

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CHINA ROGERS and AIJA
ROGERS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHARLISE M. ADAMS-ROGERS,

Respondent-Appellant.

UNPUBLISHED

July 17, 2007

No. 275163

Wayne Circuit Court

Family Division

LC No. 06-458053-NA

Before: Meter, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(ii),¹ (g), and (j). We affirm.

Following the death of Isaac Lethbridge, a two-year-old foster child in respondent's home, the Department of Human Services petitioned the trial court to take jurisdiction over respondent's adopted minor children, China and Aija, and terminate respondent's parental rights. The evidence showed that Isaac had multiple bruises and sustained blunt trauma and second-degree burn injuries before he died on August 16, 2006. On the day of his death, numerous individuals occupied the home, including respondent, an adult caretaker who resided in the basement, other foster children, and respondent's adopted children. Other members of respondent's family, including an adult son and grandsons, visited respondent's home that day.

Respondent argues on appeal that the trial court erred in finding that the evidence established the statutory grounds for termination. Under MCR 3.977(E)(3), the trial court was required to find, based on clear and convincing legally admissible evidence, that one or more facts in the petition were true in order to establish a statutory ground for termination. See

¹ Although the trial court specifically applied subsection (b)(ii) in its decision, the order terminating respondent's parental rights mistakenly refers to subsection (b)(iii).

MCR 3.977(E)(3). We review the trial court's decision for clear error. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

MCL 712A.19b(3)(b)(ii) applies where a parent had an opportunity to prevent physical injury or abuse to a child or sibling of a child, yet failed to do so. The child who was physically abused, Isaac, was a foster child in respondent's home. Foster parents and children are brought together through a contractual arrangement. See *Mayberry v Pryor*, 422 Mich 579, 592; 374 NW2d 683 (1985). Further, neither China nor Aija is Isaac's sibling. Thus, it was clear error to terminate respondent's rights under MCL 712A.19b(3)(b)(ii).

Regardless of Isaac's status as a foster child in respondent's home, the doctrine of anticipatory neglect or abuse may still be considered in evaluating respondent's parental fitness. *In re Powers*, 208 Mich App 582, 592; 528 NW2d 799 (1995). Under the doctrine, how a parent treats one child is probative of how a parent may treat other children. *Id.* at 588. Therefore, respondent's treatment of Isaac is probative of how respondent might be expected to care for China and Aija, and the trial court appropriately considered this when finding that subsections (g) and (j) were established.

There was ample evidence for the trial court to find clear and convincing evidence that Isaac's death was not accidental and that he suffered multiple injuries at different times. Sometime between Isaac's last visit to the medical clinic on August 14, 2006, when Dr. Pierre Morris alerted respondent to his suspicion of possible physical abuse, and Isaac's death on August 16, 2006, there was evidence that Isaac suffered additional bruising, multiple burns, and blunt force injuries. Further, respondent did not follow through on Dr. Morris's request for blood tests to substantiate her claim that Isaac bruises easily. The trial court reasonably concluded from the evidence that respondent failed to protect Isaac or provide appropriate supervision for him.

As a whole, the evidence at least supports an inference that respondent lacked sufficient awareness of what went on in her home to protect Isaac and, despite the suspicion of physical abuse brought to her attention by Dr. Morris, took no steps to protect Isaac or impose proper supervision in the home. Thus, even if it were possible that China injured Isaac, the trial court could reasonably conclude that MCL 712A.19b(3)(g) and (j) were proven with respect to each child.

In sum, respondent was responsible for creating a home environment in which her foster child, Isaac, was physically abused. Nothing in the trial evidence indicates that the home environment would change if Aija and China were returned, except that there would no longer be foster children in the home. Applying the doctrine of anticipatory neglect or abuse, we conclude that the trial court did not clearly err in finding that MCL 712A.19b(3)(g) and (j) were proven by clear and convincing evidence. Regardless of her intent, respondent failed to provide proper care or custody for Aija and China, and there is no reasonable expectation that she would be able to provide proper care and custody within a reasonable time considering their ages. Further, there is a reasonable likelihood, based on respondent's conduct, that the children would be harmed if returned to respondent's home.

Further, respondent has not established any basis for disturbing the trial court's ultimate decision to terminate her parental rights. Under MCL 712A.19b(5), once a statutory ground for

termination is established, the trial court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). Here, the trial court found that the children's safety and well-being outweighed any bond between them and respondent. Considering the evidence as whole, the trial court did not clearly err in terminating respondent's parental rights. *In re JK*, *supra* at 209; *In re Trejo*, *supra* at 356-357.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Talbot
/s/ Donald S. Owens