STATE OF MICHIGAN

COURT OF APPEALS

In re GLASPIE, Minors

UNPUBLISHED
June 24, 2021

No. 354880
Jackson Circuit Court
Family Division
LC No. 19-002306-NA

Before: JANSEN, P.J., and RONAYNE KRAUSE and GADOLA, JJ.

PER CURIAM.

This case arises out of the death of respondent's two-month old child, T.G., on June 11, 2019, resulting from severe physical injuries he sustained on June 8, 2019 while in respondent's care. Respondent argues that the trial court clearly erred when it concluded that terminating his parental rights to his two older children, J.G. (age seven) and J.G. (age four), under MCL 712A.19b(3)(b)(*i*) (parent caused physical injury of a sibling), (*ii*) (failure to protect a child from physical injury), (g) (failure to provide proper care or custody), and (j) (child will be harmed if returned to parent), was in the minor children's best interests. We affirm.

We review a trial court's ruling regarding best interests for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The focus of the best-interest inquiry is on the child, not the parent. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). The trial court may consider various factors when making its determination, including the child's bond to the parent, *In re Olive/Metts Minors*, 297 Mich App 35, 41-4; 823 NW2d 144 (2012), the parent's parenting ability, *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009), and the child's need for permanency, stability and finality, *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992). Further, the court may also consider any history of domestic violence and the child's well-being while in care. *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014). The findings need not be extensive; "brief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1).

The trial court determined that there was clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(b)(*i*), (*ii*), (j) and (g), which states:

> The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
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> (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
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> (*i*) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
>
> (*ii*) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.
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> * * *
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> (g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
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> * * *
>
> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

"Once a statutory basis for termination has been shown by clear and convincing evidence, the court must determine whether termination is in the child's best interests." *In re LaFrance*, 306 Mich App 713, 732-733; 858 NW2d 143 (2014), citing MCL 712A.19(b)(5). " The focus at the best-interest stage has always been on the child, not the parent. " *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). A trial court should weigh all the evidence available to it when making its best-interest determination. *In re Payne/Pumphrey/Forston*, 311 Mich App 49, 63; 874 NW2d 205(2015).

It is well recognized that evidence of how a respondent treats one child is probative of how the respondent would treat another. *In re Jackson*, 199 Mich App 22, 26; 501 NW2d 182, 184 (1993). Thus, the trial court did not clearly err when it considered the severity of T.G.'s abuse in making its best-interest determination. In *In re Jenks*, 281 Mich App 514; 760 NW2d 297 (2008), this Court concluded that the trial court properly considered the grave nature of a father's criminal sexual conduct involving a half-sibling and the length of his incarceration for that offense when making its best-interest determination.

Respondent argues that his parental rights were terminated because he allegedly murdered T.G. and that the charge has not been proven. However, it is irrelevant that respondent's criminal

murder charge has not been resolved. Child protection proceedings are civil in nature and, as correctly noted by the trial court, have a lower standard of proof than criminal proceedings. "The purpose of child protective proceedings is the protection of the child, while criminal cases focus on the determination of the guilt or innocence of the defendant." *In re Brock*, 442 Mich 101, 107-108: 499 NW2d 752, 756 (1993).

The record supports the trial court's conclusion that respondent horrifically abused two-month old T.G. on June 8, 2019, resulting in his death on June 11, 2019. It was undisputed that when T.G.'s mother brought the infant to respondent's home at approximately 8:00 p.m., the child was conscious and did not have any apparent injuries or breathing difficulties. T.G. was solely in respondent's care until approximately 10:00 p.m. when respondent called 911 and reported that the child had stopped breathing. Respondent later told an attending physician that T.G. drank a small amount from a bottle and then fell asleep. According to respondent, nothing occurred during the next 90 minutes between the time T.G. fell asleep and the point at which he started fussing, would not calm down, and experienced short quick shallow breaths. Respondent initiated CPR, coached by the 911 dispatcher, and later told the investigating detective that he did shake T.G. after the child had stopped breathing.

Three medical experts definitively concluded that T.G. died from trauma so severe that it resulted in *immediate* signs of injury and loss of consciousness. This plainly rebuts respondent's claim that the child was injured before he came into respondent's care on June 8, 2019. CT scans of T.G.'s head showed injuries that could only have been caused by trauma or shaking, and a skull fracture that could only have been caused by impact. The infant also had retinal hemorrhages definitively consistent with head trauma, as well as 30 to 35 bilateral rib fractures in multiple stages of healing dating as far back as 12 days beforehand and which were not of the type that could have been caused by CPR. Further, the child also had compression fracturing of his back, the left femur was suspicious of injury, and the left fibula showed some signs of injury. All of T.G.'s injuries were the result of physical abuse and abusive head trauma. There was also brain bleeding, caused either by impact or acceleration/deceleration trauma, and not by a genetic structural abnormality. Also, there was testimony that after an abusive incident that involved the types of severe injuries that T.G. had sustained, the child would "present with some form of symptoms almost immediately afterwards," indicating that the event causing the injury had occurred on the evening of June 8, 2019. The forensic pathologist concluded that T.G. had sustained a blunt force trauma to the head, and had been violently shaken or sustained a blunt force trauma with such force as to cause accelartion-decleration retinal hemorrhages. It was determined that T.G. was immediately unconscious and comatose from the extensive blow to his head, that the cause of death was a traumatic head injury from blunt force trauma, and that the death was a homicide.

Another physician testified that T.G. had sustained a blow to the abdomen that had a high degree of specificity for abuse. He concluded that T.G. had been abused at least twice and almost certainly at least three times, including on the night of June 8, 2019. He unequivocally stated that the abuse caused death, and had no doubt that the acute injuries were from extreme, violent, out-of-control shaking.

The record does not support respondent's claim that the child's injuries occurred within a 10 to 14-day time period while the child was not in his care and that no real effort was made to investigate the possibility that T.G. was injured while in his mother's care or the care of others. While there may have been evidence of earlier injuries, the medical evidence was clear that T.G.'s

lethal injuries occurred on the evening on June 8, 2019 while he was solely in respondent's care. Respondent had acknowledged to a detective that he was the only one who had been with T.G. between 8:00 and 10:00 p.m. on June 8, 2019. Notably, T.G.'s mother was present during the bench trial and respondent did not avail himself of the opportunity to call her as a witness to testify whether T.G. was or was not in respondent's care during the time frame of the additional abusive episodes.

Respondent contends that the trial court's best-interest determination was clearly erroneous because the children's mother and the paternal grandparents testified that respondent was an amazing father to the children and that they opposed terminating his parental rights. It is undisputed that respondent did not have a criminal record or any prior history of abuse, neglect, aggression, domestic violence, or mental health or substance abuse issues. Moreover, respondent was an active father and appeared to have a bonded relationship with J.G and J.G. However, the trial court did not clearly err in concluding that, despite testimony indicating respondent's appearance of being an ideal father, there was a darker side that flared, seemingly without warning, that resulted in the children's sibling's horrific death. The trial court properly concluded that placing the children in his care was too grave a risk to their safety and that this risk outweighed the children's bond with respondent. That petitioner did not have the children psychologically evaluated, as respondent argues it should have, is of no moment, as it would not have ameliorated the risk.

Lastly, respondent claims that the trial court erred by not expressly addressing the fact that the children were residing with their mother. The trial court did note that the children would remain in their mother's care. Although "a child's placement with relatives weighs against termination," *In re Mason*, 486 Mich 142, 164; 782 NW2d 747, 758 (2010), MCL 712A.13a(1)(j) defines "relative," and biological mother is not included in the definition. Because the children's biological mother is not a respondent's "relative" for purposes of MCL 712A.19a, the trial court was not required to consider that relative placement. *In re Schadler*, 315 Mich App 406, 413; 890 NW2d 676, 679-680 (2016).

Reviewing the whole record, we are not left with a firm conviction that the trial court mistakenly concluded that it was in the children's best interests to terminate respondent's parental rights given that T.G. had been "so horrifically abused," resulting in his death.

Affirmed.

/s/ Kathleen Jansen
/s/ Michael F. Gadola