

STATE OF MICHIGAN
COURT OF APPEALS

In re Ide, Minor.

UNPUBLISHED
February 19, 2015

Nos. 323031, 323032
Lenawee Circuit Court
Family Division
LC No. 13-000168-NA

Before: MURRAY, P.J., and HOEKSTRA and WILDER, JJ.

PER CURIAM.

Respondents, Lindsay Robison and Jason Ide, appeal as of right the trial court's order terminating their parental rights to the minor child, JI, under MCL 712A.19b(3)(b)(i). Because the trial court did not clearly err by terminating respondent's parental rights, we affirm.

On July 6, 2013, JI, who was then approximately 11 weeks old, began to have difficulty breathing, his arms moved abnormally, and his eyes rolled back in his head. JI was taken to the hospital where medical personnel determined that he had blood on his brain and retinal hemorrhages too numerous to count. Based on this evidence, Dr. Bethany Mohr, a board certified child abuse pediatric specialist, determined that JI had been subjected to nonaccidental abusive head trauma. She opined, based on the physical evidence, that the abuse likely consisted of shaking JI or slamming him against a soft surface with considerable force.

Subsequently, the Department of Human Services (DHS) filed a petition seeking termination of respondents' parental rights. The trial court concluded there was clear and convincing evidence to support termination under MCL 712A.19b(3)(b)(i) (the child suffered abuse caused by the parent and there is a reasonable likelihood that the child will be harmed if returned to the parent's care). After also concluding that termination was in JI's best interests, the trial court terminated respondents' parental rights. Respondents both now appeal as of right.

On appeal, respondents contend that termination under MCL 712A.19b(3)(b)(i) was not appropriate because the trial court could not conclusively determine who caused JI's injuries. They also contend that JI's best interests were not served by terminating their parental rights and that the trial court erred in terminating their parental rights where petitioner had not complied with its obligation to offer services as required by MCL 712A.19a(2).

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination under MCL 712A.19b(3) has been proven by clear and convincing evidence. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). The trial court must also

find that a preponderance of the evidence supports the conclusion that termination is in the child's best interests. *In re Moss*, 301 Mich App 76, 83, 90; 836 NW2d 182 (2013). "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).

An appeal from an order terminating parental rights is reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 357; 612 NW2d 407 (2000). "A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). When assessing the trial court's factual findings, due regard is given to the trial court's "special opportunity" to judge the credibility of the witnesses. *In re Ellis*, 294 Mich App at 33.

In this case, the trial court terminated respondents' parental rights pursuant to MCL 712A.19b(3)(b)(i), which states that the trial court may terminate a parent's parental rights if the court finds clear and convincing evidence that:

(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.

When considering this provision, this Court has previously recognized that there will be times when the identity of a child's abuser may not be known with certainty. Nonetheless, even where the perpetrator's identity remains unknown, this Court has held that termination of parental rights is appropriate where the facts show that the parents must have either caused the injury or failed to prevent the injury. See *In re Ellis*, 294 Mich App at 35-36; *In re VanDalen*, 293 Mich App 120, 140; 809 NW2d 412 (2011). For example, in *In re Ellis*, 294 Mich App 31-32, a two month old child was brought into the hospital with severe injuries that medical personal determined to be the result of physical abuse. The parents could not provide an explanation for the injuries and it could not be proven who caused the child's injuries. The trial court nonetheless terminated the respondent's parental rights and on appeal this Court affirmed, concluding that the inability to say for sure who committed the abusive act might be relevant in criminal proceedings, "but it is irrelevant in a termination proceeding." *Id.* "When there is severe injury to an infant, it does not matter whether respondents committed the abuse at all, because under these circumstances there was clear and convincing evidence that they did not provide proper care." *Id.* Consequently, this Court held that termination of parental rights is permissible "even in the absence of definitive evidence regarding the identity of the perpetrator when the evidence does show that the respondent or respondents must have either caused or failed to prevent the child's injuries." *Id.* at 35-36. See also *In re VanDalen*, 293 Mich App at 140 ("Two infant children suffered severe, and in one case life-altering, injuries, at the hands of respondents because at least one of them perpetrated this shocking abuse and one of them failed

to adequately safeguard the children from the abuse. . . . It does not matter in the least which of them committed these heinous acts.”).

The present facts are analogous to those in *In re Ellis* and other cases therein, and the trial court did not clearly err in terminating respondents’ parental rights. Specifically, the facts undisputedly show that JI suffered grievous physical injury. At 11 weeks of age, JI was taken to the hospital with difficulty breathing and other symptoms. His head was noticeably large, and Dr. Mohr explained that a child’s head may expand due to chronic subdural hemorrhages. CAT scans and MRIs established that JI had blood on the brain, consisting of both old and new blood. Dr. Mohr dated the new blood and concluded it was 3 to 7 days old. She could not definitively fix the date of the older blood, but suggested that such blood was unlikely related to JI’s birth given that he was 11 weeks old and blood on an infant’s brain related to a child’s birth typically dissipates within 58 days. Tellingly from a medical perspective, an ophthalmology evaluation also showed that JI had retinal hemorrhages in all layers of his retina in both eyes.

Neither Robison nor Ide could provide an explanation for JI’s injuries, and there was no history of a car accident, fall from several stories high, or other significant trauma to explain JI’s injuries. Based on the physical evidence, Dr. Mohr opined that JI had been subjected to nonaccidental abusive head trauma. Dr. Mohr also opined that returning JI to the same environment, where he faced risk of further such injuries, would place JI at risk of death. In short, the medical evidence presented at trial conclusively established that JI had been subjected to severe nonaccidental abusive head trauma and that he faced a risk of serious harm if returned to the same environment.

The trial court indicated that it could not conclusively establish who caused JI’s injuries. The trial court did, however, determine that termination under MCL 712A.19b(3)(b)(i) was appropriate because the facts were such that Robison and Ide either caused JI’s injuries or failed to prevent those injuries. Specifically, the facts showed that JI had been primarily under Robison’s care, but that during the 3 to 7 day time frame related to the newer blood Ide also had unsupervised time with JI.¹ Notably, on July 4, 2013, Ide was alone with JI while Robison’s stepfather, Natividad Perez, slept in another room of the house. On that date, Perez awoke to the sound of JI crying loudly, and when he went to comfort JI, Perez noticed that JI’s face appeared gray in color. Two days later he was taken to the hospital with severe injuries. While respondents both disavowed any knowledge of JI’s injuries, the trial court reasonably concluded based on its opportunity to assess respondents’ credibility that respondents were inconsistent and incredible in their testimony. Further, although there were other caregivers for JI on occasion, the trial court also concluded based on the testimony presented that there was no evidence that any of the other caregivers had injured JI or had any tendency “to injure the child in such a horrible, intentional, and non-accidental manner.” In short, the evidence shows that both

¹ Although Dr. Mohr could not date the older blood on JI’s brain, she indicated it was unlikely related to JI’s birth given his age at the time of his examination. If this older blood was then also the result of abuse, Robison and Ide both had access to JI at various times since his birth.

respondents had an opportunity in which to cause JI's injuries and that one of them was responsible for JI's injuries.

Both respondents have attempted to avoid termination of their parental rights by disavowing responsibility for JI's injuries and claiming those injuries were inflicted by the other parent. Such arguments are unavailing because it is nonetheless true that respondents either personally caused JI's injuries or failed to protect him from that harm. See *In re Ellis*, 294 Mich App at 33, 35-36. Specifically, there is ample evidence to support the conclusion that respondents failed to protect JI. Most notably, Robison previously filed an ex parte motion to alter Ide's parenting time after she witnessed Ide "yank" a five week old JI out of his bassinet by his clothing. This specific allegation of abuse in the motion was in addition to other assertions of domestic violence between Ide and Robison as well as allegations of Ide's anger issues, including assertions that he had screamed and swore at JI. Ide has also purportedly pushed Robison while she was holding JI, and Robison's mother later raised concerns about Ide's method of bathing JI. As a result of Robison's motion, an order was entered affording Ide two hours of parenting time on Saturdays at Robison's home. Despite Robison's concerns about Ide's parenting and the existence of an order limiting his parenting time, Robison continued to allow Ide access to JI beyond those times, including, for example, on July 4th when Ide was alone with JI for a period of time and again on July 6th when Ide had sole care of JI. Indeed, despite her concerns, Robison met with a friend of the court employee to discuss providing Ide additional parenting time, and on July 5th she moved out of her mother's home to reside in an apartment with Ide. Perhaps most tellingly, Robison testified that she believed Ide was responsible for JI's injuries at issue in this case and yet, at the hospital when questioned by Dr. Mohr, Robison lied to Dr. Mohr and denied any instances of domestic violence. In other words, Robison lied to the doctor treating her severely injured child at a time when information about his history would have been of great importance to his diagnosis and treatment. Robison then admitted at trial that she lied because she wanted to protect Ide. Given this evidence, it is plain that, at a minimum, Robison failed to protect JI from harm.

Similarly, assuming for the sake of argument that Ide was not the cause of JI's injuries, the evidence shows that Ide failed to adequately protect JI. That is, Ide made no protest to an order restricting his parenting time to two hours each Saturday and made no objection to JI's remaining in Robison's care. Supposing that the cause of JI's injuries lay with Robison, it is clear then that Ide failed to make any effort to protect him, and this was despite the concerns he had previously expressed to CPS about the condition and suitability of Robison's home as well as Ide's own accusations that Robison had previously engaged in violence during their domestic disputes by, for example, striking Ide with a lamp. Moreover, like Robison, Ide lied to Dr. Mohr when asked if there were any domestic violence concerns in the home. On these facts, the trial court did not clearly err in concluding that, at a minimum, Ide failed to protect JI.

Considering the evidence as a whole, it is plain that JI suffered severe injuries as a result of physical abuse committed by one of the respondents. Despite the fact that respondents were ultimately responsible for JI's care, they have failed to provide any feasible explanation for his injuries. In such circumstances, it matters not which parent ultimately inflicted the grievous injuries because it has been shown by clear and convincing evidence that respondents either personally caused JI's injuries or failed to protect him from harm. See *In re Ellis*, 294 Mich App

at 33, 35-36. Consequently, the trial court did not err in concluding termination of respondents' parental rights under MCL 712A.19b(3)(b)(i) was warranted.

On appeal, respondents also contest the trial court's best interests determination. To terminate parental rights, in addition to finding that at least one of the statutory grounds for termination have been met, the trial court must make a finding that termination is in the child's best interests. MCL 712A.19b(5). When making a best interests determination, the trial court should weigh all available evidence and may consider a wide variety of factors. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Relevant factors include the child's bond to the parent, the parent's parenting ability, a parent's history of domestic violence, the parent's visitation history with the child, the children's well-being while in their care, and the possibility of adoption. *Id.* at 714. Most relevant to the present dispute, a court may consider a parent's history of child abuse. *In re Powers Minors*, 244 Mich App 111, 120; 624 NW2d 472 (2000). Further, a child's safety and well-being, including the risk of harm a child might face if returned to the parent's care, constitute factors relevant to a best interest determination. *In re VanDalen*, 293 Mich App at 142.

In this case, the trial court had before it evidence that JI had been grievously abused and that respondents either caused the injury or failed to protect JI from that injury. The question of who in particular inflicted the abuse remained unresolved. Given these circumstances, and particularly the uncertainty regarding the precise identity of his abuser, JI's safety and well-being could not be reasonably assured upon his return to either parent's care. Cf. *id.* at 141-142. Added to the terrible abuse involved in the present case, respondents had a history of domestic violence with both parents engaging in pushing and shoving during arguments. Despite the ongoing child protective proceedings and a no-contact order, they continued to have confrontational interactions. Although respondents note they are no longer a couple, the fact remains that their continued antagonistic behavior toward one another is an indication that they continue to persist in the same negative behaviors or, as the trial court phrased it, they have "not learned their lesson." Overall, the facts show that JI's well-being and safety are best served by continuation in his current placement and the trial court did not clearly err in concluding that a preponderance of the evidence showed termination of respondents' parental rights to be in JI's best interests. And, thus, the trial court did not err in terminating respondents' parental rights. See MCL 712A.19b(5).

Respondents also contend on appeal that the trial court's termination of their rights was premature given that petitioner had not fulfilled its obligation to provide reunification services as required by MCL 712A.19a(2). Contrary to respondents' arguments, such services were not required given the aggravated circumstances involved in this case and petitioner's request for termination in the initial petition. In particular, in relevant part, MCL 712A.19a(2) provides:

(2) The court shall conduct a permanency planning hearing within 30 days after there is a judicial determination that reasonable efforts to reunite the child and family are not required. Reasonable efforts to reunify the child and family must be made in all cases *except* if any of the following apply:

(a) There is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638. [Emphasis added.]

As made plain by the statute, reasonable efforts are not required where there is a judicial determination that the parent has subjected the child to “aggravated circumstances.” Relevant to the present case, these aggravated circumstances described in MCL 722.638(1) and (2) include instances where:

(a) The department determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child’s home, has 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.

(2) In a petition submitted as required by subsection (1), *if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent’s failure to take reasonable steps to intervene to eliminate that risk*, the department shall include a request for termination of parental rights at the initial dispositional hearing [Emphasis added.]

Clearly, there was a judicial determination that these aggravated circumstances exist in the present case where the trial court found that respondents either abused JI or placed him at an unreasonable risk of harm. Consequently, respondents were not entitled to reasonable efforts at reunification. See MCL 712A.19a(2)(a). Instead, given these aggravated circumstances, as authorized by MCL 712A.19b(4) and MCR 3.961(6), petitioner sought termination in the initial petition. Where, as in the present case, petitioner’s goal is termination, the petitioner is not required to provide reunification services. *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013). Indeed, as more fully set forth in MCR 3.977(E), reunification efforts are not required where, as in the present case, (1) the initial petition requested termination, (2) the trial court found by a preponderance of the evidence that there were grounds to assume jurisdiction, (3) clear and convincing evidence for at least one ground for termination had been established, and (4) termination was in the child’s best interests. See *In re Moss*, 301 Mich App at 91-92. On the facts of this case, respondents were not entitled to reunification efforts and the trial court did not err in terminating respondents’ parental rights without the provision of additional services.²

² As a related matter, Robison in particular incorrectly asserts on appeal that her circumstances are similar to those in *In re Rood*, 483 Mich 73, 107-122; 763 NW2d 587 (2009), such that she should be entitled to efforts at reunification. Contrary to Robison’s assertions, the present facts are not at all similar to those presented in that case. Unlike the father in *In re Rood*, Robison was afforded notice of the proceedings and participated in all proceedings affecting her parental

Affirmed.

/s/ Christopher M. Murray

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder

rights. Her due process rights were not violated. Cf. *id.* at 112. Moreover, the allegations in the present case are not those of simple neglect as in *In re Rood*, and this is not a case where petitioner ever intended reunification of the child with his parent or parents such that a parent would be entitled to reunification efforts. Instead, the current allegations involve grievous physical abuse and a failure to prevent that abuse that resulted in a request for termination in the initial petition and which warranted termination of parental rights without efforts at reunification. See *In re Moss*, 301 Mich App at 91-92; MCR 3.977(E); MCL 712A.19a(2)(a). Robison's reliance on *In re Rood* is quite simply misplaced.