

## Intellectual Disability and Family Reunification

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### Termination of Parental Rights Is Improper Without a Finding of Reasonable Efforts At Reunification Tailored To a Parent's Intellectual Disability

*In re Hicks/Brown*, 893 N.W.2d 637 (Mich. 2017), concerned the parental rights of Ms. Brown, a woman with intellectual disability, were terminated. Before terminating parental rights, Michigan's Probate Code, Mich. Comp. Laws § 712A.19a(2) (2017)), requires a finding that there has been a reasonable effort at family reunification. Ms. Brown argued that the Department of Health and Human Services (the Department) failed to provide a reasonable accommodation of her disability. The department later argued that this objection to accommodation was not timely. The Supreme Court of Michigan considered whether the objection to accommodation was timely and if so, whether the Department's efforts at family reunification were reasonable.

#### *Facts of the Case*

Ms. Brown, a mother with intellectual disability, took her daughter to the Department, stating she could not take care of her. The Wayne Circuit Court assumed jurisdiction over the daughter on January 29, 2013, and instituted a service plan provided by the Department. Ms. Brown had a son in February 2013, and the court took jurisdiction over him as well.

Psychological assessment by the Department concluded that Ms. Brown had a moderate-to-severe cognitive performance problem and that she had an IQ of 70 with borderline intellectual functioning. At a January 2014 hearing, and on at least five occasions between August 2014 and the trial for termination of parental rights in July 2015, Ms. Brown's attorney argued that the service plan did not meet Ms. Brown's needs because of her intellectual disability.

She inquired about how her client could obtain more individualized assistance, receiving services through a community mental health agency called the Neighborhood Services Organization (NSO). The trial court granted the request, but Ms. Brown never received the services.

On July 25, 2015, the trial court granted the Department's petition to terminate Ms. Brown's parental rights to both children. Ms. Brown appealed the case to the court of appeals, arguing that the Department's reunification efforts had failed to accommodate her intellectual disability as required by the Americans with Disabilities Act (ADA) and that this failure should have prevented the termination of her parental rights. The Department and the children's lawyer-guardian ad litem argued based on the prior case of *In re Terry*, 610 N.W.2d 563 (Mich. Ct. App. 2000), that Ms. Brown had waived any claim stemming from her disability, because she had not raised her objection in a timely manner, which would have been when the service plan was adopted or soon afterward. The court of appeals panel rejected this argument, holding that Ms. Brown had preserved her claim by objecting sufficiently in advance of the termination proceedings to comply with the *Terry* preservation requirements. Based on this holding, the panel concluded that the Department failed in its duty to make reasonable efforts to reunify the family because the case service plan never included reasonable accommodations. Any termination order was therefore premature. The children's lawyer guardian ad litem appealed the case to the Supreme Court of Michigan.

#### *Ruling and Reasoning*

The Supreme Court of Michigan affirmed in part the court of appeals' opinion and held that the termination order was improper because an incomplete analysis had been made by the trial court as to whether there had been reasonable efforts to accommodate Ms. Brown's intellectual disability. The court also held that the Department could not argue on appeal that Ms. Brown did not raise her objection in a timely manner.

The Supreme Court of Michigan cited Michigan's Probate Code, which states that the Department has an affirmative duty to make reasonable efforts at reunification (Mich. Comp. Laws §712A.19a(2) (2017)). Reasonable efforts include creating a plan that provides services to the parent with the intent

of reunifying the family before seeking termination of parental rights (MCL 712A.18f(3)(b), (c), and (d) (2016)). The court also cited the ADA's prohibition of discrimination against individuals with disability.

The Supreme Court of Michigan held that the trial court made insufficient findings to support the determination that the Department made reasonable efforts to accommodate Ms. Brown's intellectual disability. The court first reasoned that the trial court did not appear to have considered the fact that the Department had failed to provide specific disability services, NSO, that the trial court itself had ordered. Also, the state supreme court reasoned that the trial court failed to consider whether the services that the Department provided complied with its statutory obligations to provide reasonable accommodation of Ms. Brown's disability. Therefore, the court vacated the termination order, which had been based on an incomplete assessment of whether reasonable reunification efforts had been made. The court remanded to the trial court for further proceedings, with instruction to consider whether the Department reasonably accommodated Ms. Brown's disability as part of its reunification efforts, in light of the fact that Ms. Brown never received the court-ordered NSO services.

*Discussion*

The *Brown* case addresses the significance of having an intellectual disability in relation to termination of parental-rights cases, addressing reasonable accommodations for that disability, and receiving these accommodations in regard to efforts at family reunification. The ADA was designed to ensure that individuals with disabilities have the same rights and opportunities as everyone else. It is important to have an accurate assessment of a parent's intellectual disability and how impairing that disability is in the parent's childbearing duties. Evaluations of what accommodations are needed and whether the accommodations are reasonable and successful are critical for proper identification and targeting of appropriate interventions. Reasonable accommodations for a parent's intellectual disabilities are important so that services can be tailored to the individual's unique needs and provide an equal opportunity at reunification.

Disclosures of financial or other potential conflicts of interest: None.

**Adequate Assistance of Mental Health Expert Guaranteed by the U.S. Constitution**

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**Whether Defendant Has the Right to Receive the Assistance of a Mental Health Expert Who Is Sufficiently Available to the Defense and Independent From the Prosecution**

In *McWilliams v. Dunn*, 137 S. Ct. 1790 (2017), the U.S. Supreme Court considered the scope of the state's duty to provide an indigent criminal defendant access to a mental health expert. The petitioner, James McWilliams, Jr., challenged his conviction on the basis that the state had failed to provide him with the assistance required by the Constitution as outlined in *Ake v. Oklahoma*, 470 U.S. 68 (1985).

The Court agreed and ruled that the petitioner was entitled to *habeas corpus* relief, because Alabama's provision of mental health assistance fell short of the *Ake* standard.

*Facts of the Case*

Mr. McWilliams was convicted of murder in the first degree during robbery and murder in the first degree during the rape of Patricia Reynolds, a convenience store clerk. The prosecution sought the death sentence, which required both a jury recommendation and an affirmation by the judge. At the jury portion of the sentencing hearing, the prosecution presented aggravating factors from the guilt phase and emphasized the defendant's history of prior felony convictions. The prosecution also called two psychiatrists, both of whom testified that Mr. McWilliams was not psychotic and had exaggerated or faked psychiatric symptoms during their respective court-ordered, pretrial evaluations of his sanity. The defense called Mr. McWilliams and his mother, who testified that he had sustained multiple serious head traumas as a child and had a history of subsequent