

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RAINE RABY, RHYAN
HATTER, and ROWLANDO HATTER, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

NINA NICOLE RABY,

Respondent-Appellant,

and

ANTHONY RABY,

Respondent.

UNPUBLISHED

June 16, 2005

No. 258652

Wayne Circuit Court

Family Division

LC No. 03-419623

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii) and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in determining that the statutory grounds for termination of parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Raine’s twin fourteen-month-old sister, Raven, died of a skull fracture caused by repeated and severe blows to the head with a blunt instrument. Respondent-appellant knew her husband, Anthony Raby, had abused and threatened to kill her children before the incident, but she left them in his care anyway. A few months before her death, Raven passed out and required emergency medical treatment after respondent-appellant left her alone with Mr. Raby. Respondent-appellant admitted to a confidant that she knew Mr. Raby was suspected in the death of his girlfriend’s two-year-old child in 2000, but she still disregarded the confidant’s concerns for the children as “silly.”

Mr. Raby also physically abused and threatened to kill respondent-appellant. Respondent-appellant received a personal protection order against Mr. Raby after he assaulted

her with a garden tool, but respondent-appellant never had it served. Despite these facts, respondent-appellant strengthened her relationship with Mr. Raby and protected him from the ramifications of his abuse, even to the point of providing an alternative explanation for Raven's death. While she eventually initiated a divorce, she indicated to a friend at a point early in the termination proceedings that she was biding her time until the case blew over and she could resume her life with Mr. Raby.

According to MCL 712A.19b(3)(j), grounds for termination exist if a court finds by clear and convincing evidence that if returned to the respondent, there exists a "reasonable likelihood" the children will suffer harm. According to MCL 712A.19b(3)(b)(ii), grounds for termination exist if "a sibling of the child has suffered physical injury or physical . . . abuse [, the] parent who had the opportunity to prevent the physical injury or physical . . . 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." In this case, respondent-appellant's tolerance of Mr. Raby's abuse and her reckless disregard for her children's safety established a likelihood that the children would be harmed if returned to her home. Respondent-appellant has demonstrated a pattern of establishing relationships with abusive or untrustworthy men, so the likelihood of harm is not limited to Mr. Raby's access to the children. Furthermore, respondent-appellant's past criminal history and a protective services referral in 2001 alleging that she abused her niece and nephew indicate her own instability and abusive potential. Therefore, the trial court did not clearly err when it determined that returning the children to respondent would create a reasonable likelihood of harm. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Further, the evidence did not show that termination of respondent-appellant's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo, supra*. Although evidence presented by a nurse and daycare provider indicated that respondent-appellant met the physical needs of her children and that they were bonded to respondent-appellant, the fact that respondent-appellant did not protect her children from the clear danger and actual abuse inflicted by Mr. Raby demonstrated a disregard for her children's safety and well-being that was not outweighed by provision for their basic physical needs.

Affirmed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello