

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of TRML and KJL, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

BILL LONG,

Respondent-Appellant.

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UNPUBLISHED

December 10, 2009

No. 291775

Montcalm Circuit Court

Family Division

LC No. 2008-000317-NA

Before: Markey, P.J., and Bandstra and Murray, JJ.

PER CURIAM.

Respondent appeals by right from the trial court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent first argues that petitioner did not make reasonable efforts to reunify the family or to accommodate his disabilities. Petitioner was required to make reasonable efforts to rectify the conditions that caused the children’s removal. MCL 712A.18f; *In re Fried*, 266 Mich App 535, 542; 701 NW2d 192 (2005); *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000). In making these efforts, petitioner was required to comply with the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, and “to make reasonable accommodations for those individuals with disabilities.” *In re Terry, supra* at 25. If petitioner failed “to take into account [respondent’s] limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family.” *Id.* at 26. We review’s a trial court’s determination that petitioner made reasonable efforts to reunify the family for clear error. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

We find that the trial court did not clearly err when it found that petitioner made reasonable efforts to reunify the minor children with respondent and reasonably accommodated respondent’s disabilities. Respondent raised the issue in a timely manner in his motion requesting accommodations under the ADA. *In re Terry, supra* at 26. After hearing testimony at the termination trial, the trial court specifically determined that respondent, who cannot read and has mental health issues, suffered from a “disability” under the ADA and that he was entitled to special accommodations.

Our review of the record reveals that petitioner accounted for and reasonably accommodated respondent's disabilities, as the trial court found. Petitioner's foster care case manager worked with respondent for a year. It was determined pursuant to a psychological examination that respondent functioned at a fourth grade level for reading and writing. To address this disability, the case manager read each portion of the parent treatment plan to respondent and made sure he understood the requirements of the plan, her scoring of barriers, and the referrals. In addition, the case manager had many phone contacts with respondent regarding the treatment plan to ensure that respondent understood what he needed to do, and she spoke with respondent weekly about the treatment plan when he was at that agency for his supervised parenting time visits.

To address respondent's disabilities and petitioner's concern that respondent had attended three groups of parenting classes before the minor children were removed from his care, the foster care manager arranged for one-to-one in-home parenting classes, which took place once a week for 12 weeks. The goal was to allow respondent to work closely with the instructor and have more of an opportunity to ask questions. The instructor for the parenting class testified that he was satisfied that respondent acquired basic knowledge of all the material covered. During parenting time, the case manager assisted respondent when he was having trouble with the minor children. She increased respondent's visits to two hours so he would have more time with the minor children to work on parenting skills. After a week, however, respondent requested to ease into the additional time. The case manager stated that she spent more than the average amount of time working with respondent and, in her opinion, believed that respondent was given a case service plan that would benefit his needs specifically. Furthermore, she was not aware of any other services that could be offered.

Respondent's case coordinator through the Montcalm Center for Behavioral Health testified that for two years she monitored respondent's taking his medication, his symptoms, how he was doing in the home, and budgeting; she believed that respondent's needs were satisfied. She worked with respondent in his home approximately one to two times a month. She indicated she had to be very concrete and specific in respondent's daily actions, breaking things down and taking more time so that respondent could understand.

Regardless of a respondent's disability, he must be able to attain the minimum parental skills necessary to meet the children's needs. "If a parent cannot or will not meet [his] irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent." *In re Terry, supra* at 28 (citation omitted). Further, "[t]he ADA does not require petitioner to provide respondent with full-time, live-in assistance with [his] children." *Id.* at 27-28. Unfortunately, despite petitioner's efforts, it was evident that respondent remained unable to parent the minor children. The trial court did not clearly err in finding that petitioner made reasonable efforts at reunification.

The trial court also did not err in finding that statutory grounds for termination of respondent's parental rights were established and in terminating his rights. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Terry, supra* at 21-22. The trial court's decision is reviewed for clear error. *In re Miller, supra* at 337.

The issue that led to adjudication was neglect of the minor children. KJL was left in his crib for extended periods. Portions of his crib were missing, and portions had been chewed through. When petitioner investigated a referral, the investigator found one child's diaper soaked, and he was wet from his torso to his knees. His room was used to store a variety of items, including car parts and tools, and the items stored in his room were piled dangerously high. The other child was diagnosed with failure to thrive, and no medical reason appeared to account for this problem other than her parents' failure to feed her appropriately. Respondent and the children's mother were provided with a myriad of services to address the issues of neglect before the removal of the minor children. After their removal, respondent was provided with mental health assistance, one-to-one in-home parenting classes, parenting time with the minor children, and assistance and direction from petitioner during and after parenting time. His parenting time was increased from one hour a week to two hours a week, but he was unable to handle that length of parenting time. In addition, respondent was dependent on the children's mother to assist him in day-to-day activities, including care of the minor children. This was problematic because her parental rights to another child had previously been terminated, and her rights to the two children at issue were terminated during the pendency of this case.

The evidence was clear and convincing to support the trial court's findings that respondent's parenting skills did not improve, and his ability to manage the behavior of the minor children decreased as he became more frustrated and overwhelmed by the responsibilities. In addition, although respondent had a great deal of affection and love for his children, he was not able to provide guidance in a regular and sustained fashion and could not manage the food, clothing, and medical care issues without assistance from others. Unfortunately, he required the assistance of the children's mother. While there is no question that respondent was provided with reasonable services and that he participated in those services, he was unable to demonstrate that he benefited from those services. The conditions that led to adjudication were not rectified, nor would they be within a reasonable time. We have consistently held that a parent must benefit from the services offered so that the parent can improve his or her parenting skills to the point where the children would no longer be at risk in the parent's custody. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005).

The evidence also supported the court's finding that respondent had failed to provide proper care and custody in the past and would be unable to do so within a reasonable time, and there was a reasonable likelihood that the children would be harmed in his care. In addition to the issues with respect to respondent's ability to appropriately parent the minor children, the trial court was concerned that respondent was still living with the children's mother after her rights had been terminated. Moreover, there had been allegations of alcohol and marijuana use, and domestic violence in the home. The trial court stated that it made its decision with regret because respondent tried very hard. The trial court stated that the issue was "whether within his limitation he could adequately parent these children," and the court did not err in finding that he could not.

We affirm.

/s/ Jane E. Markey  
/s/ Richard A. Bandstra  
/s/ Christopher M. Murray