STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ANTOWONE LAMAR MAYES, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

AMBER PATTERFRITZ,

Respondent-Appellant,

and

REGINALD MAYES,

Respondent.

UNPUBLISHED
March 16, 2001

No. 225905
Monroe Circuit Court
Family Division
LC No. 99-014470-NA

In the Matter of ANTOWONE LAMAR MAYES, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

REGINALD MAYES,

Respondent-Appellant,

and

AMBER PATTERFRITZ,

No. 225932
Monroe Circuit Court
Family Division
LC No. 99-014470-NA

Respondent.

Before: Hood, P.J., and Doctoroff and K.F. Kelly, JJ.

PER CURIAM.

Respondents appeal as of right from the order terminating their parental rights pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), and (k)(iii); MSA 27.3178(598.19b)(3)(b)(i), (b)(ii), (g), (j), and (k)(iii). We affirm.

Respondents argue that the family court erred in proceeding to a termination trial without first holding either a dispositional review hearing or a permanency planning hearing, pursuant to MCL 712A.19b(1); MSA 27.3178(598.19b)(1), MCR 5.973, and MCR 5.974(F). We disagree. The Child Protection Law, MCL 722.621 *et seq.*; MSA 25.248(1) *et seq.*, requires petitioner to seek termination of parental rights at the initial dispositional hearing if it is determined that a child has been abused, the abuse included "battering, torture, or other severe physical abuse,"[1] and 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 eliminate that risk. MCL 722.638(1) and (2); MSA 25.248(18)(1) and (2).

In this case, when the original petition was filed, petitioner was aware that the child suffered from a fractured right humerus, a bone in his upper arm, and several fractured ribs. However, petitioner did not know at that time whether the injuries were the result of an accident or were deliberately inflicted. Expert medical testimony at the subsequent adjudicative hearing eliminated all reasonable explanations for the child's injuries except child abuse. No evidence pointed to any perpetrators other than respondents, who acknowledged being the child's sole caretakers. Given these facts, petitioner was required to seek termination of respondents' parental rights, and the family court did not err in proceeding to a termination hearing without holding a dispositional hearing or a permanency planning hearing.

We also reject respondents' argument that a review hearing was required by statute or court rule. MCL 712A.19b(1); MSA 27.3178(598.19b)(1) determines only what should happen if a child remains in foster care following a review hearing or dispositional hearing. Likewise, MCR 5.974(F) gives the family court discretion to take action on a supplemental petition under certain circumstances, but does not require that a review hearing take place.

Both respondents argue that the trial court erred when it concluded that petitioner established statutory grounds for termination by clear and convincing evidence. Specifically,

---

[1] Severe physical abuse" is not defined under the act. "Child abuse" is defined as "harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare, or by a teacher or teacher's aide, that occurs through nonaccidental physical or mental injury; sexual abuse; sexual exploitation, or maltreatment." MCL 722.622(e); MSA 25.248(2)(3). "Severe physical injury" includes bone fractures. MCL 722.628(3)(c); MSA 25.248(8)(3)(c).

respondent Patterfritz argues that the family court clearly erred in finding that termination of her parental rights was warranted under §§ 19b(3)(b)(i) and (b)(ii). She contends that the family court erred in finding that it was not necessary to determine which parent "caused the physical injury" and which parent "had the opportunity to prevent the physical injury . . . but failed to do so." Patterfritz further argues that there was no evidence that she caused physical injury to the child or that she had the opportunity to prevent his injuries.

We find no clear error in the family court's conclusion that these statutory grounds were established by clear and convincing evidence. Although respondent is correct that petitioner did not conclusively prove that either respondent caused the child's injuries, all accidental causes of his injuries were ruled out at the termination hearing. Respondents testified that the child had been in their exclusive care between the time of his birth and the time his broken bones were discovered. Patterfritz testified that she was the child's primary caretaker and left him in Mayes' sole care only twice.

Moreover, circumstantial evidence indicated that both parents had the opportunity to prevent at least some of the child's injuries. The medical testimony indicated that the break in the child's arm would have been immediately very painful, and the child would have screamed for some time. The broken ribs would have been painful whenever the child was moved, dressed, or bathed. Under these circumstances, there were opportunities for either parent to discover the injuries and separate the child from the abusing parent. Finally, respondents lived together when the injuries occurred, remained a couple throughout the pendency of the case, and sat through all of the hearings and heard the evidence. Their denial of any knowledge of the source of the child's injuries indicates a "reasonable likelihood" that the child would "suffer injury or abuse in the foreseeable future" if returned to his parents' custody.

Patterfritz also argues that the family court erred in finding that termination of her parental rights was warranted under §§ 19b(3)(g) and (j). The same evidence that supports termination under §§ 19b(3)(b)(i) and (b)(ii) also supports a finding that respondents failed to provide proper care and custody for the child, that there was no reasonable expectation that respondents would be able to provide proper care and custody within a reasonable time, and that there was a reasonable likelihood, based on respondents' conduct, that the child would be harmed if returned to respondents. In addition, the evidence indicated that of the twenty-three available visits with the child, respondent Patterfritz attended only ten and did not show up or call for eleven of the missed visits. Patterfritz did not complete her psychological evaluation and missed several appointments for domestic violence counseling. Respondents argued in front of the child, expressed their hostility towards the caseworkers, and, at the time of the termination hearing, had no permanent home. There was no reasonable likelihood that respondents would be able to provide care and custody for the minor child within a reasonable time, and there was ample likelihood that the child would be harmed if returned to respondents.

Termination was also warranted under § 19b(3)(k)(iii). An orthopedic surgeon testified that the child's arm fracture was likely caused by a direct blow, either by an object or by a compression of the arm as the child laid on his side. He stated that it would take "a full thrust, with full body weight, with momentum to fracture a humerus in a child that age." He also thought that the injury to the child's ribs was caused by a blow or thrust applied to the chest wall.

The family court did not clearly err in finding that the child had been subjected to severe physical abuse.

Respondent Mayes argues on appeal that he was never told that he had to distance himself from respondent Patterfritz in order to avoid having his parental rights terminated, and there was no evidence that he chose her over the child. However, respondents lived together during the time that the child sustained his injuries, sat through all of the proceedings and heard the medical evidence that the child's injuries were the result of a severe trauma and must have been intentionally or recklessly inflicted. Because respondents continued their relationship after hearing this evidence, the court did not clearly err in determining that they had each chosen the other over the child.

Mayes also argues that he was in compliance with his treatment plan, except for the completion of a psychological examination. At the termination hearing, Mayes first contended that he had completed the examination, but then, on cross-examination, stated that he had briefly talked to the psychologist because he had trouble with the written tests. Mayes attended only nine of the twenty-three available visits with the child and did not show up or call for twelve of the missed visits. Contrary to Mayes' argument, the failure to complete the psychological examination and the missed visitations demonstrate that he was not in substantial compliance with his treatment plan.

Finally, both respondents argue that the family court erred in finding that it was in the child's best interests to terminate their parental rights. Respondent Mayes contends that the family court record is void of any mention of the child's best interests as it relates to him and that no evidence sustained the court's finding that "neither parent will be in a healthy and appropriate situation to parent him in the foreseeable future." He maintains that he demonstrated his desire to have custody of the child by attending parenting classes. Patterfritz argues that she showed a willingness to make changes.

Respondents have inappropriately placed the focus of the best interests inquiry on their own activities and desire to have custody. Once a petitioner establishes a statutory ground for termination, the family court must terminate parental rights unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). Here, the evidence was overwhelming that the child was intentionally injured by respondents, and their denial of the abuse strongly suggests that it would continue in the future. As the family court stated, "[n]o one can speak for [the child] nor intervene on his behalf the next occasion that either parent abuses him or fails to protect him. . . ." The court did not err in concluding that termination of respondents' parental rights was not clearly contrary to the child's best interests.

Affirmed.

/s/ Harold Hood
/s/ Martin M. Doctoroff
/s/ Kirsten Frank Kelly