STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of J.L. MULLREED, Minor.	UNPUBLISHED June 24, 2014 No. 317440 Livingston Circuit Court Family Division LC No. 2012-014330-NA
In the Matter of J.L. MULLREED, Minor.	No. 318126 Livingston Circuit Court Family Division LC No. 2012-014330-NA

Before: BORRELLO, P.J., and SERVITTO and BECKERING, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the trial court's order terminating their parental rights to their minor child, JL, pursuant to MCL 712A.19b(3)(b)(*i*) (parent caused physical injury) and (*ii*) (failure to prevent physical injury), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm). We affirm.[1]

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This case involves allegations of substantial and repeated instances of physical abuse against respondents' minor child. According to medical personnel, by approximately two months of age, JL had suffered a host of injuries throughout his body that were in various stages of healing and were indicative of physical abuse absent plausible histories of trauma. Three

[1] Although the trial court transcript of July 17, 2013 and substantive analysis contained therein clearly indicates that the trial court terminated respondents' parental rights based on MCL 712A.19b(3)(b)(*i)* and (*ii*), the court's order incorrectly cites to "MCL 712A.19b(3)(*i*) and (*iii*)," thus inadvertently eliminating the (b), and substituting (*iii*) for (*ii*). On appeal, although they contest the trial court's findings, neither respondent contests that the trial court terminated their parental rights pursuant to MCL 712A.19b(3)(b)(*i*) and (b)(*ii*).

medical experts in the area of pediatrics, and specifically child abuse, testified regarding JL's injuries and typical causes for such injuries in a child of his age. JL sustained: 1) a torn frenulum, which is typically caused by someone forcefully inserting a pacifier or baby bottle into the baby's mouth, and can also be caused by "a punch"; 2) 19 rib fractures at least seven to fourteen days old, sustained on both the left and right side, both anterior and posterior, with some ribs sustaining more than one fracture, which is "highly specific for child abuse" inflicted by forcefully squeezing the baby's rib cage; 3) two skull fractures, one on each side of the baby's head, indicating at least one, and possibly two, instances of traumatic impact; 4) a subdural hemorrhage on the left side of the baby's head that was approximately three to seven days old; 5) a healing fracture of the metatarsal bone in the baby's right foot, typically caused by squeezing, bending, or direct force; 6) a healing fracture of the baby's right second finger in the bone closest to the knuckle, typically caused by squeezing, bending, or direct force applied to the finger; 7) irregular findings on radiography indicating possible fractures near the child's left and right wrists; 8) irregular findings on radiography "highly suspicious for some type of trauma or injury to the left shin bone at some point"; and 9) scleral hemorrhage in the baby's right eye, usually caused by direct trauma or a ruptured blood vessel caused by a squeezing force. The baby also had scratches on his face, a "very swollen," bruised, and discolored upper lip, dry blood in both nares of his nose, which is indicative of trauma, and recent bruising along his sternum of different sizes that match up with a person forcefully grabbing the baby by the chest. As one expert noted, even injury as minor as bruising is a significant and concerning finding in a two-month-old baby because a baby cannot inflict injury upon himself at that age. All three experts confirmed that the injuries JL sustained were consistent with chronic, intentionally inflicted trauma or abuse.

Petitioner sought immediate termination of respondents' parental rights. After a jury adjudication trial, and a finding by the jury that one or more of the statutory grounds in the petition had been proven, the trial court exercised jurisdiction over JL. Pursuant to MCL 712A.19a(2)(a), respondents did not receive reunification services. Following a lengthy disposition and best-interest hearing, the trial court found that grounds for termination had been proven by clear and convincing evidence and that termination of respondents' parental rights was in JL's best interests.

II. REUNIFICATION SERVICES

On appeal, both respondents argue that the trial court erred when it found that reasonable efforts were not required to reunify them with their child. We disagree. MCL 712A.19a(2)(a) allows the trial court to find that reasonable efforts to reunite the family are not required where "[t]here is a judicial determination that the parent has subjected the child to aggravated circumstances . . . ." Those aggravated circumstances include the following, as set forth in MCL 722.638(1)(a)(*i*) through (*vi*)[2]:

(*i*) Abandonment of a young child.

[2] MCL 712A.19a(2)(b) to (d) also provide additional situations where reasonable efforts are not required; these are inapplicable here.

(*ii*) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

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

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

(*v*) Life threatening injury.

(*vi*) Murder or attempted murder.

Citing MCL 712A.19a(2) our Supreme Court in *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), explained that " '[r]easonable efforts to reunify the child and family must be made in *all* cases' except those involving aggravated circumstances . . . ." Moreover, this Court has held that "[s]ervices need not be provided where reunification is not intended." *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008), citing MCL 712A.18f(1)(b). See also *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013), quoting *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009) (explaining "petitioner 'is not required to provide reunification services when termination of parental rights is the agency's goal.' ").

In light of the evidence presented at the adjudication trial, the trial court did not clearly err in finding that the circumstances under MCL 722.638(1)(a)(*iii*) were met here.[3] As noted above, medical experts testified that JL suffered multiple instances of intentional abuse. These injuries included 19 rib fractures, two skull fractures, various limb fractures, and a subdural hemorrhage. Even respondents' expert testified that, given the nature of the injuries, JL had been subjected to "chronic" trauma. The evidence supported the trial court's finding that JL's injuries constituted battering or severe physical abuse.

Respondents' other argument, that reasonable efforts were required because the jury did not specifically find that respondents caused this abuse, is without merit. For purposes of deciding whether services should be provided, the trial court was permitted to determine *sua sponte* that respondents' caused or subjected JL to the injuries he sustained. Such would constitute a "judicial determination" of the existence of MCL 722.638(1)(a)(*iii*) sufficient to satisfy MCL 712A.19a(2). As noted in its ultimate factual findings, the trial court found respondents' alternate theories of how JL came to be injured unreasonable, and that no other person or relative could have caused all of JL's injuries. Given the record evidence, we find that the trial court's determination was not clearly erroneous.

[3] "Appellate courts are obliged to defer to a trial court's factual findings at termination proceedings if those findings do not constitute clear error." *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009).

III. STATUTORY GROUNDS

Respondents[4] also argue that the trial court erred when it found that grounds for termination had been proven by clear and convincing evidence. A trial court's finding that the grounds for termination have been proven by clear and convincing evidence is reviewed for clear error. *In re Mason*, 486 Mich at 152. "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.* (internal quotation marks and citations omitted). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). To terminate parental rights, there must be clear and convincing evidence to establish at least one statutory ground for termination. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). If the trial court improperly terminates on one statutory ground, the error is harmless as long as another statutory ground for termination was established. *Id.*

Here, the trial court found that MCL 712A.19b(3)(b)(*i*) and (*ii*), (g), and (j) were established by clear and convincing evidence. In pertinent part, MCL 712A.19b(3) provides:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
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> (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:
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> (*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.
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> * * *

[4] Although respondent-father did not expressly challenge whether there were statutory grounds for termination, he contests the validity of the trial court's findings with regard to statutory grounds in light of the fact that petitioner did not provide reunification services. We treat such a challenge as a challenge to the sufficiency of the evidence for termination of respondent-father's parental rights and address it in conjunction with respondent-mother's challenges to the trial court's findings. See *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

> (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.
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> * * *
>
> (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.

The trial court found that these grounds for termination had been proven after determining that at least one respondent was responsible for JL's injuries, that both parents had failed to provide a safe environment for their child, and that JL would be in danger were he to remain in respondents' care. The court recognized that other people had watched the child on occasion, but concluded that JL was almost exclusively in respondents' direct care during the time frame in which the injuries occurred. The court found that respondents did not provide credible testimony, and that their explanations for how JL's multiple injuries could have occurred were inconsistent, were not supported by expert testimony, and were not plausible.

As to the likelihood of future harm to the child, the trial court properly relied on expert witness testimony that the nature of JL's injuries was consistent with repeated abuse and that, statistically, such abuse increases over time in severity. The court found that, even though there was a lack of direct evidence that respondents had committed the acts of abuse, "the extent and seriousness of these injuries were consistent with prolonged abuse and clearly demonstrated a pattern of abuse in [r]espondents' home indicating a substantial risk of future harm" that was exacerbated by the ongoing uncertainty of the circumstances of the injuries. The court also found that respondents' safety plan was inadequate.

The trial court's findings were not clearly erroneous. Given the various ages of the child's injuries, in order for respondents' assertions that they were caused by persons other than respondents to be true, JL would have to have been seriously harmed at least three separate times by different relatives. This is highly implausible. Furthermore, expert witness testimony supported the trial court's finding that respondent's theories for the various causes of JL's injuries were implausible. And respondents, and in particular respondent-mother, initially provided untruthful testimony about her drug use and addiction, which the court reasonably determined called into question her credibility. We note that there was no direct testimony linking respondents to JL's injuries, with the possible exception of respondent-mother's acknowledgement that respondent-father may have accidentally squeezed JL too hard and broken his ribs. However, as the trial court noted, JL was consistently in the care of respondents during the time he received his injuries, there was no one relative who would have had access to JL at all those time periods to have inflicted those injuries in such a repetitive manner, and the evidence presented a pattern of abuse in the home where:

> week after week of this child's short life he sustained repeated injuries from his head to his toes. Week after week, for those eight weeks, he was in almost the exclusive care of the Respondent Parents who, until December 3rd, 2012, were

> home caring for [JL]. The Respondents give this Court nothing more than conjecture or silence as an explanation of what happened to their eight-week old son. The common thread, as this Court indicated, the common denominator in all of the evidence comes up clear that either one or both of the Respondent Parents caused these injuries. However, regardless of which one caused the grievous injuries, both parents failed to provide a safe environment for [JL] and failed to protect him in allowing this abuse to continue.

Furthermore, the trial court noted that respondents each admitted to observing injuries on the child but did not find them concerning enough to seek medical attention for several days, even when other relatives expressed their alarm. As such, the trial court did not err in concluding that (3)(b)(*i*) and (b)(*ii*) were established by clear and convincing evidence. *In re Ellis*, 294 Mich App 30, 35-36; 817 NW2d 111 (2011) (holding that termination of parental rights was permissible under (3)(b)(*i*) and (b)(*ii*) "even in the absence of definitive evidence regarding the identity of the perpetrator when the evidence does show that the respondent or respondents must have either caused or failed to prevent the child's injuries.").

With respect to subsections (g) and (j), the trial court also did not clearly err. Even if respondents did not cause the injuries themselves, they can fairly be said to have not provided proper care and custody of JL because the child, under their responsibility and control, suffered repeated instances of physical abuse. *Id.* And even giving respondents every benefit of the doubt, the fact that JL suffered this many injuries in such a short time, coupled with the expert witness testimony concerning recidivism, respondent-father's "lackadaisical" attitude concerning his drug use around the child, respondent-mother's ongoing substance abuse issues, and respondents' lack of insight, the trial court did not clearly err when it found that JL would likely be harmed in the future and that respondents would be unable to provide proper care and custody within a reasonable time. *Id.* See also *In re VanDalen*, 293 Mich App 120, 139-140; 809 NW2d 412 (2011).

IV. BEST INTERESTS

Respondents lastly argue that the trial court erred when it found that termination was in JL's best interests. 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 at 83. The trial court's determination that termination is in the best interests of the child is reviewed for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). On review of the record, we find that the trial court did not clearly err in determining that termination was in JL's best interests. As discussed by petitioner, this Court has reviewed a substantially similar best-interest finding in *In re VanDalen*, 293 Mich App at 141, wherein the children suffered unexplained, repeated injuries, similarly to JL here. This Court found that the fact that "the children's safety and well-being could not reasonably be assured in light of the past severe abuse of the children while in respondents' care, which remained unresolved," coupled with evidence of a stable foster home in which the children were thriving, justified the trial court's best interest determination. *Id*. at 142.

Here, respondents were responsible for at least the unexplained conditions that led to the abuse; thus, JL's safety could not be assured while in respondents' care. In addition, both respondents admitted to regular drug use while the child was in their care and permitted their

friends to use drugs at their home after the child went to sleep. Further, respondents' expert opined that respondent-father suffered from impulsivity and poor coping mechanisms. Respondents' expert also testified that respondent-mother suffered from impulsivity and low self-esteem. Expert witnesses further testified that respondents would need extensive services for a lengthy period of time before they could potentially provide proper care and custody. In contrast, testimony was also presented that JL was with a pre-adoptive family whose home was safe and stable, he had no new injuries, and he was thriving. The trial court's decision was not clearly erroneous. See *id.*

Lastly, we reject respondent-mother's contention that the trial court's best interest finding was clearly erroneous because the court failed to cite the best interest factors set forth in MCL 722.23, which is part of the Child Custody Act. Respondent-mother's argument is meritless because the trial court need not consider these factors, which pertain to child custody disputes, not termination proceedings, when terminating parental rights. *In re JS & SM*, 231 Mich App 92, 102-103; 585 NW2d 326 (1998), overruled in part on other grounds *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000).

Affirmed.

/s/ Stephen L. Borrello
/s/ Deborah A. Servitto
/s/ Jane M. Beckering