

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 20, 2011

In the Matter of R. GIERMAN, Minor.

No. 303202
St. Clair Circuit Court
Family Division
LC No. 10-000479-NA

In the Matter of WILLIAMSON/GIERMAN,
Minors.

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Before: SAAD, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

In these consolidated appeals, father appeals as of right from the trial court's order terminating his parental rights to his child under MCL 712A.19b(3)(b)(iii) and (k)(iii) and mother appeals as of right from the trial court's order terminating her parental rights to her children under MCL 712A.19b(3)(b)(ii), (g), and (j).¹ We affirm.

Mother's three-year-old son suffered serious and extensive second-degree burns on his feet and buttocks while he was in the care of father. Respondents were living together at the time. The burns were obviously severe, yet respondents did not take the child to the emergency room or his pediatrician until several days after he sustained them. Instead, they attempted to treat the burns at home with the assistance of a friend, who was a certified emergency medical technician. Respondents initially claimed that mother was caring for the child and that the child accidentally sustained his burns after he stepped into the bathtub where she was running hot water to rinse out his soiled underwear. The medical findings, however, indicated that the

¹Joshua Gierman is the father of the infant child, but was not the father of the three year old boy and will be referred to as "father" throughout this opinion. Jacquelyn Fitzpatrick is mother of both children and will be referred to as "mother" hereafter. When referring to both the father and mother we will use "respondents."

pattern of the child's burns was not consistent with this explanation and was highly suggestive of an intentional immersion into hot water, characteristic of child abuse. As a result of the medical findings, the child and his half sibling, respondents' infant daughter, were taken into protective custody pursuant to a petition requesting the court to take jurisdiction over the children and immediately terminate respondents' parental rights at the initial disposition.

Approximately 1½ months later, mother disclosed to a caseworker that she was actually not present when her child sustained his burns, and father was at home caring for her child and their infant daughter while she was at work. At the termination hearing, respondents admitted that they had lied to several individuals, including doctors and a social worker, to conceal the fact that the children were in the care of father, who had a prior child abuse conviction, when the child sustained his burns. Respondents consistently denied the allegation that father had physically abused the child and claimed that the burns were accidental, resulting when the child stepped into the bathtub with hot water running when father was out of the bathroom. The trial court, finding the medical testimony to be credible, found that the child's injuries were intentionally inflicted. The court then terminated father's parental rights to his daughter, based on his abuse of mother's child, and terminated mother's parental rights to both children, based on her inability to protect her children from injury or abuse.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the child's best interests. MCL 712A.19b(5); *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993), citing *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). This Court reviews "for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), citing *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). This Court also reviews for clear error the trial court's determination regarding the best interests of the child. *Trejo*, 462 Mich at 356-357; MCR 3.977(K). "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." *Mason*, 486 Mich at 152, quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). This Court must give regard to the "special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Miller*, 433 Mich at 337; MCR 2.613(C); MCR 3.902(A).

The trial court did not clearly err in finding clear and convincing evidence establishing that father abused his daughter's half sibling and that the abuse constituted "severe physical abuse." It is not disputed that mother's son suffered serious, extensive burns while in father's care. Father, instead, disputes the court's findings that the child's injuries were intentionally inflicted and insists that his burns were accidental. The medical testimony, however, was compelling and clearly indicated that the child's injuries resulted from physical abuse. Especially persuasive was the opinion of the pediatrician who examined the child in the hospital, an expert in child abuse, indicating that the patterns of the child's burns were highly suggestive of an "inflicted immersion" into hot water, "irrefutably" characteristic of child abuse, and not consistent with respondents' accounts of how the child sustained his burns. Respondents' attempts to conceal that father was caring for the child when he sustained his burns, and their failure to seek timely medical treatment for the child despite the obvious severity of the burns,

were highly suspicious and further indicative of a non-accidental injury. Given respondents' serious lack of candor following the incident, which diminished their credibility, and the persuasive medical testimony, it was reasonable for the trial court not to believe respondents' version of the incident.²

Further, termination of father's parental rights was clearly in his child's best interests. His history of abusive conduct clearly demonstrated that his daughter, who was only four months old, would not be safe in his care or custody. The trial court did not clearly err in terminating father's parental rights.

The trial court also did not clearly err in finding clear and convincing evidence establishing that mother had the opportunity to prevent her child's injury or abuse but failed to do so. Mother was aware of father's past child abuse conviction and that it resulted after he inappropriately disciplined his then girlfriend's one-year-old daughter after the child defecated in the bathtub. Despite her awareness of the prior child abuse incident, mother left her three-year-old son and respondents' infant daughter in father's care while she was at work, knowing that her son had diarrhea and was having difficulty with toilet training. Not surprisingly, while in father's care, the child sustained serious burns consistent with abuse after he soiled his underwear.

Father's past child abuse conviction should have, at a minimum, given mother heightened concern about her children's welfare in his care. Instead, she remained with father after the incident, never questioned his explanation about how the child sustained his burns, and continued to believe that father was not capable of intentionally injuring or abusing her children. Significantly, she left her children alone in father's care only a couple days after her son was burned. Mother's conduct clearly demonstrated that she failed to recognize or appreciate the potential danger that father posed to her children. Her subsequent attempts to conceal the fact that father was caring for her child when the child sustained his injuries by lying to medical personnel, her friend, and a social worker indicated a serious lack of judgment in placing father, and their relationship over her children's needs. Mother's poor judgment following the incident was also evidenced by her failure to seek timely medical treatment for the child, which was not only neglectful but also highly suspicious under the circumstances and indicative of an attempt to conceal her child's injuries.

The evidence also established that termination of mother's parental rights was clearly in the best interests of her children. Mother's conduct was not only neglectful but clearly showed that she had extremely poor parental judgment, prioritized her own needs over the well being of

² Because only one statutory ground must be proved by clear and convincing evidence to terminate parental rights, *Trejo*, 462 Mich at 350, and the evidence established that termination of father's parental rights was warranted under MCL 712A.19b(3)(k)(iii) (the parent abused the child's sibling and the abuse included severe physical abuse), any error in the trial court's application of MCL 712A.19b(3)(b)(iii) (a nonparent adult's act caused physical injury to the child's sibling), rather than MCL 712A.19b(3)(b)(i) (the parent's act caused physical injury to the child's sibling), is harmless. MCR 2.613(A); MCR 3.901(A).

her children, and would not likely protect them from future harm or abuse in the future. At the termination hearing, she continued to believe that father could not have abused or intentionally injured her child, even in the face of the strong medical testimony indicating that her child's injuries resulted from an intentional immersion, wholly consistent with child abuse. Mother's children were very young, making them particularly vulnerable to her apparent inability to protect them from future harm or abuse. The trial court did not clearly err in terminating mother's parental rights.

Affirmed.

/s/ Henry William Saad
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause