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STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
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In re D. D. Sykes, Minor.

No. 380475
Kalamazoo Circuit Court
Family Division
LC No. 2025-000198-NA

Before: O'BRIEN, P.J., and CAMERON and MALDONADO, JJ.

PER CURIAM.

Respondent-mother[1] appeals by right the trial court's order terminating her parental rights to her son, DDS. Respondent argues that the trial court erred by finding that petitioner, the Department of Health and Human Services (DHHS), was not required to make reasonable efforts toward reunification and by finding that the DHHS made reasonable efforts regardless. Respondent also argues that the trial court erred by finding the existence of statutory grounds for termination under MCL 712A.19b(3)(g), (i), and (j), and by finding that termination of her parental rights was in DDS's best interests. Because we agree that the DHHS failed to make reasonable efforts to reunify respondent and DDS, we vacate the trial court's order and remand this case for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

Respondent has three children other than DDS: CW, HE, and RW. Respondent has long struggled with methamphetamine and alcohol abuse, and respondent has attempted to achieve sobriety several times without success. When respondent relapsed in 2016, CW, HE, and RW were placed under the guardianship of respondent's mother.[2] Respondent began to heavily use methamphetamine beginning in 2017 onwards, which resulted in several criminal cases against

[1] We use the term "respondent" in this opinion only to refer to respondent-mother because DDS's putative father is not party to this appeal even though he was also a named respondent in the petition and the trial court's order also terminated his parental rights to DDS.

[2] RW was later placed in the sole physical custody of his father.

respondent and her incarceration. Respondent was imprisoned for 11 months in 2023, and, during that time, respondent cut off contact with her mother and CW because she believed that "it was better to be gone than be inconsistent in [CW's] life."

With respondent's consent, respondent's mother petitioned the trial court to terminate respondent's parental rights to CW so that respondent's mother could adopt him; respondent had only cared for CW for the first seven months of his life and believed that adoption was in his best interests. Specifically, respondent admitted to the added "paragraph 7F" of that petition, which admitted that the trial court had grounds to exercise jurisdiction over CW under MCL 712A.2(b)(6), that statutory grounds existed to terminate respondent's parental rights under MCL 712A.19b(3)(f) (failure to support or visit child in guardianship for two or more years), and that termination of respondent's parental rights to CW was in CW's best interests. On the basis of respondent's plea, the trial court terminated respondent's parental rights to CW.[3]

Respondent was on parole when she learned that she was pregnant with DDS in early November 2024. Respondent had been drinking about two pints of alcohol each day and abusing methamphetamine. Respondent testified at the termination hearing that she ceased both by December 2024. Because her pregnancy was deemed high risk, respondent had to quit her job. When DDS was born, he spent time in the neonatal intensive care unit where respondent visited him often.

These child-protective proceedings arose out of the events of August 1, 2025. Respondent had been arguing with DDS's putative father in an attempt to get him to act as DDS's father. Respondent took the keys to her sister's vehicle and went to the home of a cousin of DDS's putative father. There, respondent drank a significant amount of alcohol. Respondent then left, intoxicated, in her sister's vehicle.

Officer Michael Griswold of the Kalamazoo Department of Public Safety (KDPS) saw respondent driving the sister's vehicle on a flat tire. The vehicle was riding on its rim, smoking, and the tire was coming off. Officer Griswold turned on his emergency lights to pull over respondent, but she continued driving at a constant speed until she ran a red stoplight and collided with another vehicle. Respondent was hysterical and smelled of alcohol; she repeatedly asked for someone to get DDS from the vehicle. At the termination hearing, respondent testified that she believed that she had left then six-week-old DDS behind at the cousin's home, but, in fact, he was in the backseat of the vehicle in his car seat. Respondent had no memory of placing DDS in the vehicle.

Respondent told Officer Griswold that she had consumed two pints of "Cuervo," and an open bottle of Jose Cuervo tequila was found on the floorboards of her vehicle. Respondent was arrested and jailed because of the accident. She pleaded guilty to driving with a blood alcohol level of 0.17% or greater in January 2026; respondent was incarcerated throughout these child-protective proceedings because of that charge and because her actions violated the conditions of her earlier parole.

[3] Respondent retained her parental rights to HE and RW.

The DHHS filed the petition in this case in August 2025, seeking the removal of DDS from respondent's care and the termination of her parental rights. The trial court authorized the petition the following day. Initial disposition was scheduled for October 2025, but it was delayed because of respondent's then-pending criminal charges arising from the accident. The DHHS later filed an amended petition to terminate respondent's parental rights in January 2026 that alleged that statutory grounds existed to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(g), (i), and (j).

Initial disposition began in April 2026. The trial court heard the testimonies of Officer Griswold; Officer Travis Cutler, also of the KDPS; respondent; two caseworkers with Catholic Charities assigned to this case; and respondent's mother. The trial court found grounds to exercise jurisdiction under MCL 712A.2(b)(1) because respondent had placed DDS at a substantial risk of serious harm and under MCL 712A.2(b)(2) because her home was unfit because of her criminality. The trial court then found that the DHHS was not required to make reasonable efforts in this case under MCL 712A.19a(2)(c) because respondent's parental rights to CW had been involuntarily terminated and the conditions that led to that termination—"substance abuse, criminality, and parenting deficits"—had not been rectified. Regardless, the trial court found that the DHHS had made reasonable efforts because the caseworkers "sent monthly correspondence to the correctional facility, attempted to arrange contact and virtual visits, provided [respondent] updates about [DDS]'s welfare and development, sent a parent[-]agency treatment plan, and used the [JPay] system once that avenue became available." The court noted that respondent's incarceration was respondent's fault and had impeded the DHHS's ability to provide services.

The trial court also found that clear and convincing evidence showed that statutory grounds to terminate respondent's parental rights existed under MCL 712A.19b(3)(g), (i), and (j), and that termination of respondent's parental rights was in DDS's best interests. Accordingly, the court ordered the termination of respondent's parental rights. This appeal followed.

II. STANDARDS OF REVIEW

We review for clear error the trial court's finding that reasonable efforts at reunification were made. *In re MJC*, 349 Mich App 42, 47; 27 NW3d 122 (2023). "A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re Medina*, 317 Mich App 219, 227; 894 NW2d 653 (2016) (quotation marks and citation omitted).

We review de novo the interpretation of statutes, *In re Keillor*, 325 Mich App 80, 85; 923 NW2d 617 (2018), and court rules, *In re Mota*, 334 Mich App 300, 311; 964 NW2d 881 (2020). We interpret statutes and court rules according to the same principles. *Id*. We aim to give effect to the intent of the drafters; when the language is clear and unambiguous, we must enforce rules and statutes as written. *Id*.

III. ANALYSIS

The Fourteenth Amendment of the United States Constitution provides, in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." US Const, Am XIV,

§ 1. One of the oldest and most essential aspects of the liberty interest protected by the Fourteenth Amendment is "the right of parents to make decisions concerning the care, custody, and control of their children." *In re Sanders*, 495 Mich 394, 409; 852 NW2d 524 (2014). Fit parents are presumed to act in their children's best interests, but the state may, subject to the "minimal procedural protections" required by due process, remove a child from a neglectful parent's custody to protect the child's welfare. *Id*. at 409-410.

When a child is removed from a parent's custody, the DHHS has an affirmative duty to make reasonable efforts to reunify the parent and child before seeking termination of the parent's parental rights, unless the court determines that aggravated circumstances or another exception exists under MCL 712A.19a(2). See *In re Hicks/Brown*, 500 Mich 79, 85 n 4; 893 NW2d 637 (2017); *In re Sanborn*, 337 Mich App 252, 258-259; 976 NW2d 44 (2021).

MCL 712A.19a(2) provides, in relevant part:

> Reasonable efforts to reunify the child and family must be made in all cases except if any of the following apply:
>
> (a) There is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638.
>
> * * *
>
> (c) The parent has had rights to the child's siblings involuntarily terminated and the parent has failed to rectify the conditions that led to that termination of parental rights.

Aggravated circumstances exist when a parent has "abused a child" and the abuse included one or more of various serious circumstances. MCL 722.638(1)(a).

If an exception under MCL 712A.19a(2) is not present, then "[t]he [DHHS] must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *In re Sanborn*, 337 Mich App at 259 (quotation marks, citation, and alteration omitted). Even if a parent is incarcerated, the DHHS is still required to make efforts to afford the incarcerated parent a "meaningful and adequate opportunity to participate" in the proceedings. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). If a parent's incarceration prevents the parent from participating in the service plan as written, the Department has an obligation to update the service plan, *id*. at 157-158, and failure to do so prejudices a parent's fundamental rights, *id*. at 157 n 8.

In this case, the trial court concluded that the DHHS was excused from making reasonable efforts under MCL 712A.19a(2)(c) because respondent had previously had her parental rights to CW involuntarily terminated and respondent had failed to rectify the conditions that led to that termination. Citing MCR 3.961, the trial court concluded that any termination of parental rights that follows the filing of a petition for child-protective proceedings is inherently involuntary because the petition is a request for court intervention. That is not so.

A parent can voluntarily release his or her parental rights under the juvenile code, in which case the trial court need not identify a statutory ground for termination. *In re Pawloski*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 372145); slip op at 5-6. Although the more appropriate vehicle for respondent to release her parental rights to CW would have been the adoption code, MCL 710.21 *et seq*.—specifically MCL 710.29—the fact that respondent and her mother chose a different vehicle does not change the voluntary nature of the act. It strikes us as inequitable that respondent's parental rights to DDS, or any other child, should be placed in jeopardy simply because respondent chose the wrong vehicle to relinquish her parental rights to CW when she did so to serve his best interests.

The record shows that the termination of respondent's parental rights to CW was voluntary, so we conclude that MCL 712A.19a(2)(c) did not apply to excuse the DHHS from making reasonable efforts. And our review of the record does not show that there was a judicial determination that respondent subjected DDS to any of the other aggravated circumstances listed in MCL 722.638(1)(a) that would have excused the DHHS from making reasonable efforts under MCL 712A.19a(2)(a).

Next, we conclude that the trial court clearly erred by finding that the DHHS made reasonable efforts to reunify respondent and DDS. The court found that the DHHS made reasonable efforts by "[sending] monthly correspondence to the correctional facility, attempt[ing] to arrange contact and virtual visits, provid[ing] [respondent] updates about [DDS's] welfare and development, [sending] a parent[-]agency treatment plan, and us[ing] the [JPay] system once that avenue became available."

Respondent testified that she only spoke to her first caseworker briefly in court and that caseworker testified that she never spoke to respondent in prison to discuss her case or services. A termination report in the record further states, "The Agency sent monthly correspondence to the prison regarding whether virtual visits can be accommodated and what services are available while [respondent] is incarcerated" from September 3, 2025 to February 19, 2026. And respondent's first caseworker testified that she sent respondent a copy of the case service plan and other information to the prison. However, the first caseworker testified that she was unsure whether respondent received the correspondence that she sent because respondent never sent a reply. The initial case service plan and parent-agency treatment plan were created in September 2025, but it is unclear from the record if respondent ever received a copy of them because neither the case service plan nor the parent-agency treatment plans in the record bear respondent's signature.

Respondent first replied to correspondence sent to the prison after her second caseworker contacted respondent in late February 2026, and respondent stated that that was the first contact she had with her caseworker while respondent was at the prison. Respondent testified that the second caseworker refused to speak with respondent about setting up services or a Family Reunification Plan at that time because of the impending termination proceeding in April 2026.

Additionally, the record does not show that either caseworker attempted to identify services available to respondent while she was incarcerated; instead, respondent took the initiative to find a substance-abuse class, therapy services, and parenting classes available to her in prison and to formulate a plan to find employment and housing when she was released. Indeed, an updated parent-agency treatment plan in the record states, "Services will be referred upon [respondent's]

release and when she can engage with the agency to identify needs." Respondent anticipated being released on parole about four months after the termination hearing, once she completed her prison substance-abuse class. Yet respondent's parental rights were terminated before she was released.[4]

We cannot conclude that the DHHS made reasonable efforts by merely sending respondent mail that she likely did not receive, while also failing to identify services that respondent could participate in to address the barriers to reunification, such as respondent's substance abuse. "At the very least, the caseworker [could have] provide[d] available workbooks for [respondent] to complete, as has been done in many other cases involving incarcerated parents." *In re Dixon (On Reconsideration)*, 347 Mich App 337, 362; 14 NW3d 497 (2023).

On this record, we are definitely and firmly convinced that the trial court made a mistake by finding that the DHHS made reasonable efforts to reunify DDS and respondent. See *In re Medina*, 317 Mich App at 227. The requirement of reasonable efforts at reunification is a critical aspect of child-protective proceedings, and the unjustified absence of reasonable efforts in this case undermined the rest of the proceedings and impaired respondent's fundamental rights. See *In re Walters*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 369318); slip op at 7.

Accordingly, we vacate the trial court's order terminating respondent's parental rights and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.[5]

/s/ Colleen A. O'Brien
/s/ Thomas C. Cameron
/s/ Allie Greenleaf Maldonado

[4] Respondent was released from prison on September 1, 2026, and she will remain under parole supervision until September 1, 2027.

[5] Because of our resolution of the issue regarding the DHHS's reasonable efforts at reunification, we need not address respondent's other arguments.