

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
June 21, 2012

In the Matter of FREY, Minors.

No. 306859  
Jackson Circuit Court  
Family Division  
LC No. 10-002599 - NA

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Before: BECKERING, P.J., and FITZGERALD and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to her two youngest surviving children under MCL 712A.19b(3)(b)(i), (g), and (j). We affirm.

The children at issue in this case were removed from respondent's care after their two-month-old half brother suffered serious injury at the hands of his father. The injuries resulted in the death of the baby. Petitioner initiated child protective proceedings with respect to the minor children and requested termination at the initial dispositional hearing. The petition stated that "According to Children's Protection Law Section 18 (MCL 722.638) this is a mandatory petition. If it is a parent who is determined to be the perpetrator or the parent has placed the child at an unreasonable risk of harm due to that parent's failure to take reasonable steps to intervene to eliminate that risk, the petition to the court must include a request for termination of parental rights." The trial court found that clear and convincing evidence supported grounds for termination of respondent's parental rights to her two youngest children. The children were placed in the custody of their father.<sup>1</sup>

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<sup>1</sup> The trial did not terminate respondent's parental rights to her oldest child after finding that termination of respondent's parental rights was not in the best interests of the oldest child.

Respondent claims that petitioner failed to establish the statutory grounds for termination. In order 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. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Once a ground for termination is established, the court must order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews orders terminating parental rights for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "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." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Under the circumstances of this case, we are not left with a definite and firm conviction that the court made a mistake in terminating respondent's parental rights under MCL 712A.19b(3)(b)(ii) and (j).<sup>2</sup> The parties stipulated that the baby died of abusive head trauma. It is evident that respondent knew that the baby's father had a propensity for violence and was capable of physical abuse. The evidence established that respondent failed to protect the baby despite opportunities to do so. Respondent made statements to the police or medical personnel and/or testified that she knew that the baby's father shook the baby roughly in the past and that she believed that he intentionally hurt the baby in the past. At the time of the baby's death, respondent told police that, on more than once occasion, the father had roughly shaken the baby so that his head went all the way forward and all the way backward in order to "toughen him up" and that she talked to the father about shaken baby syndrome. Respondent also told police and a doctor that, when the baby was two weeks old, she came home from work to find a big goose-egg on the baby's forehead and that she did not believe the father's claim that the injury was the result of an accident. Respondent described a time when the father tossed the baby at her in anger while he stood and she sat on the couch. Respondent also told the police that the father was aggressive with her other children and she had to step in between him and the children to stop him from physically harming them. Because respondent knew of the potential violence and abuse toward her children, and her only attempt to stop it was to step in to protect the children when she was present or to occasionally take the children to daycare rather than leave them alone with the father, she clearly had the opportunity to prevent the abuse and failed to do so.

At the termination hearing, respondent argued that her failure to prevent the abuse was excused because she was a victim of domestic violence. However, expert testimony established that the domestic violence did not excuse respondent's failure to prevent injury or abuse but,

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<sup>2</sup> Only one statutory ground for termination is necessary. Thus, we need not discuss the trial court's finding that MCL 712A.19b(3)(g) was also established by clear and convincing evidence.

rather, that it was relevant to whether there was a reasonable likelihood that the children would suffer injury or abuse in respondent's home in the foreseeable future. Respondent testified at the termination hearing that the father loved the baby, that he was only playing with the baby when he shook him, and that he was getting better about playing appropriately with the baby. Respondent also testified that the father did not really toss the baby at her, but that it was more of an angry hand off, and that there were no signs from the father from which she could have predicted that he would harm the baby. Based on this testimony, the trial court found that respondent had not benefited from domestic violence therapy and would not protect her children in the future. Although the domestic violence expert witness and respondent's domestic violence therapists for individual and group therapy all testified that respondent mother had learned the red flags for abuse, had benefited from domestic violence therapy, and was not more vulnerable to domestic violence in the future, the trial court still found that there was a reasonable likelihood that the children would suffer injury or abuse in the foreseeable future. This Court is required to give deference to the trial court's findings of fact because the trial court has "the advantage of being able to consider the demeanor of the witnesses in determining how much weight and credibility to accord their testimony." *Miller*, 433 Mich at 337. The trial court did not clearly err in finding that the children would suffer injury or abuse in the foreseeable future or that there was a reasonable likelihood that the children would be harmed if returned to respondent's home.

We also reject respondent's claim that the trial court clearly erred in its best-interest determination. MCL 712A.19b(5). Although respondent's friends and the children's daycare provider testified that respondent was well bonded with her children and an attentive mother, the younger children's stepmother testified that respondent was not a good parent to her son and was not well bonded to her younger daughter and that the children experienced difficulties after spending time at respondent's home. The evidence revealed that the children were in a stable, loving home with their father and stepmother, where they had spent half their lives given the previous 50-50 custody arrangement. Giving due deference to the trial court's opportunity to view the witnesses' demeanor and testimony, the trial court properly found that terminating respondent's parental rights was in the children's best interests.

Respondent's final claim is that termination was improper because she was not afforded an opportunity to work toward unification with the children through participation in a case service plan. However, services are not required in all situations, *In re Terry*, 240 Mich App 14, 26 n 4; 610 NW2d 563 (2000) and where, as in this case, the petitioner requests termination in the initial petition there is no need to develop and consider a case service plan or to provide services because the permanency plan is termination, not reunification. *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). The filing of the termination petition was appropriate

because respondent was suspected of placing her children at an unreasonable risk of harm by failing to intervene and eliminate the risk. See MCL 722.638(2).<sup>3</sup> Therefore, petitioner's decision not to provide services in this case was justified.

Affirmed.

/s/ Jane M. Beckering  
/s/ E. Thomas Fitzgerald  
/s/ Cynthia Diane Stephens

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<sup>3</sup> MCL 722.638(2) provides:

In a petition submitted as required by subsection (1), if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the department shall include a request for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIA of 1993 PA 288, MCL 712A.19b.

The petition submitted under subsection (1) was submitted because the department determined "that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling of the child and the abuse included 1 or more of the following: . . . (vi) Murder or attempted murder. Respondent placed her child[ren] at an unreasonable risk of harm due to her failure to take reasonable steps to intervene to eliminate that risk [of abuse that resulted in the filing of the petition under subsection 1]. MCL 722.638(2).