

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HAMPTON, Minors.

UNPUBLISHED
March 4, 2014

No. 317256
Wayne Circuit Court
Family Division
LC No. 13-512222-NA

Before: HOEKSTRA, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(i) (parent caused physical injury and reasonable likelihood of reoccurrence), (b)(ii) (parent failed to prevent physical injury and reasonable likelihood of reoccurrence), (g) (failure to provide proper care and custody), (j) (reasonable likelihood child will be harmed), (k)(iii) (battering, torture, or other severe physical abuse), (k)(iv) (loss or serious impairment of an organ or limb), and (k)(v) (life-threatening injury).¹ We affirm.

I. FACTUAL BACKGROUND

Respondent's two children were removed from her home after the youngest child, six-week-old ZCH, was treated at a hospital for severe, life-threatening injuries. Doctors determined that ZCH had sustained multiple rib fractures, a massively swollen brain, and severe hemorrhaging behind the eyes. The brain injury was grave, with the "next step" being death. This injury was not consistent with falling off a changing table or rolling off a bed, as a significant amount of force was used. Large areas of her brain had died without hope of regeneration. She also suffered damage to the spine, with broken vertebrae. The rib fractures were in various stages of healing, which indicated that the injuries occurred over time, in multiple episodes. The Chief of Pediatric Neurosurgery determined that the injuries were not accidental and that if ZCH had been brought to the emergency room sooner her injuries would have been less severe. He further testified that respondent and her husband would have known something was wrong with ZCH as her symptoms would have been evident.

¹ The court also terminated the parental rights of respondent's husband, who is not a party to this appeal.

ZCH endured many surgeries including a craniectomy, where part of her skull was removed to allow her brain to expand and swell. Neither respondent nor her husband offered any explanation for ZCH's injuries, although respondent acknowledged that ZCH did not cause her own injuries. Respondent's husband only admitted that he may have rolled on ZCH, and after he was informed about the extent of her injuries, he stated that he may have bounced her vigorously. Respondent testified that there were some incidents of domestic violence with her husband, as he had physically struck her.

Respondent claimed that she was at work the day before ZCH went to the hospital when her husband called and said that ZCH appeared limp but that she revived when he put her in the shower. Respondent was unconcerned, and when she arrived home, she and her husband took ZCH to respondent's mother's house while they went out to dinner.

The next morning, respondent claimed that ZCH was not acting normal, as she seemed to be in a daze, she did not cry or make noises, she did not eat, did not have a wet diaper, and she did not react when respondent touched her face. Respondent called a doctor and mentioned some of ZCH's symptoms. The doctor informed her that if ZCH would not eat, she probably should be brought in for an evaluation. Even though ZCH did not eat, instead of bringing her in for an evaluation, respondent merely put her in the shower to try to awaken her. Respondent took the baby to Costco and then respondent's uncle's house, where ZCH eventually had a seizure. Only then did respondent take ZCH to the hospital.

According to her doctors, ZCH's prognosis is not promising as she will remain significantly impaired cognitively and physically, and likely would have cortical blindness. Given the trauma to her brain, it was predicted that she would "require total care for the rest of her life" without ever achieving independence. The psychologist who conducted the clinic study noted that "it is incomprehensible that these parents could have ignored numerous signs this infant was in distress" and "[e]ven the most naïve parents with no parenting experience" would have taken ZCH to the hospital sooner. The psychologist also noted that respondent took no responsibility for her court involvement and had a "lack of insight in taking no responsibility for [ZCH's] severe medical condition." Thus, the psychologist recommended that it was in the best interests of the children to terminate respondent's parental rights.

Based on the foregoing, the trial court found clear and convincing evidence of MCL 712A.19b(3)(b)(i) (parent caused physical injury and reasonable likelihood of occurring again), (b)(ii) (parent failed to prevent physical injury and reasonable likelihood of occurring again), (g) (failure to provide proper care and custody), (j) (reasonable likelihood child will be harmed), (k)(iii) (battering, torture, or other severe physical abuse), (k)(iv) (loss or serious impairment of an organ or limb), and (k)(v) (life-threatening injury). The court also found that termination of respondent's parental rights was in the children's best interests. Respondent now appeals.

II. TERMINATION OF PARENTAL RIGHTS

A. STANDARD OF REVIEW

On appeal, respondent contends that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree.

The petitioner must prove the existence of at least one statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350-351; 612 NW2d 407 (2000). “We review for clear error a trial court’s factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence.” *In re Mason*, 486 Mich 142, 152; 782 NW2d 747, 751 (2010). A trial court’s decision regarding a child’s best interests also is reviewed for clear error. *In re Trejo*, 462 Mich at 356-357. “A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation marks and citation omitted).

B. STATUTORY GROUNDS

The trial court terminated respondent’s parental rights under MCL 712A.19b(3)(b)(i), (b)(ii), (k)(iii), (k)(iv), and (k)(v), which permit termination under the following circumstances:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent’s act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent’s home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

(iii) Battering, torture, or other severe physical abuse.

(iv) Loss or serious impairment of an organ or limb.

(v) Life-threatening injury.

Respondent contends that termination of her parental rights under these subsections was clearly erroneous because there was no evidence that she caused ZCH’s injuries or that she had an opportunity to prevent them. That argument is meritless. We have held that “termination of parental rights under MCL 712A.19b(3)(b)(i), (b)(ii), . . . and (k)(iii) is permissible even in the absence of definitive evidence regarding the identity of the perpetrator when the evidence does show that the respondent . . . must have either caused or failed to prevent the child’s injuries.” *In re Ellis*, 294 Mich App 30, 35-36; 817 NW2d 111 (2011). In that case, this Court relied on the

fact that the minor had “suffered numerous nonaccidental injuries that likely occurred on more than one occasion and that the parents lived together, shared childcare responsibilities, and were the child’s sole caregivers.” *Id.* at 36.

Likewise in this case, ZCH was six weeks old when she was taken to the hospital with life-threatening injuries. Respondent and her husband lived together and were ZCH’s sole caregivers. ZCH’s treating physician testified that her injuries were caused by “non-accidental trauma” and that it was evident from the various healing stages of her rib fractures that the injuries occurred over a period of time in multiple episodes. Neither parent could explain her injuries. As in *In re Ellis*, ZCH was in the custody of both parents when she suffered this horrific abuse, with both parents failing to prevent her injuries. Further, the medical evidence established that ZCH’s injuries were the result of severe physical abuse, were life threatening, resulted in serious impairment of ZCH’s brain function, and could lead to blindness. Accordingly, the trial court did not clearly err in terminating respondent’s parental rights pursuant to §§ 19b(3)(b)(i), (b)(ii), (k)(iii), (k)(iv), and (k)(v).²

The court also found clear and convincing evidence of MCL 712A.19b(3)(g) and (j), which permit termination under the following circumstances:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

In *In re VanDalen*, 293 Mich App 120, 139-141; 809 NW2d 412 (2011), this Court applied §§ 19b(3)(g) and (j) under similar circumstances, as the children in that case “suffered unexplained, serious, nonaccidental injuries consistent with intentional abuse while in respondents’ sole care and custody.” *Id.* at 139. Both respondents in that case lived together with the baby, shared responsibility for her care, and noticed signs of distress. *Id.* at 140. This Court explained that “[a]lthough the record contains no direct evidence implicating either respondent in the abuse, the extent and seriousness of the injuries to both children were consistent with prolonged abuse and clearly demonstrated a pattern of abuse in respondents’ home indicating a substantial risk of future harm.” *Id.*

² While *In re Ellis* did not involve MCL 712A.19b(3)(k)(iv) and (v), the same logic as articulated above regarding the lack of direct evidence applies to those subsections. We also note that MCL 712A.19b(3)(b)(i), (b)(ii), (k)(iii), (k)(iv), and (k)(v) specifically provide a basis for terminating the parental rights to a sibling of a child who suffered such abuse.

Likewise in this case, the evidence showed that ZCH suffered unexplained, life-threatening, non-accidental injuries while in the sole care and custody of her parents. While respondent contends that her husband alone was responsible, ZCH's doctor testified that he could not identify exactly when the abuse occurred. ZCH also had injuries in various stages of healing, indicating that the harm was sustained over a period of time and in multiple episodes. While it is unclear which of ZCH's parents caused her injuries, it is clear that both failed to safeguard her from abuse and there is a substantial risk of future harm. Even if respondent did not directly cause ZCH's injuries, she ignored medical advice to seek immediate medical attention for ZCH, and ignored other obvious signs of distress before bringing ZCH to the hospital. Therefore, the trial court did not clearly err in terminating respondent's parental rights pursuant to §§ 19b(3)(g) and (j).

C. BEST INTERESTS

The trial court also properly found that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5) provides that "[i]f the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." Whether termination is in the child's best interests is to be determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The court may consider the child's bond to the parent, the need for permanency, stability, and finality, *In re Olive/Metts*, 297 Mich App at 41-42, as well as a respondent's history, psychological evaluation, and parenting techniques, *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

In the instant matter, ZCH sustained severe, life-threatening injuries while living with respondent. The evidence also suggested prolonged, ongoing abuse. According to medical testimony, ZCH would remain impaired cognitively and physically, and would likely have cortical blindness. She would need full-time medical care for the rest of her life. As the trial court opined, it was not satisfied that if given the opportunity to plan for the children, respondent or her husband could safely and adequately care for them. Moreover, ZCH's foster parent was aware of her medical conditions and was willing to adopt both ZCH and her sister.

Therefore, we find that the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.³

III. CONCLUSION

The trial court did not clearly err in finding clear and convincing evidence of MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), (k)(iii), (k)(iv), and (k)(v), and that termination was in the

³ We also note that petitioner "is not required to provide reunification services when termination of parental rights is the agency's goal." *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009).

children's best interest. We affirm.

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray

/s/ Michael J. Riordan