

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MOORE/REED, Minors.

UNPUBLISHED
June 12, 2014

No. 318955
Wayne Circuit Court
Family Division
LC No. 12-504805-NA

In the Matter of MOORE/REED, Minors.

No. 318970
Wayne Circuit Court
Family Division
LC No. 12-504805-NA

Before: JANSEN, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal by right the trial court's order terminating their parental rights to their minor children. In Docket No. 318955, respondent-mother appeals the termination of her parental rights to her six children under MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), (k)(iii), and (k)(v). In Docket No. 318970, respondent-father appeals the termination of his parental rights to his child, VM, under MCL 712A.19b(3)(b)(i), (b)(ii) (g), (j), and (i). We affirm in both appeals.

I. FACTUAL BACKGROUND

The trial court previously terminated respondent-father's parental rights to two of his children with respondent-mother because of physical abuse. Respondents' youngest child, VM, was born a few months after this earlier termination. When VM was four weeks old, she was admitted to Children's Hospital. A medical examination showed that she suffered from intractable seizures, bilateral subdural hematomas, bilateral retinal hemorrhages with retinoschisis, and a skull fracture. Medical doctors reported that VM's injuries were not accidental and consistent with child abuse. Neither respondent was able to provide an explanation for these injuries.

The Department of Human Services filed an initial petition requesting termination of both respondents' parental rights to their respective children. At the bench trial, the court took judicial notice of its entire file, including the prior order terminating respondent-father's parental

rights, and entered VM's medical records into evidence. Respondent-mother testified that respondent-father was VM's legal father and acknowledged the prior termination of his parental rights to two of their children. She admitted that she continued to have contact with respondent-father despite the prior termination order but stated that respondent-father did not have contact with the children. Respondent-father did not appear at the bench trial or at any of the proceedings leading to the termination of his rights to VM.

The trial court found that it had jurisdiction over the children, determined that statutory grounds for termination of both respondents' parental rights had been established, and stated that a best-interest hearing would be held later. After further proceedings, the court determined that it was in the children's best interests for both respondents' parental rights to be terminated.

II. STANDARD OF REVIEW

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 Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). "If 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." MCL 712A.19b(5). This Court reviews the trial court's decision for clear error. MCR 3.977(K). 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. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

III. RESPONDENT-MOTHER

The trial court did not clearly err by finding that the statutory grounds for termination of respondent-mother's parental rights were established by clear and convincing evidence. Nor did the court err by finding that termination of respondent-mother's parental rights was in the children's best interests.

Because VM sustained severe injuries while in respondent-mother's care, it is clear that respondent-mother was unable to provide proper care and custody of her children. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). Respondent-mother made bad decisions about the children's care and was unable to recognize the severity of the situation. She admitted maintaining contact with respondent-father after his parental rights to two of their children were terminated because of child abuse. Additionally, the children were not properly cared for before their removal from respondent-mother's care. They were unclean, covered with bug bites, urinated everywhere, and did not receive appropriate medical attention. Respondent-mother's home smelled and had no beds. Moreover, respondent-mother was unable to discipline the children. Several of the children had special needs and were behind in school due to poor attendance while in respondent-mother's care.

Respondent-mother argues that because petitioner did not provide services to her there is no evidence that she would not be able to care for her children within a reasonable amount of time. This claim is unpersuasive. The evidence showed that, despite respondent-mother's history with Children's Protective Services, she never came forward to request services. There

were no services that could address respondent-mother's poor protective instincts and lack of judgment, or her subsequent failure to keep her children safe from harm. The trial court did not err by finding that the statutory ground for termination set forth in MCL 712A.19b(3)(g) was established by clear and convincing evidence.

Although there was no clear evidence that respondent-mother caused VM's injuries herself, termination of parental rights under MCL 712A.19b(3)(b)(i), (b)(ii), (j), and (k) is permissible even in the absence of definitive evidence regarding the identity of the perpetrator when the proofs show that one of the parents has either caused or failed to prevent a child's injuries. *Ellis*, 294 Mich App at 33, 35-36. The evidence in this case clearly showed that VM suffered life threatening, nonaccidental injuries and that respondent-mother was the children's primary caregiver. Respondent-mother had no explanation for the injuries and she maintained a relationship with respondent-father whose parental rights were previously terminated due to physically abusing a child. Because respondent-mother maintained a relationship with a known child abuser and VM sustained life-threatening, nonaccidental injuries while in her care, there was a reasonable likelihood that all of the children would be at risk of harm if returned to her care.

Nor did the trial court err by finding that termination of respondent-mother's parental rights was in the children's best interests. MCL 712A.19b(5); MCR 3.977(K). There was no strong bond between respondent-mother and the children, and it was certainly in the children's best interests to be raised in a home free from physical abuse. To reiterate, it appears that VM was physically abused because respondent-mother allowed respondent-father access to the children. It is in the children's best interests to be cared for by someone who makes their safety a priority, unlike respondent-mother. It also in the children's best interests to be cared for by someone who can maintain their hygiene, address their special needs, obtain appropriate medical care, and ensure that they attend school. We perceive no error in the trial court's termination of respondent-mother's parental rights.

IV. RESPONDENT-FATHER

Respondent-father acknowledges that his parental rights to two other children were previously terminated after he physically abused and caused injury to the younger child. This was sufficient to establish the statutory ground for termination set forth in MCL 712A.19b(3)(i). However, respondent-father argues that the lack of evidence that he caused VM's injuries or had any contact with her or the other children after the prior termination order makes termination in this case inappropriate. He further contends that he was not given the opportunity to demonstrate his ability to parent VM, and that with time and appropriate services his parental rights need not have been terminated. We disagree and find this argument disingenuous. The caseworker testified that respondent-father did not participate in services to address the issues that led to the prior termination of his parental rights, and he did not participate in proceedings or request services in this case.

In addition to MCL 712A.19b(3)(i), the trial court did not clearly err by finding that termination of respondent-father's parental rights was proper under MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). Four-week-old VM sustained life-threatening, nonaccidental injuries while in respondents' custody. Thus, there was clear and convincing evidence to establish that

respondent-father did not provide proper care and custody of his child. *Ellis*, 294 Mich App at 33. Moreover, as noted previously, termination of parental rights is permissible pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), and (j) even in the absence of definitive evidence regarding the identity of the perpetrator when the evidence shows that the respondent has either caused a child's injuries or failed to prevent the injuries. *Id.* at 34-35.

In this case, neither respondent could explain VM's bilateral retinal hemorrhages, left parietal skull fracture, or subdural hemorrhage on the base of her brain. The doctors who evaluated VM indicated that her injuries were not accidental. Thus, contrary to respondent-father's claim, termination of his parental rights was proper even if it could not be definitively established that he inflicted the injuries.

Further, respondent-father had a history of committing child abuse. This Court has long recognized that abuse of one child is probative of a parent's proclivity to abuse other children. *In re Parshall*, 159 Mich App 683, 689; 406 NW2d 913 (1987); *In re Youmans*, 156 Mich App 679, 689; 401 NW2d 905 (1986); *In re Dittrick Infant*, 80 Mich App 219, 222; 263 NW2d 37 (1977); *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). Because of respondent-father's history of physical abuse, VM would be at risk of harm in his care. There can be no question that it was in her best interests to terminate respondent-father's parental rights. MCL 712A.19b(5).

Affirmed.

/s/ Kathleen Jansen
/s/ Christopher M. Murray
/s/ Mark T. Boonstra