

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of J.M.J., M.D.J., J.P.H., P.D.B., and
A.J.B., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JACETTA BOURNE JOHNSON,

Respondent-Appellant,

and

DUANE MICHAEL JOHNSON,

Respondent.

UNPUBLISHED
December 17, 2002

No. 238843
Wayne Circuit Court
Family Division
LC No. 98-363625

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii) and (g). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court did not clearly err in determining that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence showed that J.M.J. was diagnosed with Shaken Baby Syndrome, and, over the three-year course of these child protective proceedings, no evidence established that the child's serious physical impairments were the result of any disease or process other than having been physically abused. Respondent-appellant's husband, respondent Duane Johnson, was considered to have been the perpetrator of J.M.J.'s injuries and was allowed only supervised access to the children. Despite the suspicion surrounding Johnson, respondent-appellant again allowed him back into her home after the trial court dismissed its jurisdiction over the children and returned the children to her custody. A few months later, the couple's four-month-old infant, M.D.J., sustained six broken ribs. The evidence clearly showed that respondent-appellant failed to protect the children from abuse by Johnson and failed to provide

proper care and custody. There is no reasonable expectation that respondent-appellant will be able to protect the children or provide them with proper care and custody within a reasonable time because the evidence showed that she placed the children's well being second to Johnson.

Although the evidence did not establish that respondent-appellant's three older children had been seriously abused, the treatment J.M.J. and M.D.J. received is probative of the treatment and living conditions to which all of the children were subject. *In re Powers*, 208 Mich App 582, 588-589; 528 NW2d 799 (1995). Therefore, the trial court did not err in finding that the statutory grounds were established with respect to all of the children.

Additionally, the evidence did not show that termination of respondent-appellant's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Although beyond what was necessary, the trial court found that termination was in the children's best interests, and this was established by evidence that respondent-appellant placed Johnson in priority over the children to the point of allowing him back into her home after J.M.J.'s serious injury. Thus, the trial court did not err in terminating respondent-appellant's parental rights to the children.

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh