

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MICHAEL RENNICK,
REGINALD CRUMP, JR., and MARIO NUNEZ-
CUELLO, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CRYSTAL MOUNTAIN,

Respondent-Appellant.

UNPUBLISHED
April 4, 2006

No. 265422
Clinton Circuit Court
Family Division
LC No. 04-017318-NA

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the children under MCL 712A.19b(3)(a)(ii), (c)(i), (c)(ii), and (j). We affirm.

In July 2004, the court took the children into its temporary custody following allegations that respondent was using crack cocaine, was evicted from her apartment, had left her two older children with relatives without leaving any medical consent or information regarding her whereabouts. After giving birth to her youngest child, both she and the child tested positive for drugs. Respondent did not participate in any offered services and did not seek out any services. Her last drug screen three months before the termination trial came back positive. She last visited the children in a supervised setting, as permitted by the court, in October 2004. On September 12, 2005, the court terminated respondent's parental rights.

On appeal, respondent raises four issues. First, she contends that the trial court violated her due process rights when it failed to notify, and secure her presence at, the dispositional hearings on December 21, 2004, and June 9, 2005. Because respondent appeared at the June hearing and did not object to her notice of the hearing on the record, she waived any objection as to notice of that hearing. MCR 3.920(G). The lower court record shows that respondent was sent notice of the December hearing by mail. Respondent's claim challenging notice is without merit. Further, contrary to respondent's argument, the court did not have an affirmative duty to procure her presence at the December 21, 2004 hearing. See *In re Vasquez*, 199 Mich App 44,

48-49; 501 NW2d 231 (1993). Thus, respondent's due process challenge regarding the December 2004 and June 2005 hearings must fail.

Second, respondent contends that the trial court denied her her constitutional right to counsel. The right to due process guarantees assistance of counsel in child protective proceedings. *In re CR*, 250 Mich App 185, 197; 646 NW2d 506 (2002). Under MCR 3.915(B), the court is required to advise the respondent of the right to retain an attorney to represent her at any hearing and that (1) the respondent has the right to a court appointed attorney if the respondent is financially unable to retain an attorney, and (2) if the respondent is not represented by an attorney, the respondent may request a court-appointed attorney at any later hearing. The transcript of the August 26, 2004, pretrial conference, respondent's first appearance on the record, shows that the court properly advised respondent of her right to counsel, but respondent did not exercise the right. Respondent did not request counsel at any subsequent hearing. As such, respondent's argument on appeal must fail. Respondent's claim that she asked for counsel following the September 12, 2005, trial concerns her request for appellate counsel and is irrelevant to her claim on appeal.

Third, respondent claims that the evidence did not support termination of her parental rights under any of the cited statutory grounds. The evidence shows that the trial court did not clearly err in finding termination was appropriate under §§19b(3)(a)(ii), (c)(i), and (j). MCR 3.977(G)(3); MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Because no new conditions justifying the court's adjudication of the children were raised in the instant case, aside from those that originally brought the children into the court's temporary custody, the trial court erred to the extent that it relied upon § 19b(3)(c)(ii). However, this error was harmless in light of the clear and convincing evidence supporting termination of respondent's parental rights under the other cited statutory grounds. See *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Finally, respondent alleges that petitioner failed to make reasonable efforts to reunite her with the children because (1) it failed to tailor services to her disabilities, in violation of the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, and (2) it failed to ascertain her whereabouts. Because respondent did not raise her ADA claim prior to appeal, that issue is not preserved for appeal. *In re Terry*, 240 Mich App 14; 610 NW2d 563 (2000). Respondent's argument that petitioner had an affirmative duty to ascertain her whereabouts is misplaced. When a child is removed from the parent's custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. See *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005); MCL 712A.18f(1), (2), and (4). In the instant case, petitioner fulfilled its obligation by adopting a service plan and referring respondent to services. Respondent failed to participate in any offered services and to maintain contact with her caseworkers. Although respondent argues that petitioner had an affirmative duty to run a criminal check to see if she was incarcerated before reporting to the court that her whereabouts were unknown, she fails to cite any authority to support this argument. Further, respondent does not argue that any incarceration affected the reasonableness of services offered. Thus, respondent's argument that petitioner failed to provide reasonable efforts to reunite her

with her children must fail.

Affirmed.

/s/ Michael R. Smolenski

/s/ Donald S. Owens

/s/ Pat M. Donofrio