

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of L.B. and N.S. III, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHAMEKA BARNETT and NATHANIEL
SPARKS II,

Respondents-Appellants.

UNPUBLISHED

April 15, 2004

No. 250965

Berrien Circuit Court

Family Division

LC No. 2002-000022-NA

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

PER CURIAM.

Respondents appeal as of right from the trial court order terminating their parental rights to their minor children under MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. See MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). This case involves a three-month-old child who suffered second-degree burns on six different parts of his body. Respondents claimed to have been sleeping at the time, and respondent-father stated he was awakened by the cries of the minor child and found the minor child lying on the forced air heat vent on the floor of their apartment with several obvious burns. According to respondents, the minor child, who was sleeping in an infant car seat, had gotten out of the car seat and rolled several feet onto the heat vent, and the burns occurred while the child was on the vent.

An expert in pediatric care testified that the explanation given by respondents was not consistent with the burns suffered by the child. As the child was only three months old, he would be physically unable to get himself out of a car seat, physically unable to roll several feet, and physically unable to reposition or crawl while on the heat vent to achieve burns on various parts of his body. Moreover, the testimony of the expert was that temperatures of at least 120 to 125 degrees would be required to suffer burns of that nature and the contact would have to be continuous over a period of time for the burn to occur even at that temperature. He did indicate

that hotter temperatures could result in burns with just a quick touch. There was no evidence presented that would indicate how the forced air heat vent could achieve a temperature that high.

The court indicated on many occasions that it would be unable to return the children to the care of the respondents without a plausible explanation of how the burns occurred. Respondents exercised their Fifth Amendment rights and did not testify. A plausible explanation was never forthcoming, and respondents stuck to their initial explanation despite the expert's testimony. Nonetheless, the Family Independence Agency worked with respondents for more than fifteen months, offering a variety of services, including parenting classes, counseling, a parent aide, visitation, psychological assessments, and contact with the FIA caseworker. Respondents complied with most of the services by attending classes, counseling sessions and visitation. Respondents, who were described as low-functioning adults, were never able to show that they had grasped the concepts that they learned or that they would be able to implement the concepts taught to effectively parent the minor children, provide adequate care and custody, and keep them from harm. After more than a year of services, respondents had made no progress towards a better understanding of these concepts, and it was concluded by counselors and the FIA caseworker that additional services would not provide a benefit to respondents.

Considering the fact that respondents did not provide a plausible explanation for how the minor child suffered such severe burns and did not understand the seriousness of the situation in conjunction with the fact that significant services were provided and no progress had been made, the court found that the statutory requirements for termination of parental rights were met. In addition to these facts, respondents did not have an appropriate place for the children to live and, at the time of the termination trial, lived with three other people in a house that had a stench due to plumbing problems, spoiled milk left in the backyard, and litter strewn about the backyard.

Regarding the specific statutory requirements, the trial court correctly found that MCL 712A.19b(3)(c)(i) was met by clear and convincing evidence. Proceedings were brought because the minor child suffered second-degree burns on his body in six different places. The explanation given by respondents was not consistent with the testimony offered to the court by the expert in pediatric critical care. Despite the provision of services for over a year, respondents did not learn the concepts needed to provide effective parenting and to keep the minor children safe. Since insufficient progress had been made over that period of time and the experts indicated that they did not expect any additional progress to be made, the court correctly concluded that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time.

The court also correctly found that MCL 712A.19b(3)(g) was met by clear and convincing evidence. That court found that, without regard to intent, respondents did not provide proper care or custody for the minor child because he suffered severe second-degree burns while he was in their care. Based on the fact that significant services were provided to respondents over a period of more than a year and they made no progress toward understanding the gravity of the circumstance and what is required to provide proper care and custody of the minor children, the court properly found that there was no reasonable expectation that respondents would be able to provide proper care and custody within a reasonable time considering the young ages of the children.

Finally the court did not err in finding that MCL 712A.19b(3)(j) had been established as well. After a year of services, respondents did not understand the seriousness of the burns suffered by the minor child or the importance of providing a plausible explanation for what happened. Based on this, the court correctly found that there was a reasonable likelihood, based on the capacity of respondents, that the minor children would be harmed if returned to respondents' home.

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Michael R. Smolenski