

**Court of Appeals, State of Michigan**

**ORDER**

In re I Messer Minor

Docket No. 325375

LC No. 14-001013-NA

Michael J. Riordan  
Presiding Judge

Pat M. Donofrio

Jane M. Beckering  
Judges

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The Court orders that the opinion issued in this case is hereby AMENDED to correct a clerical error. The opinion is corrected to read June 16, 2015 as the date of the opinion.

In all other respects, the opinion remains unchanged.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUN 29 2015

Date

*Jerome W. Zimmer Jr.*  
Chief Clerk

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* I. MESSER, Minor.

UNPUBLISHED  
June 16, 2016

No. 325375  
Ingham Circuit Court  
Family Division  
LC No. 14-001013-NA

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

PER CURIAM.

Respondent-father appeals by right the trial court’s order terminating his parental rights to the child at issue, IM, under MCL 712A.19b(3)(b)(i) (parent caused physical injury or abuse and there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future), MCL 712A.19b(3)(g) (failure to provide proper care or custody and no reasonable expectation that parent will be able to provide proper care and custody), MCL 712A.19b(3)(j) (reasonable likelihood of harm), and MCL 712A.19b(3)(k)(iii) and (v) (battering, torture, or other severe physical abuse and life-threatening injury). We affirm.

I. BACKGROUND

When IM was less than two months old, she was admitted to a hospital with what her treating physician characterized as life-threatening injuries. She had multiple broken bones and bruises all over her body. She had suffered a stroke and was experiencing bleeding around her brain. She was also experiencing seizures. The doctor testified that IM had both new and old injuries. It is undisputed that IM was in respondent’s sole care immediately before she was taken to the hospital. Respondent claimed that IM’s injuries had been caused four days earlier when he was holding her and tripped on his cats. The treating physician testified that respondent’s explanation was not consistent with the nature and extent of IM’s injuries.

A police officer interviewed respondent at the hospital and at the police station. Respondent told the officer that he frequently became frustrated when IM cried and that he would yell at her and shake her until she stopped crying. He recounted one incident in which he “slammed” the child into his abdomen and bent her legs backward when she would not stop crying. He also claimed that he heard voices in his head and that he was “not ready to be a parent” until he received help.

## II. STATUTORY GROUNDS

A trial court's determination that the statutory grounds for termination have been established by clear and convincing evidence is reviewed for clear error. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). "A finding is clearly erroneous [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* (internal quotation marks and citations omitted; alteration in original).

Pertinent to this appeal, MCL 712A.19b(3) provides that a respondent's parental rights may be terminated for the following reasons:

(b) The child or a sibling of the child has suffered physical injury or physical . . . abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical . . . 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.

\* \* \*

(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 . . . and the abuse included 1 or more of the following:

\* \* \*

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

\* \* \*

(v) Life-threatening injury.

The trial court found that MCL 712A.19b(3)(b)(i) had been established by clear and convincing evidence. The court concluded that the evidence showed that respondent had caused IM's injuries. The court also highlighted respondent's admission that he is 'not ready to be a parent' but that he might be ready 'in 17 years once he got the help he needed.' "

The trial court's finding that § 19b(3)(b)(i) had been established is firmly rooted in the record evidence. There was clear and convincing evidence that respondent had caused physical injuries to IM. Medical testimony established that when she presented to the hospital, IM had bleeding around her brain, had suffered a stroke on her right side, a broken rib, fractured leg bones, and bruising all over her body. The child's treating physician, an expert in pediatrics and child abuse, testified that she also "presented with recurrent seizures, decreased level of consciousness, and respiratory embarrassment." He described her injuries as life-threatening. He was clear in his testimony that IM's injuries were indicative of child abuse and that respondent's explanation—that she was injured when he had tripped while holding her four days prior—could not explain her recent and life-threatening head injury. It is also clear that IM was in respondent's care when the new injuries occurred. Moreover, respondent admitted to the police that he had violently shaken the child on several occasions to get her to stop crying.

The trial court also did not err in finding that there was a reasonable likelihood that IM would suffer additional injuries if she remained with respondent. Again, the injuries inflicted on this child were severe. In his police interview, respondent admitted that he was incapable of properly caring for IM when she was crying, as he would become frustrated and violently shake her. He admitted to doing so on several occasions. He also admitted to slamming her into his chest when he was upset and frustrated and that this had caused her legs to bend backward. These behaviors evidence a reasonable likelihood that the child would be harmed if returned to respondent's care.

The trial court found that MCL 712A.19b(3)(g) had been established for the same reasons stated for MCL 712A.19b(3)(b)(i), and added that respondent would "not be able to rectify these conditions within any reasonable time as he is facing serious charges and has serious mental health conditions." Given the evidence, we agree. The trial court also found that MCL 712A.19b(3)(j) had been established because respondent "is unable to care for children and loses control when they cry or fuss. He has and will harm children in his care." This finding is consistent with the record evidence, particularly respondent's own admissions.

Finally, the trial court found that MCL 712A.19b(3)(k)(iii) and (v) had been established given "[t]he nature of the extensive injuries from the Respondent Father's shaking and manhandling the child resulted in broken bones and brain trauma." The court further noted that "[a] medical coma was induced to help save [IM's] life." "She is lucky to be alive," the court concluded. These findings were entirely consistent with the record evidence.

We also reject respondent's suggestion that services to improve his parenting would have been appropriate. "Generally, reasonable efforts must be made to reunite the parent and children unless certain aggravating circumstances exist." *In re Moss*, 301 Mich App 76, 90-91; 836 NW2d 182 (2013), citing MCL 712A.19b(2). However, petitioner "is not required to provide reunification services when termination of parental rights is the agency's goal." *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Petitioner may also request, as it did in this case, termination in the initial petition. MCL 712A.19b(4); *In re Moss*, 301 Mich App at 91. Under these extreme circumstances, seeking termination at the initial disposition hearing was justified. See MCL 722.638(1)(a)(iii) and (iv) (requiring petitioner to seek termination at the initial disposition hearing where the parent battered, tortured, or severely abused the child, or where the parent inflicted life-threatening injury).

### III. BEST INTERESTS

Respondent also argues that the trial court erred in finding that termination of his parental rights was in IM's best interests. A trial court's determination that termination of parental rights is in the best interests of the child by a preponderance of the evidence is reviewed for clear error. *In re Rood*, 483 Mich at 91.

"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). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

Here, the trial court stated that it was doubtful whether a "positive bond" existed between respondent and IM given the abuse he inflicted on her. The court also characterized respondent's parenting ability as "non-existent," given testimony from the child's mother and maternal grandmother that they repeatedly had to direct respondent regarding the proper way to handle an infant. The court stated that termination of respondent's parental rights would allow IM to be provided with the "permanence and stability of care provider(s) who are fully able to appropriately handle both the everyday care of a young child and also the residual effects of her life-long injuries."

The trial court did not err in finding that it was in IM's best interests to terminate respondent's parental rights. By his own admissions, respondent was incapable of adequately caring for a child. The evidence also pointed to respondent being a source of danger to the child's well-being. Further, there was no evidence that any bond existed between respondent and IM, and, as stated by the trial court, given the abuse respondent inflicted, it is unlikely that one existed.

Affirmed.

/s/ Michael J. Riordan  
/s/ Pat M. Donofrio  
/s/ Jane M. Beckering