

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SHAWNA NATASHA YOUNG
and JAZMINE JALNA DENISE BIRCHETT,
Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

STEPHANIE NICOLE YOUNG BIRCHETT,

Respondent-Appellant,

and

CLARENCE THOMAS BIRCHETT and JERRY
LEE MIXON,

Respondents.

In the Matter of SHAWNA NATASHA YOUNG
and JAZMINE JALNA DENISE BIRCHETT,
Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JERRY LEE MIXON,

Respondent-Appellant,

and

UNPUBLISHED
February 14, 2006

No. 264642
Wayne Circuit Court
Family Division
LC No. 05-437929-NA

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STEPHANIE NICOLE YOUNG-BIRCHETT and
CLARENCE THOMAS BIRCHETT,

Respondents.

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother Stephanie Young Birchett appeals as of right from the order terminating her parental rights to both children pursuant to MCL 712A.19b(3)(b)(ii), (g), and (j). Respondent father Jerry Lee Mixon appeals as of right from the same order terminating his parental rights to Shawna pursuant to MCL 712A.19b(3)(a)(ii), (g), and (k)(i). We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in determining that the statutory grounds for termination were established by clear and convincing evidence or in its best interests ruling. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 353, 355; 612 NW2d 407 (2000).

The minor child Shawna, who was 17 months old at the time, was taken to the hospital suffering from the effects of dehydration and from sexual abuse. The evidence established that respondent mother, her primary caretaker, had failed to provide adequate food and drink to the child for a number of days. Respondent mother concedes that the child's dehydration was the result of her failure to provide sufficient quantities of fluids. However, she argues that she was only 15 years old and relied upon the child's godmother, who told her not to give the child a bottle any more. This claim is not borne out by the lower court record, which reveals that respondent mother was in her twenties rather than her teens when the pertinent events occurred. Regardless of respondent's age, the evidence established that the child suffered from physical injuries caused by dehydration, that respondent mother had the opportunity to prevent such injuries and failed to do so, and that there was a reasonable likelihood that the child would suffer injury in the foreseeable future if placed in her home.

Regarding the issue of sexual abuse, respondent mother first points to the discrepancies in the testimony of Dr. Daniel Taylor and Dr. Mary Leih-Lei, and argues that the physical signs of the sexual abuse were not obvious to a layperson. Regardless of whether the tears in the child's rectum and vagina were visually evident, there was testimony that respondent mother knew that her husband was sexually abusing Shawna.¹ Respondent mother told the protective services worker that her husband started sharing a bed with Shawna and having sex with her because respondent mother would not sleep with him following the birth of her second child. The night before Shawna was taken to the hospital, respondent mother knew that her husband was sleeping

¹ Respondent mother's husband is not Shawna's biological father.

in the same bed with Shawna and heard the child screaming four or five times during the night. Although respondent mother went to the bedroom door, her husband told her that the child was fine and respondent mother did nothing further to protect Shawna from the abuse. Moreover, although she saw the child's eyes roll to the back of her head the following day, respondent mother failed to seek medical attention for the child until her husband returned home from work around 7:00 p.m.

Respondent mother does not address how termination was clearly not in the children's best interests. Rather, she argues that the trial court clearly erred in terminating her parental rights because clear and convincing evidence was not presented warranting termination under the above subsections. However, as discussed above, we find that the trial court properly terminated her parental rights under MCL 712A.19b(3)(b)(ii), (g), and (j). Therefore, respondent mother's argument has no merit.

Respondent father argues that the trial court erred in finding that he deserted and abandoned his daughter, relying on the fact that respondent mother obtained a PPO against him. However, the PPO expired on June 25, 2004. After the expiration of this PPO, respondent father still failed to visit or support the child for a period exceeding 91 days. He further argues on appeal that he was not given the opportunity to care for his child and should have been given a treatment plan that included services to unify the family. However, his failure to visit and care for his daughter since the child's birth, and the fact that he did not have a job or the means to financially support his daughter, support the trial court's findings that he failed to provide proper care for the child and there was no reasonable expectation that he would be able to provide proper care within a reasonable time considering the child's age.

Regarding the issue of Shawna's best interests, respondent father argues that there was no evidence that he was an unfit parent or that he harmed the child in any way. However, the issue at this stage of the termination hearing is not whether respondent was a fit parent or whether he had harmed the child but whether the child's best interests precluded termination of his parental rights. The evidence showed that respondent father had seen the child only twice since her birth, and he had not supported her financially. Given these facts, the trial court did not clearly err in finding that termination of respondent father's parental rights was in the child's best interests.

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald