

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DE'ZYRE ANNETTE SIMS,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JAVON FREDERICK MARTIN,

Respondent-Appellant,

and

EMERALD KIRBY SIMS, a/k/a EMARLD
KIRBY SIMS,

Respondent.

In the Matter of DE'ZYRE ANNETTE SIMS,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

EMERALD KIRBY SIMS, a/k/a EMARLD
KIRBY SIMS,

Respondent-Appellant,

and

JAVON FREDERICK MARTIN,

UNPUBLISHED
November 17, 2009

No. 291964
Wayne Circuit Court
Family Division
LC No. 08-480529

No. 291965
Wayne Circuit Court
Family Division
LC No. 08-480529

Respondent.

Before: Hoekstra, P.J., and Murray and M. J. Kelly, JJ.

PER CURIAM.

In these consolidated appeals, respondents Javon Martin and Emerald Kirby each appeal as of right the trial court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(b)(i), (b)(ii), (j), and (k)(iii). Because we conclude that there were no errors warranting relief, we affirm.

The trial court terminated respondents' parental rights to the minor child, De'Zyre, at the initial dispositional hearing, relying primarily on evidence that respondents' younger child, five-week-old Hunter, died after sustaining a severe head injury while in respondents' care. The circumstances surrounding Hunter's injury and the perpetrator were never determined, but medical experts testified that the injury was caused by blunt force trauma to the head that was inconsistent with an accidental injury.

On appeal, both respondents argue that the trial court erred in terminating their parental rights to De'Zyre because the statutory grounds for termination were not established by clear and convincing evidence.

The existence of a statutory ground for termination must be proven by clear and convincing evidence. MCR 3.977(F)(1)(b) and (G)(3); *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). The trial court's findings of fact are reviewed for clear error and may be set aside only if, although there may be evidence to support them, the reviewing court is left with a definite and firm conviction that a mistake has been made. MCR 3.977(J); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

The trial court did not clearly err in finding that termination was justified under MCL 712A.19b(3)(j). Hunter unquestionably suffered a serious head injury that caused his death. The injury occurred while respondents were caring for Hunter and the injury was inconsistent with an accidental cause. Respondents live together and neither was willing to provide an explanation for Hunter's injury, or take responsibility for his death. Under the circumstances, regardless of which respondent caused the injury to Hunter, the trial court did not clearly err in finding that there was a reasonable likelihood that De'Zyre would be harmed if returned to respondents' home. MCL 712A.19b(3)(j).

Once the trial court found that the grounds stated under MCL 712A.19b(3)(j) were established, it was required to order termination of respondents' parental rights if it also found "that termination of parental rights is in the child's best interests[.]" MCL 712A.19b(5). Respondents also argue that termination of their parental rights was not in De'Zyre's best interests. The trial court's best interests decision is also reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The evidence showed that De'Zyre loves respondents and is bonded to them, and that visitations had been appropriate. Further, other family members testified that respondents have a

loving relationship with De'Zyre, and they did not believe that the child would be harmed in their care. However, Hunter died from a serious injury, which evidence suggested was not accidental, while in respondents' care and neither respondent was able or willing to provide an explanation for the injury. Given the totality of the evidence, we cannot conclude that the trial court clearly erred when it found that termination of respondents' parental rights was in De'Zyre's best interests. Further, because the trial court did not clearly err when it found that there was a reasonable likelihood, based on respondents' conduct or capacity, that De'Zyre would be harmed if returned to respondents' home, MCL 712A.19b(3)(j), and did not clearly err when it found that termination was in De'Zyre's best interests, MCL 712A.19b(5), we need not consider the alternate bases for termination. See *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Although the trial court did not err when it terminated both respondents' parental rights to De'Zyre, we feel compelled to express our concerns regarding the quality of the brief filed on behalf of respondent Javon Frederick Martin. This case, like all cases regarding the termination of parental rights, involves serious allegations of abuse and neglect leading to the termination of parental rights. The termination of parental rights involves one of the more severe actions that the State can take against an individual, and implicates an individual's fundamental liberty interest in raising one's child. See *Santosky v Kramer*, 455 US 745, 758-759; 102 S Ct 1388; 71 L Ed 2d 599 (1982). Thus, there is an important constitutional right at issue in every such appeal.

Adding to that already important feature, in this case the trial court heard significant expert and medical testimony regarding the circumstances surrounding Hunter Sims' death. Also at issue is which of the two respondents actually inflicted these injuries on Hunter. Despite the detailed facts and important legal principles, the brief filed on behalf of Mr. Martin was deficient in all respects. For one, the statement of facts comprised no more than a page and a quarter of respondent's brief. Not that length is always necessary or encouraged, but after seven days of trial and numerous lay and expert witnesses on the cause of death, one would expect something more than just over a page of essentially conclusory statements and procedural comments. The court rules certainly require more. See MCR 7.212(C)(6). Additionally, the brief's argument section failed to comply with MCR 7.212(C)(7). There was not a single citation to a statute or case, no citations to the record, and the three arguments, including headings, comprised approximately one page. Indeed, the entirety of respondent's second argument, which challenged whether there was clear and convincing evidence that it was in the best interests of the child to have her father's rights terminated, simply states, "father Javon Martin was bonded to his daughter . . . and it was not in her best interest to have his parental rights Terminated (sic)." In the next and final argument, which was entitled "[w]as the court's decision clearly erroneous," respondent simply argued that one of the witnesses testified that the death could have been caused by an accident and that no evidence attributed the injuries to the father. Again, these are merely conclusory statements made without any citation to law or fact.

This is unacceptable, and counsel is advised to either submit any forthcoming briefs to this Court in full compliance with our court rules, or face further action.¹

There were no errors warranting relief.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Christopher M. Murray
/s/ Michael J. Kelly

¹ This is not the first time this counsel has submitted such a nonconforming brief. In *In re Ford*, unpublished opinion per curiam per the Court of Appeals, decided July 14, 2009 (Docket No. 290111), our Court noted: “respondent’s brief on appeal failed to conform to the requirements of MCR 7.212(C)(7). Respondent’s arguments are totally devoid of citations to the record or supporting authority.” Despite these shortcomings, the *In re Ford* Court addressed the merits of the trial court’s decision terminating the parental rights, as we have done in this case.