

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
April 9, 2013

In the Matter of V. M. INMAN, Minor.

No. 313055  
St. Clair Circuit Court  
Family Division  
LC No. 12-000193-NA

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Before: BORRELLO, P.J., and K. F. KELLY and GLEICHER, JJ.

PER CURIAM.

Respondent R. Collins appeals as of right from a circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), and (k)(iii). We vacate and remand for further proceedings.

I. BASIC FACTS

The 14-month-old minor child suffered a complete fracture of the tibia, as well as “a green stick fracture” to his fibula, in which the fracture does not go completely through the bone. Dr. Markman (who did not personally examine the child) testified that:

A significant amount of force has to be applied in order for a child to break their bones. The concerning thing in this case was that there was no history given as to what could have caused [the child] to break this leg. [The child] was just recently learning how to walk I believe he had only been walking for a couple of months. He was unable to climb and there was no history given that would account for this injury.

Possible explanations for the injury would be “either a direct blow to the side of his leg, that his leg was forcibly bent, or it could have been caused if he slammed down onto his feet and the compression between the force of his upper body and the force generated by hitting the bottom of the floor.” Markman concluded that the child’s “injuries were medically diagnostic of physical abuse.”

Respondent could offer no explanation for how the child was injured, but was consistent in speaking with workers and in her testimony at trial. Respondent testified that she lived two apartments down from Jessica Rukowski and Jessica’s fiancé Sean Finch. Jessica watched the child and, in exchange, respondent paid Jessica and also provided transportation for Jessica when needed because she had no vehicle. This arrangement had been in effect for approximately three

weeks before the child was injured. On the day of his injury, respondent started her shift at work at approximately 5:00 p.m., leaving the child with Jessica and Sean. Respondent did not see the child at 2:00 am when her shift ended because Jessica had asked respondent to take her to the hospital with her sick infant, Isabelle, who was running a fever. Respondent remained at the hospital with Jessica and Isabelle until 7:30 or 8:00 a.m. when they returned to Jessica's apartment. At that time, the child was acting fussy and whiny. After a failed attempt to get the child to settle, respondent decided to take him home.

When respondent returned to her own apartment, she placed the child on the living room floor. Respondent noticed that the child continued to be fussy and did not walk around the apartment like he usually would; instead, he simply sat in the middle of the room and continued to fuss. Respondent was engaged in a lengthy phone conversation with the child's dad, Jesse Inman. Inman had not seen the child in three weeks due to an on-going dispute with respondent. Respondent admitted that keeping the child from his father was not good and the two had agreed that Inman would see the child later that day. Inman testified he could hear the child being fussy in the background. After speaking with Inman, respondent decided to change the child. Upon pulling his legs out of his sleeper pajamas, the child's fussiness and whininess turned into full crying and shaking. Respondent noticed that the child's leg was swollen and bruised. She ran to Jessica's apartment and had Jessica and Sean look at the leg. Respondent then called Inman and met him at the hospital.

Respondent readily admitted that she had a history with Department of Human Services (DHS) as to her three older girls – ages 12, 11, and 6. DHS asserted jurisdiction over the children in 2008 upon allegations of respondent's prescription drug abuse. Respondent cooperated with services and the children were ultimately returned to her care. Although she had legal custody of the children, respondent and the girls' father, John Padilla, informally agreed that the children would remain with him so that they would not have to change schools. Respondent saw the children frequently and the two oldest children testified on her behalf. Inman and Padilla also testified on respondent's behalf.

DHS sought temporary jurisdiction of all four children. It also sought immediate termination of respondent's parental rights. The referee found that the court had jurisdiction pursuant to MCL 712A.2(b)(1) and (2) and took the case under advisement with respect to disposition. The referee issued a written recommendation:

[Respondent] stated that she could not explain how [the child] had broken his leg. She stated that she was not there so she did not know what had happened. This would mean that the injuries occurred while respondent mother was at work or at the hospital and that either Ms. Ratkowski or Mr. Finch have [sic] caused the injuries. Based on the available evidence however, [the child] did not appear to have sustained any type of traumatic injury at the time Ms. Ratkowski and Ms. Collins returned home from the hospital. Ms. Collins had the opportunity to lay down next to [the child] for fifteen (15) minutes before she took him home. There was no indication of bruising all over his body or of him being in acute pain that a transverse fracture of the leg would cause. He was fussing at the time, but based on all accounts, his fussing was consistent with the teething that he had been going through for several weeks. Ms. Collins stated that she did not realize [the

child's] leg had been broken until she went to change his diaper and removed his pants. This occurred almost two hours after she brought him home from the Ratkowski-Finch apartment. It is inconceivable that, prior to that time, she did not observe any of the serious bruising or the abrasion that [the child] had sustained. There is a very noticeable bruise on his face along the jaw line, and a very noticeable abrasion on his cheek. If those injuries occurred earlier in time while [the child] was at the Ratkowski-Finch apartment, the injuries would have and should have been observed much earlier and a more complete examination of [the child's] condition made prior to the time Ms. Collins went to change his diaper.

As Dr. Markman noted, a child of this age must be supervised at all times by a parent or appropriate caregiver. The injuries in this case were so serious and significant, the parent or caregiver would be aware of those injuries having occurred and would be able to provide an account of them. In this case the parent did not provide any account of the injuries, stating that she did not know what had happened because she was not there. The evidence establishes that there was no indication by any of the three adults present, that [the child] has sustained serious injuries at the time he left the Ratkowski-Finch apartment on March 12, 2012. The logical conclusion is that the child was injured after he was taken home by his mother. Based upon all the available evidence, [respondent] was the one who was supervising [the child] when the injuries occurred.

For all the foregoing reasons, the Court finds that there is clear and convincing evidence to terminate the parental rights of respondent mother, . . .to [the child] pursuant to MCL 712A.19b(3)(b)(i)(ii) [sic], (g), (j) and (k)(iii). The evidence is also clear and convincing that termination of the respondent mother's parental rights is in the best interest of the minor child, [the child]. . . .

Two of [respondent's other] children, [B.D.] age 12, and [S.D.], age 11, testified that they have never been hit or struck by their mother. They both stated that they did not believe their mother would ever physically harm them. By all the evidence presented at trial, the girls are bonded with their mother and have a good relationship with her. These children are much older than [the child] and are living with their father in the Detroit area. Based upon the evidence presented the Court does not find clear and convincing evidence that termination of respondent mother's rights to [the girls] is in the best interest of these children.

The trial court entered an order adopting the referee's findings of fact and conclusions of law. Respondent now appeals as right.

## II. STANDARD OF REVIEW

A trial court's finding that a statutory ground for termination has been proven by clear and convincing evidence is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the

trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). The trial court's decision regarding the child's best interests is also reviewed for clear error. *In re Trejo*, 462 Mich at 356-357; MCR 3.977(K).

### III. ANALYSIS

After reviewing the entire record, we are left with the definite and firm conviction that a mistake has been made. While we support the trial court's decision to assert temporary jurisdiction over the child, termination of respondent's parental rights was premature.

Respondent continuously denied that she caused the child's injuries. She suggested that it might have been Sean Finch, who was left alone with the child for at least five hours while respondent, Jessica, and Isabelle were at the hospital. Notably, Sean disappeared immediately after the child's injury in an attempt to avoid contact with police. He was subsequently arrested on warrants for unpaid child support and domestic violence. Yet, inexplicably, DHS worker Kimberly Greer testified that neither Sean nor Jessica were "part of our specific investigation."

The trial court focused on the fact that the child allegedly failed to show any signs of distress before leaving Jessica's apartment. It concluded, therefore, that the injury must have occurred after respondent left Jessica's apartment. However, the record actually supports a finding that the child *was* in some distress while still at Jessica's apartment. Respondent, Jessica, and Sean all testified that the child was acting fussy, but they all attributed the fussiness to teething.

In addition to testimony that the child was acting fussy, there was evidence that he was unable to bear his weight before leaving Jessica's apartment. During cross-examination, Jessica testified as follows:

*Q.* Your testimony was that she set him down, he stood briefly and he fell down, right?

*A.* Yeah.

*Q.* That he then righted himself by sitting back up, right?

*A.* Yeah. When he fell down he fell down on his bottom. Got upset and threw himself back. And I have this stand thing in my kitchen, he hit his head on that.

*Q.* When she set him down on his feet, he almost immediately went down to his bottom, right?

*A.* Yes.

*Q.* And, at that time, he started into a fit and threw his head backwards, right?

*A.* Yes.

Q. And, again, that's pretty typical for him, right?

A. Yes.

Q. And then Ms. Collins had to pick him off the floor when he was throwing that fit?

A. Yes.

Q. And he didn't stand back up?

A. No.

Respondent testified that, when she took the child home and placed him on the living room floor, he did not immediately stand up, walk, and play.

Therefore, contrary to the conclusions of the trial court, there was record evidence that the child was in distress (albeit for a different reason than what the witnesses believed) and that he bore no weight on his legs before leaving Jessica's apartment.

Respondent had no history of physically abusing children. The worker testified that her apartment was "well maintained" and that the child's room was "a nice room." Respondent had a good relationship with her other three children, who testified on her behalf at trial. The rush to termination was unnecessary, especially in light of the fact that DHS admitted it conducted what can only be described as an incomplete investigation, having failed to look into Sean as the source of the child's injuries. We find that the trial court's conclusions regarding the child's injuries were too speculative to warrant termination.

Vacated and remanded for further proceedings. We do not retain jurisdiction.

/s/ Stephen L. Borrello  
/s/ Kirsten Frank Kelly  
/s/ Elizabeth L. Gleicher