

STATE OF MICHIGAN
COURT OF APPEALS

In re L. B. C. HAMPTON, Minor.

UNPUBLISHED
April 12, 2016

No. 328935
Wayne Circuit Court
Family Division
LC No. 14-518612-NA

Before: O'CONNELL, P.J., and MARKEY and O'BRIEN, JJ.

PER CURIAM.

Respondent-mother, K. Walker, appeals as of right the trial court's order terminating her parental rights to her minor child under MCL 712A.19b(3)(b)(i) (parent caused physical injury), (b)(ii) (parent failed to prevent physical injury), (g) (failure to provide proper care and custody), and (j) (risk of harm if child returned to parent). We affirm.

I. FACTUAL BACKGROUND

In November 2014, the child reported to a hospital with a fractured forearm and a fractured femur. According to Children's Protective Services worker Juliette Todd, Walker and her live-in partner, Mills, both stated that the child and Mills's unrelated child had fallen down the stairs. When Todd investigated, she found that the stairs had no baby gate to prevent falls. Walker stated she was at work, and Mills reported the children fell down the stairs while he was preparing lunch. Walker testified that the children liked to watch television upstairs, and she allowed them to do so without supervision, but would not do it again.

On December 10, 2014, Todd received another complaint related to the child. According to Todd, when the child returned to the hospital to have her casts removed, a large burn was discovered on the back of her shoulder, and the child had a variety of other superficial injuries, including large scratch marks on her forehead, mouth, arms, and one foot. Another large burn was discovered underneath the cast when the hospital removed it. The child was hospitalized for two days to treat her second-degree burns. Todd testified that when she tried to speak to Walker to develop a safety plan for the child, Walker walked away from her.

Initially, Walker and Mills told Todd that a hot extension cord must have caused the burns. However, Walker testified that she no longer believed doctors who stated that the burn under the child's cast was a burn. Walker believed that a screw got into the child's cast and caused the injury. Walker testified that she had since moved out of Mills's home and now lived with her sister. According to Walker, she still talked occasionally with Mills, but left his home

because of “normal relationship problems”; specifically, Mills was on the phone with women at all hours of the night. Mills testified that he had not caused the child’s injuries.

The Department of Health and Human Services (the Department) petitioned for protective custody and immediate termination. The trial court authorized the petition for protective custody over the child. At the preliminary hearing, the trial court ordered that “I’m going to order you to keep [reasonable efforts] open. Now that’s going to take positive action on mother’s part . . . if she wishes to receive referrals for any type of services that would assist her in reunifying with her child then she needs to make herself available to you.” There is no indication in the record that Walker sought services. Following the combined adjudication and dispositional hearing, the trial court terminated Walker’s parental rights.

II. STANDARDS OF REVIEW

This Court reviews for clear error whether the trial court engaged in reasonable efforts to reunify a child with his or her parents and the trial court’s factual findings and ultimate determinations on the statutory grounds for termination. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). We also review for clear error the trial court’s determination regarding the children’s best interests. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake. *Mason*, 486 Mich at 152.

III. REASONABLE EFFORTS

Walker contends that the trial court erred by failing to order the Department to engage in reasonable efforts to reunify her with her child. We disagree.

Parents have a significant constitutional liberty interest in the care and custody of their children. *In re Miller*, 433 Mich 331, 346; 445 NW2d 161 (1989); *MLB v SLJ*, 519 US 102, 119; 117 S Ct 555; 136 L Ed 2d 473 (1996). This right entitles the parent to due process before the state may remove the parent’s child from his or her custody. *In re Sanders*, 495 Mich 394, 403-404; 852 NW2d 524 (2014). However, the Department need not provide services to every family in every situation. See MCL 712A.18f(1)(b); *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). “Services need not be provided where reunification is not intended.” *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008). This includes when the Department seeks termination at the initial disposition hearing. *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013).

In this case, because of the serious nature of the child’s injuries, the Department petitioned to terminate Walker’s parental rights at the initial dispositional hearing. The trial court was not required to order reunification services. Additionally, while it was not required to do so, the trial court *did* order the Department to engage in reunification services if Walker requested them. There is no indication that Walker requested any services. We conclude that the trial court did not clearly err by failing to order the Department to engage in efforts to reunify Walker with her child.

IV. STATUTORY GROUNDS

Walker contends that the trial court clearly erred when it found that statutory grounds supported terminating her parental rights, and that this error deprived her of her constitutionally protected interests in her child. We disagree.

The trial court may terminate the parent's parental rights at the initial dispositional hearing if it finds on the basis of clear and convincing, legally admissible evidence that the facts in the petition are true and establish a statutory basis for terminating the parent's parental rights under sections pertinent to this appeal, including MCL 712A.19b(3)(b), (g), and (j). See MCR 3.977(E)(3); *In re Utrera*, 281 Mich App 1, 15-16; 761 NW2d 253 (2008). The Department has the burden to prove the existence of a statutory ground by clear and convincing evidence. MCL 712A.19b(3); *Mason*, 486 Mich at 166. Clear and convincing evidence is "evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (quotation marks and citation omitted, alteration in original).

MCL 712A.19b(3)(b) provides that the trial court may terminate a parent's rights 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.

Termination under MCL 712A.19b(3)(b)(i) and (ii) is appropriate when circumstances indicate that at least one caregiver perpetrated the abuse and the other failed to prevent it. *In re Ellis*, 294 Mich App 30, 35; 817 NW2d 111 (2011).

Additionally, MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights if

[t]he 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.

And MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights if

[t]here 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.

Evidence that a child suffered serious, unexplained, non-accidental injuries consistent with abuse supports terminating a parent's rights under MCL 712A.19b(3)(g) and (j). *In re VanDalen*, 293 Mich App 120, 140-141; 809 NW2d 412 (2011).

In this case, the two-year-old child suffered several serious, non-accidental injuries over the course of a month when in the care of Walker and Mills, Walker's live-in partner. Initially, the child fell down the stairs. Despite the serious nature of the child's injuries, Walker failed to install a baby gate on the stairs. Walker continued to leave the child in Mills's care, even though the child developed several superficial injuries. The child ultimately suffered serious burns that required a two-day stay in the hospital. Walker had apparently noticed the injuries a few days earlier but failed to take the child in for medical care. When Todd attempted to speak to Walker about a safety plan, Walker simply walked away. Walker's attempts to explain the burns were nonsensical—it is difficult to imagine how a toddler could burn herself through a cast, or why a doctor would state that an injury was a burn when it was actually a screw. Walker ultimately broke off her relationship with Mills, not because of the danger he posed to the child, but rather because other women were calling him.

We are not definitely and firmly convinced that the trial court made a mistake when it found that the evidence supported terminating Walker's parental rights under MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). The injuries, which included broken bones and severe burns, were serious. Either Walker caused the child's injuries or Mills repeatedly injured the child over the course of a month, and Walker failed to prevent the injuries. Additionally, Walker failed to listen to or ignored the Department's efforts to ensure that the child would be safe in Walker's care.

V. BEST INTERESTS

Finally, Walker contends that the trial court clearly erred when it found that termination was in the child's best interests. Again, we disagree.

The trial court must order the parent's rights terminated if it finds from a preponderance of evidence that termination is in the children's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012); *Moss*, 301 Mich App at 83. To determine whether termination of a parent's parental rights is in a child's best interests, the court should consider a wide variety of factors that may include “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.” *Olive/Metts*, 297 Mich App at 41-42. The trial court may also consider “a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption.” *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

In this case, the trial court considered a variety of pertinent factors when determining the child's best interests. While it did not address Walker's bond with the child, that is only one factor among many possible factors. The trial court addressed the serious injuries the child received in Walker's care and Walker's inability to explain them, which reflected on Walker's parenting abilities. The trial court also addressed the child's needs for safety, permanence, and stability. The trial court heavily weighed the child's young age and her needs for a safe and

stable home. The trial court found that the child had a strong likelihood for adoption. It considered the entire record when making its findings regarding the child's best interests, and its findings were supported by record evidence. We are not definitely and firmly convinced that the trial court made a mistake when it found that terminating Walker's parental rights was in the child's best interests.

We affirm.

/s/ Peter D. O'Connell

/s/ Jane E. Markey

/s/ Colleen A. O'Brien