

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DA'JOIUR TYREON JOSHUA
NEWMAN and A'NIHYRA ADORE PRICE,
Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
September 26, 2006

Petitioner-Appellee,

v

SABRINA HEARNDON,

Respondent-Appellant,

and

CLYDE PRICE,

Respondent.

No. 267073
Wayne Circuit Court
Family Division
LC No. 05-446327-NA

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(b)(i), (j), (k)(iii), and (k)(v). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, the trial court must terminate respondent's parental rights unless it determines that to do so is clearly not in the child's best interests. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). In applying the clearly erroneous standard, the Court should recognize the special opportunity the trial court has to assess the credibility of the witness. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court did not clearly err when it terminated respondent-appellant's parental rights to the minor children pursuant to MCL 712A.19b(3)(j). The evidence showed that respondent-appellant left the minor children in the care of respondent Clyde Price and that A'nihya, the three-month-old child of both respondents, was severely injured. Respondents admit that A'nihya was fine when respondent-appellant left her in respondent Price's care. Respondent-appellant first claimed that she dropped the minor children at respondent Price's place of employment, a residential home for mentally challenged adults, at 7:00 p.m., but later admitted that it was closer to 3:00 or 4:00 p.m. She stated that at first she did not want to admit that the minor children were at Price's place of employment for several hours because she felt that might put his job in more jeopardy. Respondent Price stated that he left the minor children sleeping on the couch surrounded by pillows and went to the bathroom for 15 to 20 minutes. When he came out of the bathroom, A'nihya was lying on the floor face up. His statements to the social worker at the hospital, the CPS worker, and the police were inconsistent regarding whether A'nihya was crying or unresponsive when he found her. He called 911 and A'nihya was transported to St. John's Hospital where it was determined that she had severe head injuries.

Expert testimony of Dr. Marcus DeGraw from St. John's Hospital regarding the extent of the injuries was admitted. When A'nihya arrived at the hospital, she was not responsive. A breathing tube was inserted, and she was put on a respirator. She underwent neurosurgery to relieve intra-cranial pressure as the result of bleeding, both in the brain and in the vessels leading to and from the brain. A'nihya had a complex fracture on the left side of her head from the front to the very back portion of the skull, and there was significant swelling on the outside of the skull between the skin and the bone. Dr. DeGraw testified that the head injury was consistent with blunt trauma with a force that was equivalent to falling from a several story high window or a high motor vehicle accident, and he was 100 percent certain that the injury did not occur from A'nihya falling off a couch. The only explanation that made sense to Dr. DeGraw was child abuse and, but for the life saving measures taken at St. John's Hospital, A'nihya would not have survived. A skeletal survey, typically done when there is a suspicion of child abuse, revealed a fracture of the lower portion of A'nihya's femur just above her knee. Dr. DeGraw testified that this type of fracture was consistent with a jerking or pulling force of the muscles on the bone and was highly specific for child abuse.

Despite the compelling expert testimony of Dr. DeGraw that the injuries could only have occurred as the result of child abuse, respondent-appellant continued to describe the incident as an accident. While she stated that she would do whatever it took to get her children back, including parting ways with respondent Price, respondent-appellant continued to live with Price, did not believe that he was responsible for intentionally causing the injuries to A'nihya, and did not believe that he was capable of causing such injuries. Clearly the trial court had overwhelming evidence to find that there was a reasonable likelihood that the minor children would be harmed if returned to respondent-appellant's care.

With regard to MCL 712A.19b(3)(b)(i), (k)(iii), and (k)(iv), the trial court was clear in its finding that respondent Price subjected A'nihya to physical abuse, that the injuries were severe, and that they were life threatening. The trial court did not indicate that it believed respondent-appellant caused the injuries. Accordingly, these statutory subsections do not apply to respondent-appellant. However, termination of parental rights must occur if only one of the

statutory subsections is proved by clear and convincing evidence. Clear and convincing evidence established MCL 712A.19b(3)(j) with regard to respondent-appellant.

The trial court also did not err in its best interests determination. MCR 712A.19b(5). The trial court found that respondent Price was responsible for the serious injuries inflicted on A'nihya. Respondent-appellant lied to protect respondent Price's job, continued to refer to the incident as an accident, did not acknowledge that the injuries could only have been sustained as the result of a blunt force consistent with child abuse, and did not believe that Price did or could have caused the injuries to the minor child. Two months after the incident occurred, respondent-appellant continued to live with respondent Price and indicated that she would stand by him even in the event of a criminal prosecution. There was no evidence introduced to support a finding that respondent-appellant had a strong bond with the minor children or that it was in any way not in their best interests to terminate respondent-appellant's parental rights.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Jessica R. Cooper