

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 26, 2013

In the Matter of J. HERRERA, Minor.

No. 311758
Kent Circuit Court
Family Division
LC No. 10-052268-NA

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

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(ii), (c)(i), (g), and (j). We affirm.

In this case, respondent and father had a son and a daughter together, both of whom were subject to separate termination proceedings in different counties. The Ottawa County trial court terminated the parents' rights to the son in a separate proceeding. Thereafter, the Kent County trial court (hereafter "trial court") terminated the parents' rights to the daughter, J., the minor child of concern in this case.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review the trial court's determination for clear error." *Id.* "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The record established that the respondents' young son was physically abused while in the care of the parents, and neither parent offered any plausible explanation for the son's injuries. Less than one year later, J., who was two months old, was also physically abused while in the sole primary care of the parents, and neither parent offered any plausible explanation for J.'s injuries. Throughout the proceedings, both the trial court and the Kent County Department of Human Services (DHS) made it clear that the only obstacle to respondent's reunification with J. was respondent's inability to offer a plausible possible explanation for J.'s injuries. However, respondent never provided any such explanation. J.'s caseworker recommended termination of respondent's rights, citing significant concerns regarding respondent's ability to protect J. from harm given J. and her brother's unexplained injuries as well as respondent's continued failure to provide a plausible explanation for those injuries. The caseworker testified that DHS had exhausted every possible service in this case.

The foregoing evidence of record supported termination under MCL 712A.19b(3)(b)(ii), (g), and (j). This court has found that a trial court did not clearly err by finding that the statutory grounds for termination were established by clear and convincing evidence when both children “suffered unexplained, serious, nonaccidental injuries consistent with intentional abuse while in respondents’ sole care and custody.” *In re Vandalen*, 293 Mich App at 139. In cases similar to the present case, this court has found that the trial court’s determination to terminate parental rights is proper when at least one respondent had perpetrated the abuse and one failed to prevent it; consequently, it did not matter which did which. *In re Ellis*, 294 Mich App 30, 35; 817 NW2d 111 (2011). Accordingly, we do not find that the trial court committed clear error in finding a statutory ground for termination. *In re VanDalen*, 293 Mich App at 139.

Having concluded that the trial court did not clearly err by finding at least one statutory ground for termination, i.e., sections 19b(3) (b)(ii), (g) or (j), we do not need to address the trial court’s additional ground for termination, section 19b(3)(c)(i). *In re HRC*, 286 Mich App at 461.

Furthermore, the trial court did not clearly err by finding that termination of respondent’s parental rights was in the minor children’s best interests. MCL 712A.19b(5); *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). The foregoing evidence supported the trial court’s finding that termination of respondent’s parental rights was in J.’s best interests. *In re Ellis*, 294 Mich App at 36; *In re VanDalen*, 293 Mich App at 141. The caseworker indicated that termination was in J.’s best interests because “there continues to be an extremely high risk of threat and harm to [J.] if she’s returned to” respondent. Moreover, the record established that by the time of termination, J. had been living with her brother in the same foster home for over two years, and J. had only lived with respondent for the first two months of her life. The caseworker testified that J. was doing well in her foster home and had bonded with her brother and her foster parents. This further supported the trial court’s finding that termination was in J.’s best interests. *In re VanDalen*, 293 Mich App at 141-142 (“Given that the children’s safety and well-being could not reasonably be assured in light of the past severe abuse of the children while in respondents’ care, which remained unresolved, and that the children were thriving in the care of their foster parents, the court did not clearly err by finding that termination of respondents’ parental rights was in the children’s best interests.”).

Respondent also argues that the trial court violated her due process rights by failing to place the child with relatives. We disagree. “Whether proceedings complied with a party’s right to due process presents a question of constitutional law that we review de novo.” *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). During the pendency of the case, respondent moved to have J. placed with relatives. The trial court denied her motion, finding that it did not have the authority to change J.’s brother’s placement and that separating J. from her brother was not in J.’s best interests. The trial court is not required to place a child with relatives. *In re IEM*, 233 Mich App 438, 453-454; 592 NW2d 751 (1999), rev’d on other grounds by *In re Morris*, 491 Mich 81; 815 NW2d 62 (2012); *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). Rather, the trial court is required to make its placement decisions on the basis of the child’s best interests. See *In re Rood*, 483 Mich at 95, quoting MCL 712A.13a(10) (“If the child is not returned to his home, ‘the court shall order the juvenile placed in the most family-like setting available consistent with the juvenile’s needs.’”); *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). Here, the trial court did not clearly err by determining that it was in J.’s best

interest to remain in foster care with her brother. Respondent is not entitled to relief on the basis that the trial court did not place J. with relatives.

Finally, respondent argues that the trial court violated her due process rights by “fail[ing] to insure [sic] that the promises made at the time of admission and throughout the proceedings were not [sic] fulfilled.” We review this unpreserved claim for plain error affecting respondent’s substantial rights. *In re VanDalen*, 293 Mich App at 135, citing *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Respondent appears to claim that when she pleaded to the petition at the adjudication trial, she did so under the assurance that her son’s case would be transferred to Kent County. Respondent provides no citations to the record to support this assertion, and our review of the record lends no support. Moreover, the record indicates that the trial court and the parties all made efforts, albeit unsuccessfully, to have the case transferred to Kent County. Accordingly, nothing in the record supports that the trial court committed plain error or violated respondent’s due process rights simply because the son’s case was never transferred to Kent County.

Respondent also contends that the trial court deprived her “of fundamental fairness” by demanding that she identify the father as the perpetrator. Respondent provides no citation to the record in support of this contention, nor does review of the record reveal that the trial court made any such demand. Thus, respondent has not established that the trial court denied her due process right to fundamental fairness. *In re Beck*, 287 Mich App 400, 401; 788 NW2d 697 (2010) (“The essence of due process is fundamental fairness.”).

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause