

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of FRANKIE COLEMAN,
PROMISE COLEMAN, SHAWNIQUASHE
SMITH-ANDERSON and DALONN BEDDELL,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LACOMBNIKE A. ANDERSON,

Respondent-Appellant,

and

DESHAWN SMITH and KROMAH BEDDELL,
a/k/a KRUMAH BEDDELL,

Respondents.

UNPUBLISHED
January 25, 2007

No. 270739
Wayne Circuit Court
Family Division
LC No. 05-449386-NA

Before: Fort Hood, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(i) and (ii), (g), (j) and (k)(iii). Because the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence, and the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests, we affirm.

Respondent's¹ children came under the jurisdiction of the trial court upon petition when, in 2005, one of respondent's children, Dalonn Beddell, was taken to the hospital with a traumatic brain injury. At the conclusion of a bench trial, respondent's parental rights were terminated with respect to her children. The parental rights of DeShawn Smith, father of Shawniquashe Smith-Anderson, and Kromah Beddell, father of Dalonn Beddell, were also terminated.

We review the trial court's findings of fact in termination proceedings for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). 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 McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). "Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000).

On appeal, respondent argues that the requisite statutory grounds for termination were not established. We disagree.

MCL 712A.19b(3)(b) provides that a parent's parental rights may be terminated if 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:

- (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.

Other statutory grounds for termination include when 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 (MCL 712A.19b(3)(j)), and:

- (k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

...

- (iii) Battering, torture, or other severe physical abuse.

MCL 712A.19b

Here, there was no dispute that Dalonn suffered severe physical injury. He was unresponsive after a purported fall from a bed and was placed in the snow as respondent tried to revive him. He was then taken to the hospital where it was discovered he had a fractured

¹ Respondent refers to Lacombnike Anderson only, as the remaining respondents are not parties to this appeal.

vertebra, some small bruises, and a critical brain injury that required immediate emergency surgery. Respondent maintained throughout the proceedings that Dalonn suffered his injury when he fell from his bed, which was 12 to 15 inches off the floor. The medical testimony, however, demonstrated that the child's injuries were not consistent with respondent's explanation.

Dr. Sood Sandeeb testified that Dalonn had to have surgery immediately after he arrived at the hospital because his blood clot could have caused severe brain damage or death. Dr. Sandeeb also clearly testified several times that respondent's explanation that Dalonn fell off his mattress, 18 inches or less to the ground, could not have caused Dalonn's subdural hematoma. Dr. Deniz Altinook, who reviewed Dalonn's post-operative MRI, agreed that Dalonn's injury was caused by nonaccidental trauma. Altinook also testified that after reviewing Dalonn's medical records, he did not believe that Dalonn had any medical condition that would have caused a spontaneous bleed in the brain. Altinook stated that subdural hematoma was the most common injury caused by shaken baby syndrome. Significantly, although neither doctor could testify with 100% certainty that Dalonn was shaken, both agreed that a fall as explained by respondent could not have caused the injury. Based upon the testimony, the record does not permit any other conclusion than that the injury was inflicted on Dalonn.

Further, the evidence suggested that respondent physically abused Dalonn and did so on the date he was taken to the hospital. Detective Barbara Simon testified that she spoke to respondent at the hospital, then had her taken down to the police station for questioning. Detective Simon testified that respondent told her she had begun abusing Dalonn in October 2005 and that she had hit, whipped and slapped Dalonn on December 16, 2005, the date he was taken to the hospital. Detective Simon also testified that respondent had signed a statement to that effect.

Even if respondent did not injure Dalonn on the date of his hospitalization, there was evidence that respondent was aware that DeShawn Smith had physically abused Dalonn, and she failed to protect him. Respondent testified that she heard Smith whipping Dalonn on December 16, 2005 due to the twenty-three month old having soiled himself, and heard Dalonn screaming loudly for approximately two minutes before she stopped Smith. Respondent further testified that she was afraid of Smith because he had previously hit her and her children, yet she remained with him. The evidence establishes by clear and convincing evidence, then, that termination of respondent's parental rights was appropriate under MCL 712.19b(3)(b) (i) or (ii), (j), and (k).

The evidence also established that termination of respondent's parental rights is appropriate pursuant to MCL 712A.19b(3)(g). MCL 712A.19b(3)(g) provides for termination if:

The parent, without regard to intent, 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.

Here, Keila Williams, a protective services worker for the Department of Human Services, testified that respondent had a protective services history since April 2004 related to homelessness. Ms. Williams' testimony reflected that respondent continually had problems with housing and oftentimes left Dalonn with his grandmother because she was unable to provide for

him. Several complaints had been made regarding respondent allegedly neglecting the children in the year and a half preceding Dalonn's injury. Moreover, at the time of Dalonn's injury, respondent's home had three beds on the floor, no other furniture, and no refrigerator or stove. Considering that Dalonn suffered a severe nonaccidental injury while in respondent's care and that for the previous year and a half, respondent failed to consistently provide her children with adequate housing. Further, the evidence did not clearly show that termination of respondent's parental rights was contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo*, *supra*, 462 Mich at 356-357. The trial court thus properly terminated respondent's parental rights.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Michael J. Talbot

/s/ Deborah A. Servitto