Any claim that the [DHS] is violating the ADA must be raised in a timely manner.” *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). A respondent must raise the issue “when a service plan is adopted or soon afterward,” not at the dispositional hearing to determine termination. *Id.* If the respondent fails to raise the issue in a timely manner, her “sole remedy is to commence a separate action for discrimination under the ADA.” *Id.* Respondent did not even raise this issue in the trial court. Therefore, respondent waived any right to claim that petitioner violated the ADA in this proceeding.

Next, respondent argues the trial court should have placed the children with their maternal grandmother. We disagree.

In termination cases, this Court reviews the trial court’s findings of fact and best interest determinations for clear error. *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). This Court may only set aside these findings if it “is left with a definite and firm conviction that a mistake has been made.” *Id.* This Court reviews a trial court’s refusal to place children with a parent’s relatives for an abuse of discretion. *Matter of McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991).

“If a juvenile is removed from the control of his or her parents, the juvenile shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents.” MCL 712A.1(3). A trial court is not required to place children with relatives, “if it finds that termination is in the [children’s] best interests.” *In the Matter of Olive/Metts, Minors*, ___ Mich App ___; ___ NW2d ___ (Docket No. 306279, issued June 5, 2012), slip op at 4.

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. [*Id.*, slip op at 3 (internal citations and quotation marks omitted).]

However, successful placement of the children with a parent’s relative “weighs against termination.” *In re Mason*, 486 Mich 142, 164; 782 NW2d 747, 758 (2010).

The maternal grandmother is not an appropriate guardian for the children. Although the maternal grandmother has shown that she is willing to try to provide a permanent and stable home for the children, and the children wish to be in her custody, there is evidence that placement with the maternal grandmother would not be in the children’s best interest. The maternal grandmother has a history of mental illness and instability. The trial court previously terminated the maternal grandmother’s legal guardianship because of her suicidal thoughts and actions. She has various physical ailments that prevent her from properly taking care of the children. The maternal grandmother also allows respondent to live with her, and would likely allow respondent to be alone with the children, because she has done so in the past. Similarly, the maternal grandfather was previously unable to cope with taking care of the children and left.

Respondent is not an appropriate placement. Respondent has not had custody of the children in six years. She lacks parenting ability. Additionally, S.R.B. and S.S.B. have special needs that require additional parenting skills. Respondent has failed to show that she will be able to provide the children with a permanent and stable home.

Therefore, it is in the best interest of the children to terminate respondent’s parental rights, rather than place them with their maternal grandmother.

Finally, respondent argues S.G.B.’s, and S.S.B.’s fathers’ due process rights were violated. We disagree.

This Court reviews whether a person’s due process has been violated de novo. *In re HRC*, 286 Mich App 444, 450; 781 NW2d 105 (2009). “Whether a party has legal standing to assert a claim constitutes a question of law that we review de novo.” *Heltzel v Heltzel*, 248 Mich App 1, 28; 638 NW2d 123 (2001).

A parent has a right to due process in a termination proceeding. *In re HRC*, 286 Mich App at 454.

Due process requires fundamental fairness, which will involve consideration of the private interest at stake, the risk of an erroneous deprivation

of such interest through the procedures used, the probable value of additional or substitute procedures, and the state or government interest, including the function involved and the fiscal or administrative burdens imposed by substitute procedures. [*Id.*]

“A failure to provide notice of a termination proceeding hearing by personal service . . . is a jurisdictional defect that renders all proceedings in the family court void.” *In re Terry*, 240 Mich App at 21. However, “[g]enerally, persons do not have standing to assert constitutional or statutory rights on behalf of another person.” *In re HRC*, 286 Mich App at 458.

First, respondent does not have standing to assert the fathers’ constitutional rights to due process. See *In re Terry*, 240 Mich App at 21. Second, there is no indication that the fathers’ notices of the proceedings were constitutionally deficient. There are multiple documents in the lower court file indicating that petitioner and the trial court attempted to locate the fathers through personal service, speaking with relatives, obtaining phone numbers, and even setting up a meeting to speak with one of the fathers. Petitioner also provided notice to the fathers through publication. Therefore, respondent does not have standing to assert these rights and there was no violation to raise.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Mark J. Cavanagh