STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ALIYAH TIANA BEUFORD, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RICKEHL BLEDSOE,

Respondent,

and

ANTONIO BEAUFORD,

Respondent-Appellant.

UNPUBLISHED
February 24, 2009

No. 287100
Wayne Circuit Court
Family Division
LC No. 00-393521-NA

Before: Whitbeck, P.J., and O'Connell and Owens, JJ.

PER CURIAM.

Respondent Antonio Beuford[1] appeals as of right from a July 29, 2008 circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(*i*) (physical or sexual abuse by the parent), (j) (the child is likely to be harmed if returned to the parent's home), and (k)(*iii*) (the parent abused the child and the abuse included battering, torture, or other severe physical abuse). We affirm.

I. Basic Facts And Procedural History

Rickehl Bledsoe is the mother of nine-year-old Tierra Bailey, seven-year-old Aliyah Beuford, and 23-month-old Tilyah Bledsoe. Beuford is Aliyah's father. Aliyah had been living with Beuford since the age of two.

[1] Antonio Beuford's surname is spelled without an "A." Beuford's surname was misspelled in the termination order.

In January 2008, the Department of Human Resources (DHS) filed a petition seeking temporary custody of Aliyah with respect to Bledsoe and permanent custody of Aliyah with respect to Beuford. It alleged that Aliyah had been out of school for a week, reportedly due to illness. When she returned to school, she had the remains of a black eye. She reported that respondent had "whipped her with a belt" because she vomited on her bed. A "large belt mark" and "old marks and bruises" were observed on her body. Following a preliminary hearing, the court authorized the petition and placed the child in foster care.

The parties agreed that Beuford would stipulate to the trial court taking jurisdiction and finding that there was a statutory basis for termination. Beuford admitted that he had been convicted of third-degree child abuse against Aliyah for which he was currently on probation. The trial court also received various exhibits, including photographs of that depicted noticeable scars and marks on Aliyah's abdomen, left arm, and back, and certain medical records from when Aliyah was seen in the Detroit Medical Center emergency room on January 29, 2008, and in which the examining physician concluded that Aliyah was "suffering from alleged physical abuse and assault." The probation department recommended a sentence of two years' probation. The trial court found that it had jurisdiction over the child and that the evidence was sufficient to establish a basis for termination under §§ 19b(3)(b)(*i*), (j), and (k)(*iii*).

Kai Anderson, a psychiatrist at the Clinic for Child Study, was qualified as an expert in her field. Dr. Anderson testified that she evaluated Beuford and Aliyah on June 26, 2008. Beuford, who reported that he had been physically disciplined as a child, "acknowledged that he hit his daughter because she had got into some rat poison." Dr. Anderson thought that Beuford "did not appear to appreciate how severe the abuse was . . . [b]ecause he focused more on the fact that he was very concerned about her actions, and that the manner that he chose to discipline her was appropriate, as opposed to the negative effects that could occur from the abuse." Aliyah, on the other hand, reported that Beuford hit her with a stick, a belt, and an extension cord "because she vomited and peed in the bed." Dr. Anderson stated in her report that Aliyah reported that Beuford "had 'whooped' her before and showed the writer several marks on her back and also stated that her father had hit her on the head . . . because 'I needed help with my homework . . . he took my neck and kept hitting my head on the table.'" Beuford denied this and he was not aware of any marks on Aliyah's head.

Dr. Anderson testified that she observed Beuford and Aliyah together and noted that they appeared to share a strong bond despite the abuse. In her report, she stated:

> Mr. Beauford [sic] helped Aliyah read a book. Aliyah was very exited to see her father and appeared to be very comfortable with him. He was very nurturing and affectionate with Aliyah and attended to her needs. They discussed school. Aliyah wrote on the board, "I love my dad." He responded by telling her that he loved her too and he was looking forward to her returning home. Aliyah shared that she plays on the computer at her foster mother's home and states she always types, "I want to go back to my daddy so much." There was evidence of a bond between Aliyah and her father.

Dr. Anderson recommended giving Beuford an opportunity to plan for reunification by participating in services, including anger management therapy and parenting classes, "[b]ecause he acknowledged his actions. He appeared to understand that his actions were inappropriate.

And he appeared to be willing to receive education and treatment to help him to correct his behaviors." Dr. Anderson added that Beuford "demonstrated a commitment to caring for Aliyah, and appears motivated to continue to care for Aliyah." Dr. Anderson stated that Beuford's prognosis was good. He had an 80 percent chance of rehabilitation, as long as he complied with the service plan, given the absence of prior antisocial or illegal behavior and the absence of any substance abuse problem, plus Beuford's "commitment to provide for his daughter" and his willingness to learn why physical discipline is inappropriate.

Dr. Anderson stated that she had not been aware that Beuford had blackened Aliyah's eye in October 2007. She admitted that the more frequent the abuse, the more likely Beuford is to repeat it. Nevertheless, she still felt that "he has the capacity of changing. I do not recommend termination, based on that."

In the trial court's written opinion, it noted that it had previously found from Beuford's admission and the exhibits introduced at the plea proceeding that "there was a statutory basis for exercising jurisdiction" under §§ 19b(3)(b)(*i*), (j), and (k)(*iii*). After summarizing the testimony from the dispositional hearing and quoting extensively from Dr. Anderson's report, the trial court held that the material allegations in the petition were substantiated and determined by clear and convincing evidence that the parental rights of Beauford should be terminated based upon MCL 712A.1(b)(3)(b)(*i*), (j), (k)(*iii*). The trial court also held that additional efforts for reunification of Aliyah with the Beuford would not be made since there was no evidence to show that termination of parental rights was clearly not in Aliyah's best interests.

II. Statutory Grounds For Termination

A. Standard Of Review

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence.[2] We review for clear error a trial court's decision terminating parental rights.[3] A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.[4] Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.[5]

B. Analysis

Beuford argues that the trial court erred in finding that a statutory ground for termination was established by clear and convincing evidence. But he stipulated at the plea proceeding that

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[2] MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

[3] MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours*, *supra* at 633.

[4] *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

[5] MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

there was a statutory basis for termination based on his admissions and other evidence introduced at the hearing. "A party cannot stipulate a matter and then argue on appeal that the resultant action was error."[6] Therefore, this issue is waived.

III. Best Interests Determination

A. Standard Of Review

Once a petitioner has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights.[7] We review the trial court's decision regarding the child's best interests for clear error.[8]

B. Analysis

Beuford contends that the trial court erred in its best interests analysis because there was no evidence to contradict Dr. Anderson's expert testimony that termination was not necessary. We disagree.

We note that the trial court erred by finding that termination was not contrary to the child's best interests rather than by affirmatively finding that termination was in the child's best interests. MCL 712A.19b(5) was recently amended such that a trial court must now find that termination of parental rights *is* in the child's best interests,[9] rather than finding that termination is *not* in the child's best interests. However, there is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.[10] And neither the statute nor the court rule requires the trial court to make specific findings on the question of best interests.[11] Therefore, despite the evidence of the child's bond to Beuford, based on the record as a whole, we are not left with a definite and firm conviction that a clear error was made in the best interests determination.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Donald S. Owens

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[6] *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001).

[7] MCL 712A.19b(5); *Trejo, supra* at 350. To the extent the statute conflicts with MCR 3.977(E), the statute controls. See *People v Watkins*, 277 Mich App 358, 363-364; 745 NW2d 149 (2007).

[8] *Trejo, supra* at 356-357.

[9] 2008 PA 199, effective July 11, 2008.

[10] *Trejo, supra* at 354.

[11] *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005).