

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of HERNANDEZ, Minors.

UNPUBLISHED  
July 17, 2014

No. 320184  
Calhoun Circuit Court  
Family Division  
LC No. 2013-001751-NA

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Before: BECKERING, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court's order terminating his parental rights to the minor children under MCL 712A.19b(3)(b)(i) (child suffered abuse and there is a reasonable likelihood the child will be abused in the future), (k)(iii) (parent abused child and abuse included battery, torture, or other severe physical abuse), and (k)(iv) (loss or serious impairment of an organ or limb). We affirm.

The Department of Human Services (DHS) removed GH, along with his siblings, EH and JH, in May 2013 because GH, who was only four months of age, was brought to the hospital with several broken ribs, bruising of his chest and arms, hemorrhaging of the eye, a swollen tongue, and a broken femur. Respondent, who was alone with the children during the time immediately preceding the discovery of the injuries, initially denied knowing how GH was injured. However, about five months later, after taking a polygraph examination, respondent told a police detective that he had accidentally dropped GH, causing his injuries. A physician who treated GH at the hospital indicated that GH also had older, healing rib fractures. Respondent attributed these injuries to an incident in March 2013, when, according to respondent, the then two-month old GH rolled off the couch while in his care.<sup>1</sup> GH's injuries led the physician to conclude, "With the number of injuries and the difference in timing, this child has had an abusive injury. I would say, 100%." The trial court subsequently terminated respondent's parental rights to the three children at the initial dispositional hearing in January 2014.

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<sup>1</sup> The physician testified that he did not think rolling off a couch onto the floor approximately two feet below would cause a baby to sustain rib fractures. According to the police detective, the flooring underneath the couch in question was covered by both a carpet and a rug, and the distance between the cushions and the floor was approximately "a foot, maybe, foot and a half."

Respondent first argues that the trial court erred in finding statutory grounds to terminate his parental rights. An appeal from an order terminating parental rights is reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 357; 612 NW2d 407 (2000). “A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made.” *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). “To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong . . . .” *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999) (quotation marks omitted).

MCL 712A.19b(3)(b)(i) 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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(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.

Here, evidence of record clearly established that GH suffered physical injury and that respondent caused that injury. The treating physician testified that GH had several rib fractures, old and new, and that GH’s right femur was fractured above his knee. GH also had bruising to his left chest, left back, and right upper arm. With regard to the cause of these injuries, the physician testified that GH had significant, non-accidental trauma to his chest, meaning that the chest injuries were caused by excessive squeezing or punching. Further, the femur fracture was the type caused by a “jerk” and was not accidental in nature. As mentioned *supra*, the physician testified that these injuries would not have been caused by routine care, and that “[w]ith the number of injuries and the difference in timing, this child has had an abusive injury. I would say, 100%.” Further, GH’s mother testified that respondent was home alone with the children during the time immediately preceding the injuries. Given that respondent was the only adult with GH at the time of his injuries, and the treating physician’s conclusions that the injuries were the product of abuse, the trial court did not clearly err in finding that respondent caused GH’s injuries.

Additionally, in order to terminate parental rights under MCL 712A.19b(3)(b)(i), the trial court needed to find 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.” Here, GH was twice injured while in respondent’s care during the first four months of his life. Although respondent denied that he caused the injuries, the trial court found that respondent’s denials lacked credibility. This is a finding to which we defer. See *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011) (“[R]egard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.”). Further, even if GH’s injuries were accidental, respondent’s lack of candor with regard to the cause of these injuries could have resulted in even

further damage to GH. Indeed, GH suffered serious injuries and respondent simply left the child in his swing for his mother to find him. Considering the repetition of GH's injuries and the apparent disregard for GH's wellbeing, the trial court's finding that there was a reasonable likelihood that GH would suffer injury or abuse in the foreseeable future was not clearly erroneous.

"Because one statutory ground for termination was established by clear and convincing evidence, we need not consider whether the other grounds cited by the trial court also supported the termination decision." *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).<sup>2</sup>

Respondent also asserts that the trial court erred in making its best interest findings. "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). Here, the core of the trial court's best interest analysis was its conclusion that, based upon respondent's actions toward GH, all of the children were in danger from respondent. "Evidence of how a parent treats one child is evidence of how he or she may treat the other children." *In re Hudson*, 294 Mich App 261, 266; 817 NW2d 115 (2011). Moreover, even if GH's injuries were accidental, respondent's reaction to the accidents was totally inappropriate. As the trial court noted, even assuming that respondent's recitation of the May incident was true, his response to dropping GH was to place him in his swing and wait for the child's mother to come home and discover the injury. As such, the trial court appropriately concluded that, whether this was accidental or not, "the severity of the injury to the child is so extreme that I can not overlook it as to [GH] and as to the other two children . . ." See *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011) (termination was in the children's best interest where evidence demonstrated that they would not be safe with the parents). Further, while it is true that testimony indicated that the children shared a bond with respondent, the bond between parent and child may be outweighed by the children's needs. See *In re LE*, 278 Mich App 1, 29-30; 747 NW2d 883 (2008). Here, based on respondent's past actions, it was clear that his young children would not be safe in his care, regardless of any other considerations. Thus, we find no clear error with the trial court's best interest determination.

Affirmed.

/s/ Jane M. Beckering  
/s/ Joel P. Hoekstra  
/s/ Elizabeth L. Gleicher

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<sup>2</sup> Nevertheless, we conclude that the trial court did not clearly err in finding additional statutory grounds for termination.