

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 15, 2013

In the Matter of A. EVANS, Minor.

Nos. 312073; 312074
Hillsdale Circuit Court
Family Division
LC No. 12-000202-NA

Before: GLEICHER, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother and respondent father appeal as of right the trial court order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i) and (ii), (g), (j), and (k)(iii). We affirm, because the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence as to both respondents. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The main factual findings by the trial court were that the minor child was abused, that the abuse resulted in numerous fractures to the child's bones, that both parents were almost exclusively the constant caregivers for the child, and that either one or both could have inflicted the injuries, and the other could have prevented them. The evidence supported these findings, as it established that in March of 2012, the minor child, who was eight months old at the time, was brought to the hospital for a fractured arm. A medical examination established he had several injuries, including a new fracture in his left arm and possibly an older fracture in the left arm, three older or healing rib fractures, a shoulder injury, and bruising that indicated bite marks. Dr. Bethany Mohr testified that the injuries could not have been caused from the regular handling of a child or an accident such as falling off a couch and that the injuries were consistent with abuse. The evidence was uncontroverted that respondents provided all the care for the child, with very brief exceptions, none of which corresponded to the week before or day that the child was taken to the hospital. There was evidence that respondent father was rough with the child, but the cause of the child's injuries remained uncertain.

Termination of parental rights of both parents is permissible pursuant to MCL 712A.19b(3)(b)(i) and (ii), (g), (j), and (k)(iii) when it is unclear which parent caused the injuries when the evidence shows that the respondent or respondents must have caused or failed to prevent the injuries. *In re Ellis*, 294 Mich App 30, 34-35; 817 NW2d 111 (2011); *In re VanDalen*, 293 Mich App 120, 140-141; 809 NW2d 412 (2011). As noted, the evidence

supported the trial court's findings that respondents were the only ones to care for the child, with limited and brief exceptions, and that the child had suffered multiple injuries on at least two occasions. Throughout the case, the actual cause of the child's injuries remained uncertain. On this record, the trial court did not clearly err in terminating parental rights pursuant to MCL 712A.19b(3)(b)(i) and (ii) because at least one respondent caused the child's injuries and the other respondent failed to protect the child. Without knowing the cause of the injuries, and because both respondents failed to comply with the service plan,¹ there was a reasonable likelihood the child would suffer additional injury or abuse if returned to the home. MCL 712A.19b(3)(b)(i) and (ii).

Similarly, the trial court did not clearly err in terminating parental rights pursuant to MCL 712A.19b(3)(g) and (j). The respondents failed to provide proper care and custody for the child when he suffered multiple nonaccidental injuries while in their exclusive care. Also, there was no indication that respondents would be able to provide proper care and custody in the future, or that the child would not suffer harm if returned to the home, when the respondents continued to refuse to disclose the cause of the child's injuries and did not comply with the case service plans. MCL 712A.19b(3)(g) and (j). Finally, the trial court did not clearly err when it terminated respondents' parental rights pursuant to MCL 712A.19b(3)(k)(iii), because the child had been abused in a way that included battering, torturing, or other severe physical abuse considering the number of injuries, that they were in varying stages of healing, and that they could not have been caused during normal handling of the child. MCL 712A.19b(3)(k)(iii).

Both respondents also argue that the trial court erred in finding that termination was in the child's best interests. MCL 712A.19b(5). A trial court's decision regarding a child's best interests is reviewed for clear error. *Trejo Minors*, 462 Mich at 356-357; MCR 3.977(K). A trial court does not clearly err in finding that a termination is in a child's best interests when a young child suffers unexplained injuries consistent with abuse while in the primary care of their parents, the children are in foster care, which was providing stability and permanency, and the children's safety could not be assured considering the past abuse. *VanDalen*, 293 Mich App at 141-142. In this case, the child suffered unexplained injuries while in the primary care of respondents, he was doing well in a foster care placement that offered permanency, and his safety could not be assured if returned to the parents. Thus, the trial court did not clearly err in finding termination was in the child's best interests. MCL 712A.19b(5).

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Peter D. O'Connell
/s/ Christopher M. Murray

¹ Mother went to one counseling appointment and failed to schedule another one until a week before the termination hearing. Father missed several substance abuse counseling and parenting skills and counseling appointments as well as numerous visits with the child.