

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of ELDER/MALONE, Minors.

UNPUBLISHED  
October 28, 2014

No. 320733  
Wayne Circuit Court  
Family Division  
LC No. 13-515100-NA

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In the Matter of ELDER, Minors.

No. 320734  
Wayne Circuit Court  
Family Division  
LC No. 13-514962-NA

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In the Matter of MILLER, Minors.

No. 320735  
Wayne Circuit Court  
Family Division  
LC No. 13-515109-NA

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Before: BOONSTRA, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

In these consolidated cases, respondent C. Elder appeals by right the trial court's orders terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i), (j), (k)(iii), and (k)(iv).<sup>1</sup> We affirm.

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<sup>1</sup> In Docket No. 320733, respondent's parental rights to CME and NMM were terminated pursuant to §§ 19b(3)(b)(i), (j), and (k)(iv). In Docket No. 320734, respondent's parental rights to CKE and CJE were terminated pursuant to §§ 19b(3)(b)(i), (j), and (k)(iii). In Docket No. 320735, respondent's parental rights to KMM-1 and KMM-2 were also terminated pursuant to §§ 19b(3)(b)(i), (j), and (k)(iii).

The trial court did not clearly err in finding that §§ 19b(3)(b)(i), (j), and (k)(iii) were each established by clear and convincing evidence. *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008); MCR 3.977(E)(3) and (K). In 1998, respondent caused the death of his three-month-old son, for which he was convicted of manslaughter. Respondent fathered six more children between 2008 and 2013. In late 2013, respondent's 19-month-old son, CKE, suffered severe burns to both hands while in respondent's custody. Respondent claimed that CKE accidentally injured himself by overturning a cup of hot water that respondent had placed within his reach. The evidence, however, indicated that the injuries could not have occurred accidentally. A physician testified that the uniform glove-like burn pattern on both hands was not the type that would result from spilling hot water on one's hands, but instead was consistent with immersion, and that due to the natural reflex response to pain, a child could not have voluntarily submerged both hands in hot water and held them there. The physician concluded that the injuries were "diagnostic as physical abuse." Respondent's explanation for the injuries was also belied by CME's statement that respondent took CKE into the bathroom to wash his hands, that CKE began to cry while in the bathroom, and that CKE's hands were "burning" and "falling off" when he emerged from the bathroom.

Thus, the trial court did not clearly err in finding that respondent's act caused CKE's injuries. That respondent was convicted of manslaughter for causing the death of one child and deliberately inflicted serious burn injuries on another child supports the trial court's determination that no child was safe in respondent's custody and was reasonably likely to be injured or abused in the foreseeable future if placed in respondent's home. Accordingly, the trial court did not clearly err in finding that grounds for termination were established under §§ 19b(3)(b)(i), (j), and (k)(iii).<sup>2</sup>

Contrary to what respondent asserts, petitioner was not required to prove that he would neglect his children for the long-term future as held in *Fritts v Krugh*, 354 Mich 97, 114; 92 NW2d 604 (1958), overruled on other grounds by *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). The decision in *Fritts* predates the enactment of § 19b(3), which now sets forth the criteria for termination of parental rights.

We also reject respondent's claim that petitioner was required to provide reunification services before the cases could proceed to termination. "Reasonable efforts to reunify the child and family must be made in all cases" unless certain aggravating circumstances are present, MCL 712A.19a(2), one of which is that there has been a judicial determination that the parent has subjected the child to aggravated circumstances as provided in MCL 722.638. MCL

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<sup>2</sup> Respondent appears to be unaware that the trial court also relied on § 19b(3)(k)(iv) as a statutory basis for terminating his parental rights to CME and NMM. It is unclear why the trial court relied on § 19b(3)(k)(iv) in one case, but not the other two cases. Regardless, because the trial court's termination of parental rights to each child is supported by another statutory ground, it is unnecessary to determine whether termination was also warranted under § 19b(3)(k)(iv). Any error in relying on this additional ground would be harmless. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

712A.19a(2)(a). Aggravated circumstances exist when a parent has abused a child or a child's sibling and the abuse included battering, torture, or other severe physical abuse. MCL 722.638(1)(a)(iii). Here, the trial court did not err in determining that respondent severely physically abused CKE. Accordingly, reunification services were not required. MCL 722.638(2).

Respondent also argues that termination of his parental rights was not in the children's best interests. We disagree. "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). Whether termination is in the child's best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In deciding whether termination is in a child's best interests, the court may consider a variety of factors, including the child's safety and well-being, *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011), and whether the parent can provide a safe and stable home, *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). Respondent caused the death of one child and deliberately inflicted severe burn injuries on another. Respondent presented a clear risk of harm to the children's safety and well-being. Thus, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K).

We affirm.

/s/ Mark T. Boonstra  
/s/ Jane E. Markey  
/s/ Kirsten Frank Kelly