

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LORICK/ELLINGTON-
EDWARDS, Minors.

UNPUBLISHED
March 25, 2014

No. 317370
Wayne Circuit Court
Family Division
LC No. 12-510046-NA

In the Matter of A. CARVIN, Minor.

No. 317390
Wayne Circuit Court
Family Division
LC No. 12-510170-NA

Before: BECKERING, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

In these consolidated appeals, respondent appeals as of right from the trial court orders terminating his parental rights to the three minor children under MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), and (k)(iii). We affirm.

I. STATUTORY GROUNDS FOR TERMINATION

To terminate parental rights, the trial court must find that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). After finding a statutory ground by clear and convincing evidence, the trial court must order termination of parental rights if it also finds that termination is in the child's best interests. MCL 712A.19b(5). We review for clear error the trial court's findings on appeal from an order terminating parental rights. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

In the instant case, the trial court found that five statutory grounds for termination had been proven by clear and convincing evidence based on MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), and (k)(iii), which provide as follows:

(3) 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:

* * *

(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:

(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.

* * *

(g) 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.

* * *

(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.

(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.

Upon review of the record, we conclude that the trial court did not clearly err in finding that the above statutory grounds were established by clear and convincing evidence. The salient facts in this case are largely undisputed. On September 27, 2012, respondent's 20-month-old daughter, AL, was hospitalized with a perforated small intestine, which had caused an infection. She was unable to swallow saliva because of hemorrhaging around the small intestine, and a blockage caused AL to profusely vomit bile. While in the emergency room, her condition required treatment under a rapid response code, which was one step below a code blue or full cardiac arrest. The medical team believed that AL was within 15 minutes of being in cardiac arrest. Because of the severity of her injuries, AL had two very complicated surgeries and had an open stomach drain. AL received seven blood transfusions and remained in the hospital for

ten weeks. She was on full life support for much of her hospital stay. She was given a morphine drip to manage her pain, fed through a feeding tube, and was unable to eat for weeks following her discharge from the hospital. A medical expert opined that it was remarkable that she survived the severe injuries because she was very close to death. In addition to her abdominal injuries, the child had a bite mark from an adult on her right shoulder.

AL had been in the sole custody and care of respondent and her mother in their home in the days preceding her hospitalization, and in the exclusive care of respondent in the hours preceding her rapid deterioration. In offering a possible explanation for their child's condition, the parents reported that, two days earlier, AL had fallen two feet from an air mattress and landed on top of an eight-inch plastic air pump. Both parents claimed that they had done nothing to hurt their child. Dr. Angelilli concluded that this explanation was incompatible with AL's life-threatening injuries. Thus, petitioner sought termination of respondent's parental rights to all three of his children at initial disposition.

Dr. Mary Lu Angelilli, a board-certified pediatrician and a member of the Child Abuse Protection team at Children's Hospital of Michigan since 1988, assessed AL on September 28, 2012. At the termination hearing, Dr. Angelilli provided expert testimony that was clear, concise, and that the trial court found to be credible. She explained that the only mechanism for AL's injury was a blunt force trauma to the abdomen that required a "very high degree of force." Dr. Angelilli unequivocally testified that the injuries could not possibly be caused by horseplay between two young siblings, repeated punching from another small child, or a fall from a mattress onto an air pump. According to Dr. Angelilli, the most typical cause of similar trauma was falling off a bike while traveling at a high rate of speed and jamming the handlebars into the abdomen, or falling from a great height and landing on something. She further testified that AL's injuries could have been caused by a single punch from an adult depending on the size of the adult and the adult's ability to inject speed into the punch. Dr. Angelilli gave her expert opinion that there was no indication of an accidental cause of AL's life-threatening injuries, and that this was a case of child abuse.

Gail Mills, a psychologist who evaluated respondent after petitioner became involved in this case, concluded that AL was injured while she was in respondent's care. She also concluded that respondent was very immature. She observed that respondent did not have a particularly serious demeanor in terms of his lifestyle and that he had exhibited some erratic behaviors in the past. Mills opined that respondent showed no insight into the need for court involvement and took no responsibility for AL's injuries while in his care. Mills opined that it was in the children's best interests to terminate respondent's parental rights. Her opinion was based on her conclusion that AL was injured by respondent while in respondent's care. She arrived at this conclusion after listening to respondent's explanation of AL's injuries and after obtaining information from caseworkers.

In light of the evidence presented, the trial court did not clearly err in finding that termination was authorized under MCL 712A.19b(3)(b)(i). It is undisputed that AL was solely in respondent's care immediately before she began to display signs of her injuries. The child's mother testified that AL was sleeping when she left the child in respondent's care on the morning of September 27, 2012. When the mother returned home approximately two or three hours later, AL began vomiting large quantities of bile, had labored breathing, and her condition deteriorated

rapidly. Further, respondent failed to give a credible explanation for AL's injuries. Throughout the proceedings, he maintained that the child's injuries were caused by a fall from an air mattress onto an air pump. This explanation was incompatible with Dr. Angelilli's testimony that AL's injuries were caused by a "very high degree of force," and that the injuries were inconsistent with a short fall onto an air pump. This explanation was also inconsistent with statements made by AL's mother before trial, as AL's mother initially told Dr Angelilli that the child fell from a mattress without any mention that she had landed on an air pump. Furthermore, the record demonstrates that AL showed no appreciable symptoms of trauma in the days preceding her hospitalization. Additionally, Dr. Angelilli testified that there was nothing in AL's medical history that could have caused her injuries. Given the lack of explanation for AL's injuries and that AL was in respondent's care immediately before she began displaying symptoms of her injuries, the trial court did not clearly err in concluding that respondent physically abused AL. Moreover, given the severity of AL's injuries, the trial court did not clearly err in finding that there was a reasonable likelihood that AL would suffer from injury or abuse in the foreseeable future if placed in respondent's home. As such, the trial court did not clearly err in finding that statutory grounds for termination existed pursuant to MCL 712A.19b(3)(b)(i). See *In re BZ*, 264 Mich App at 296-297.¹

However, regardless of whether respondent perpetrated the abuse that caused AL's injuries, termination of respondent's parental rights was warranted under MCL 712A.19b(3)(b)(ii). Termination of parental rights is permissible even in the absence of definitive evidence regarding the identity of the perpetrator of abuse when the evidence shows that the parent either caused the child's injuries or failed to prevent the child's injuries. *In re VanDalen*, 293 Mich App 120, 139-140; 809 NW2d 412 (2011); *In re Ellis*, 294 Mich App 30, 33-36; 817 NW2d 111 (2011). In the case at bar, even if, as respondent contends, he did not perpetrate the abuse, he, as the child's caretaker, had an opportunity to prevent the abuse perpetrated on AL, but failed to do so. Indeed, respondent, along with mother, were AL's only caretakers. The evidence produced at trial demonstrated that AL's injuries were the product of non-accidental abuse, and respondent was unable to offer a plausible explanation for AL's injuries in light of Dr. Angelilli's testimony that AL's fall onto the air pump could not have caused her injuries. Additionally, the evidence produced at trial demonstrated that respondent was unaware of the bite mark on AL's shoulder. Therefore, even if respondent was not the perpetrator of the abuse, he was in a position to prevent the abuse, but failed to do so. See *In re Ellis*, 294 Mich App at 35-36 (holding that even if the respondents in that case did not perpetrate the abuse, termination was appropriate pursuant to MCL 712A.19b(3)(b)(ii) because the respondents failed to prevent the abuse). Further, given the severity of AL's injuries, there was a reasonable likelihood that AL would suffer injury or abuse in the foreseeable future if returned to respondent's home. Consequently, the trial court did not clearly err in finding that termination was appropriate under MCL 712A.19b(3)(b)(ii). *Id.*

¹ In reaching this conclusion we reject respondent's argument that certain witnesses, Mills in particular, lacked credibility because we defer to the trial court's credibility determinations. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

“Only one statutory ground need be established by clear and convincing evidence to terminate a respondent’s parental rights” *Id.* at 32. Although we need not decide whether the remaining statutory grounds were established by clear and convincing evidence, we find that the trial court did not clearly err by finding that termination was appropriate under the remaining statutory grounds. Regarding MCL 712A.19b(3)(g), the record reveals that respondent failed to provide proper care and custody for AL and that there was no reasonable expectation that he would be able to provide proper care and custody within a reasonable amount of time because the record reveals that AL sustained non-accidental, abusive trauma that likely occurred while she was in respondent’s care. See *In re VanDalen*, 293 Mich App at 141. Moreover, at the time of the termination hearing, respondent did not have stable housing or adequate finances. He also refused petitioner’s assistance in locating housing and employment. Thus, there was ample evidence that respondent failed to provide his children with proper care or custody and that there was no reasonable expectation the he would be able to do so within a reasonable time considering the ages of his children. Similarly, with regard to MCL 712A.19b(3)(j), there was clear and convincing evidence of a reasonable likelihood that respondent’s children would be harmed if returned to his home because of the severity of AL’s injuries. We also find that there was clear and convincing evidence for termination under MCL 712A.19b(3)(k)(iii) because the record contains evidence that AL suffered severe injuries that were indicative of child abuse at approximately the same time she was left in respondent’s care, and because respondent was unable to provide a credible explanation for the cause of AL’s injuries. Consequently, on this record, we are not left with a definite and firm conviction that the trial court made a mistake in finding that there were statutory grounds for termination of respondent’s parental rights. *In re BZ*, 264 Mich App at 296-297.

Next, respondent claims error requiring reversal because petitioner failed to present specific evidence that respondent injured AL’s siblings, AC and KE. This claim is meritless. Although there was no evidence that respondent injured the other children, termination was proper under the clear and unambiguous language of MCL 712A.19b(3)(b) and (k), which provide for termination when a parent abuses the child “or a sibling of the child.” Additionally, “[e]vidence of how a parent treats one child is evidence of how he or she may treat the other children.” *In re Hudson*, 294 Mich App 261, 266; 817 NW2d 115 (2011).

II. BEST INTERESTS

On appeal, respondent merely states that he loves and cherishes his children. He does not offer any support for his contention that termination was not in the children’s best interests, and this Court has no duty to rationalize the basis for his claim. *In re CR*, 250 Mich App 185, 199; 646 NW2d 506 (2001); *In re Keifer*, 159 Mich App 288, 294; 406 NW2d 217 (1987). Nonetheless, both the caseworker and the evaluating psychologist opined that termination was in the children’s best interests. The young children needed a safe and permanent environment, which respondent was unable to provide. Reviewing the whole record, we are not left with a definite and firm conviction that the trial court made a mistake when it found that termination of respondent’s parental rights was in the children’s best interests. See *In re BZ*, 264 Mich App at 296-297.

Affirmed.

/s/ Jane M. Beckering
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan