

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of EMMANUEL CHAPMAN and
NICOLE TOWNSEL, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RACHEAL LAMEANA TOWNSEL,

Respondent,

and

EMMANUEL JAMES CHAPMAN, JR.,

Respondent-Appellant.

In the Matter of EMMANUEL CHAPMAN and
NICOLE TOWNSEL, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RACHEL LAMEANA TOWNSEL,

Respondent-Appellant,

and

EMMANUEL JAMES CHAPMAN, JR.,

Respondent.

UNPUBLISHED
December 13, 2007

No. 276901
Wayne Circuit Court
Family Division
LC No. 06-457968-NA

No. 276902
Wayne Circuit Court
Family Division
LC No. 06-457968-NA

In the Matter of D'ANGELA RENEE' SWEATT,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RACHAEL LEMEANA TOWNSEL,

Respondent-Appellant,

and

DEANGELO SWEATT,

Respondent.

No. 278022
Wayne Circuit Court
Family Division
LC No. 06-457968-NA

Before: Whitbeck, C.J., and White and Zahra, JJ.

PER CURIAM.

This is a consolidated appeal stemming from proceedings terminating the parental rights of respondent-father Emmanuel Chapman, Jr., and respondent-mother Rachael Townsel. In Docket Nos. 276901 and 276902, respectively, Emmanuel Chapman, Jr. and Rachael Townsel appeal as of right from the trial court's January 31, 2007 order terminating their parental rights to their children, Emmanuel Chapman and Nicole Townsel. The trial court terminated Rachael Townsel's parental rights pursuant to MCL 712A.19b(3)(b)(ii), (g), and (j), and terminated Emmanuel Chapman, Jr.'s parental rights pursuant to MCL 712A.19b(3)(g) and (k)(i). In Docket No. 278022, Rachael Townsel appeals as of right from the trial court's April 19, 2007 order terminating her parental rights to a third child, D'Angela Sweatt, pursuant to MCL 712A.19b(3)(g), (j), and (l).¹ We affirm.

¹ MCL 712A.19b(3) states in pertinent part as follows:

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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: . . . (ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the

(continued...)

I. Basic Facts And Procedural History

Emmanuel and Nicole were taken into protective services after Emmanuel, then approximately nine months old, “was treated at Henry Ford Hospital for a broken right femur” on August 15, 2006. According to hospital records,

[t]he mother maintains that her boyfriend rolled over on the child’s leg while they were sleeping. The medical staff reports that the mother failed to give a reasonable explanation for the injury. The child has had four emergency room visits this year.

Registered Nurse Michael Clemens was on duty during one of Emmanuel’s previous visits on February 28, 2006, when Rachael Townsel and two small children came into the emergency room at Henry Ford Hospital. According to Clemens, “In the 17 years I have been a nurse at Henry Ford Hospital, I have never once witnessed such treatment of children in my life.” Clemens explained that “most parents are on their best behavior in the Emergency Room. They comfort their children, they pick them up, they try to get them what they need if they wanted a drink, or if they wanted crackers or whatever.” From outside the examining room, Clemens heard Rachael Townsel say, “Shut up, or I’ll whip your ass.” She said it more than once and her voice was “very loud and it was very threatening. It was frightening.” Clemens looked into the room and saw “an infant on the gurney, and there was a child on the floor standing.” The little girl, who appeared to be between two and three years old, was standing up, “with arms outstretched, tears running down the face, and crying, ‘Pick me up.’ And mom was just ignoring it. It was really – it was really upsetting to me.” Clemens explained that a child abuse form had already been filed.

(...continued)

child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

* * *

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following: . . . (i) Abandonment of a young child.

* * *

(l) The parent’s rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

At the November 16, 2006 adjudication trial, 20-year-old Rachael Townsel testified that she now had a third child, who was born prematurely a month and a half earlier and was still in the hospital. She also testified about the incident that she believed might have caused the fracture to Emmanuel's leg. Contrary to hospital records, Rachael Townsel explained that a two-year-old child had fallen off the couch onto Emmanuel's leg. Rachael Townsel testified that Emmanuel had experienced other injuries. On one occasion, "his whole hand was red," and Children's Hospital told her that it was "probably a blood clot" and that "he probably pinched his hand or something." Another time, when he was five or six months old, a four-year-old girl bit Emmanuel. Rachael Townsel denied that Emmanuel was ever taken to the hospital with a bruised chest "from playing with a faucet," and denied that, on her last hospital visit, she told the doctor that Emmanuel's leg had been swollen for three weeks and was getting worse.

Rachael Townsel admitted that she gave her two-year-old daughter Nicole a "regular whooping" two or three times a week. Rachael Townsel explained that she "popped" the child with her hand three or four times "on her booty" or on her hand. "I pop her on her hand about three or four times just to let her know who I am." Rachael Townsel explained that she did not discipline Nicole without reason: "maybe if she pee on herself as far as her being potty trained, she pee on herself, yes she get a whooping for that." "Or if she cuss, which she do, do. She like to call people b-i-t-c-h a lot." Rachael Townsel described Nicole as "mean," and said "[s]he has an attitude out of this world. She thinks she own the world because her father makes her feel like she's the queen of the earth." Rachael Townsel said she never left a mark on her children, and did not hit them with a belt, because "I think that's child abuse."

Rachael Townsel testified that Emmanuel Chapman, Jr. was unemployed from the time that Nicole was born in February 2004, until April 2007, when he was incarcerated. The couple lived together until Nicole was about 17 months old; during that time, Emmanuel Chapman, Jr. provided about \$250 toward Nicole's care. Emmanuel Chapman, Jr. saw Nicole regularly during that time and "acted like [Emmanuel] didn't exist."

Rachael Townsel and the children lived on public assistance. She had been looking for a job since she was "about sixteen," but "everywhere I go, they're looking for experience, and I've never worked before." She never left her children in the care of others because she did not "trust people with my kids." She testified that she loved her children and would comply with a parent-agency agreement and provide a stable home environment for them. She did not believe that she needed parenting classes because she knew how to take good care of her children and had learned her parenting skills from her mother. However, the record reflects that Rachael Townsel had a prior history with protective services because her own mother was a crack addict who beat her.

Protective Services Worker Latoia Williams testified that there was an unsubstantiated referral involving Rachael Townsel on June 20, 2005. A substantiated referral on October 10, 2005, stated that the furnace and hot water did not work in the house where Rachael Townsel was living, but she could not be located, so no services were put in place.

Williams received another referral on June 27, 2006, and telephoned Rachael Townsel to arrange a meeting. Williams recalled that she had to "kind of talk" Rachael Townsel into meeting with her because she was afraid her children would be removed. Rachael Townsel brought Emmanuel to the meeting, down the street from where Rachael Townsel was living, but

said that Nicole was with relatives. Williams recalled that there was an old bite mark on Emmanuel's neck, and other old marks on his chest that Rachael Townsel said were caused by Emmanuel scratching himself. The palm of the child's hand was bruised, and Rachael Townsel "couldn't explain the bruise." Rachael Townsel told Williams that Emmanuel bruised easily because he was light skinned. Williams asked Rachael Townsel what kind of baby Emmanuel was, and Rachael Townsel responded, "this nigga hollered all night, and he's a bad ass." Williams considered Rachael Townsel's response "inappropriate communication" and was shocked. Williams never did see Nicole, but another worker did. When Williams next met with Rachael Townsel on July 17, 2006, Rachael Townsel would not let Williams see where she lived, but told Williams that she was pregnant and acknowledged that she was not in suitable housing; a case was opened so that she could receive services.

Pediatric Radiologist Deniz Altinok, M.D., who was on staff at Children's Hospital and an associate professor at Wayne State University, reviewed x-rays of Emmanuel's wrists taken on June 27, 2006, when Emmanuel was about 6-1/2 months old. Rachael Townsel's attorney challenged Dr. Altinok's credentials and status as an expert witness, arguing, on the basis of "personal knowledge," that he was not an expert because he received medical training in Turkey. The trial court rejected counsel's "testimony on the credentials and licensing of doctors" and qualified Dr. Altinok as an expert witness in pediatric radiology. Dr. Altinok explained the x-rays showed "growth arrest lines," a "nonspecific finding" that could be caused by a variety of things, including infection, trauma, leukemia, malnutrition, or child abuse.

Before services for Rachael Townsel could be started, Williams received another referral on July 20, 2006. A skeletal survey on Emmanuel done by another radiologist on July 20, 2006, showed "acute or healing fractures." At that time, Rachael Townsel explained that the injury occurred when her boyfriend accidentally rolled on top of Emmanuel's ankle. Dr. Altinok did not think that Rachael Townsel's version explained the child's injury. Williams found out that Rachael Townsel was not following up with Emmanuel's medical appointments and that she needed housing, so Williams set up an interview for Rachael Townsel with Wolverine Human Services and Families First.

Services for Rachael Townsel were discontinued after Rachael Townsel took Emmanuel to his doctor's appointment in August 2006. Dr. Altinok reviewed Emmanuel's x-rays taken on August 15, 2006. The x-rays showed a "right femur complete transverse fracture." There was "soft tissue swelling, without any evidence of healing," which meant that the fracture occurred within the previous five days. The fracture would have caused the child pain, and Dr. Altinok would have expected a person who was changing the child's diaper, for instance, to notice that he was in pain. Dr. Altinok "guess[ed]" that the fracture could have been caused by a two-year-old child jumping on the baby, but would expect that Emmanuel would have awakened if that had happened. The fracture to Emmanuel's femur was considered "low specificity" for child abuse, and Dr. Altinok could not say for sure that it was caused by child abuse.

There was, however, a second fracture to Emmanuel's lower right leg visible on the August 15, 2006 x-rays that was considered "high specificity" for child abuse. It involved "classic metaphysical lesions" which "happen by the forceful twisting, or shaking, vigorous shaking of the extremity." Although he could not say with 100 percent certainty, the second fracture was more likely than not caused by forceful twisting or vigorous shaking. The two fractures did not happen at the same time, and both would have been painful to the child. An

adult falling flat on top of Rachael Townsel while she was holding the child could not have caused the second fracture. Rachael Townsel denied that there was a second fracture, explaining, “[I]f I’m just now finding out about it, it didn’t happen. That’s my son, I would have known.”

Except for the fractures and growth arrest lines, Emmanuel’s bones were normal, with no sign of brittle bone disease or other pathology. Dr. Altinok explained that it was not his function to say whether there was child abuse, but to “raise the flag” so that further investigation would be done.

Emmanuel Chapman, Jr. testified that he signed an acknowledgement of paternity for Nicole but not for Emmanuel, but desired to be considered Emmanuel’s legal father and wanted to plan for both children. He was incarcerated on “felony firearm” and “possession with intent to deliver.” He had a previous conviction for fourth-degree criminal sexual conduct. His anticipated “out date” was April 14, 2008. He testified that he saw his children every day while he could, he provided money and support for Nicole “every time she really needed it, or when Rachel tell me she need something,” and he believed a bond had formed between him and the children.

On January 21, 2007, the trial court terminated Rachael Townsel’s and Emmanuel Chapman, Jr.’s parental rights to Nicole and Emmanuel.

D’Angela was taken into foster care on December 13, 2006, because she had two siblings in foster care and one of them had sustained a fractured femur while in Rachael Townsel’s care. A protective services worker testified that D’Angela was a special needs child because of her premature birth. The worker had only spoken to Rachael Townsel once, on March 9, 2007; Rachael Townsel did not appear for the March 27, 2007 hearing, and had not had contact with the relative who was caring for the child. The worker had no information about Rachael Townsel’s current housing and did not believe that she was employed. Rachael Townsel had not shown that she was capable of parenting a special needs child, and the worker believed the child would be at risk if placed in Rachael Townsel’s custody. The basis for the petition was that Rachael Townsel’s parental rights had been terminated to her other two children; she had not been offered any services. On April 25, 2007, the trial court terminated Rachael Townsel’s parental rights to D’Angela.

II. Expert Witness Testimony

A. Standard Of Review

In Docket No. 276902, Rachael Townsel does not specifically challenge any of the statutory grounds for termination, but rather argues that the trial court erred in determining that Dr. Deniz Altinok was qualified to testify as an expert witness in pediatric radiology. The preliminary determination of the qualification of an expert is an issue for the trial court to decide.² Thus, the qualification of a witness as an expert, and the admissibility of his or her

² *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 780; 685 NW2d 391 (2004).

testimony, are in the trial court's discretion and will not be reversed on appeal absent an abuse of that discretion.³ An abuse of discretion exists if the decision results in an outcome outside the range of principled outcomes.⁴

B. Analysis

MRE 702 provides:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness had applied the principles and methods reliably to the facts of the case.

Rachael Townsel more specifically argues that Dr. Altinok should not have been qualified as an expert witness because he “equivocated” during voir dire of his qualifications, gave conflicting answers, had no trial experience, failed to answer some questions, and gave some “questionable” responses. However, Rachael Townsel does not cite any testimony to support her claims. Further, Rachael Townsel does not challenge the basis for Dr. Altinok's testimony, does not point to any specific lack of qualifications in this case, and acknowledges that the degree of the witness's expertise goes to the weight, rather than the admissibility, of his testimony.⁵

Dr. Altinok testified that he went to medical school in Turkey and was trained again in the United States, and received approximately five years' training in each country. Accordingly, Dr. Altinok described himself as “double trained.” He was a pediatric radiologist on staff at Children's Hospital and an associate professor at Wayne State University. According to Dr. Altinok, although he had not yet taken his final board exams, he was “board eligible.” He explained that “there is no certification for pediatric radiologist.” Rachael Townsel has not clearly explained any basis for objecting to Dr. Altinok's testimony or qualifications. Considering Dr. Altinok's medical education, training, and experience, we conclude that the trial court did not abuse its discretion in concluding that Dr. Altinok was qualified as an expert in pediatric radiology.

³ *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006); *Chapin v A & L Parts, Inc*, 274 Mich App 122, 126; 732 NW2d 578 (2007).

⁴ *Woodard*, *supra* at 557.

⁵ See *People v Whitfield*, 425 Mich 116, 123-124; 388 NW2d 206 (1986).

III. Termination Of Parental Rights

A. Standard Of Review

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence.⁶ Once the trial court finds that a statutory ground for termination has been met by clear and convincing evidence, it must terminate parental rights unless termination is clearly not in the child's best interests.⁷ We review for clear error both a trial court's findings of fact and a trial court's decision regarding the child's best interests.⁸ To be clearly erroneous, a trial court's decision must strike this Court "as more than just maybe or probably wrong";⁹ this Court must be "left with the definite and firm conviction that a mistake has been made."¹⁰

B. Docket No. 276901

Emmanuel Chapman, Jr. argues that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. The evidence showed that Emmanuel Chapman, Jr. had been incarcerated since April 2006, and would remain incarcerated until at least April 2008. Although there was evidence that he visited the children, particularly Nicole, when he was not incarcerated, he had never provided a stable home or financial support for the children. It does not appear that he ever established paternity of Emmanuel, and Rachael Townsel testified that he acted as if the child did not exist. Rachael Townsel estimated that Emmanuel Chapman, Jr. had provided approximately \$250 in support for both children during their lifetimes. There was no evidence that he had ever provided proper care and custody for the children, or that he had any plan to do so. Therefore, we conclude that the trial court did not clearly err in finding that termination of Emmanuel Chapman, Jr.'s parental rights was warranted under MCL 712A.19b(3)(g).

As noted previously, Emmanuel Chapman, Jr. was incarcerated throughout these proceedings. However, he appeared by telephone at most of the scheduled hearings and expressed love for his children. Therefore, the evidence did not clearly support termination of Emmanuel Chapman, Jr.'s parental rights under MCL 712A.19b(3)(k)(i). However, any error in this regard was harmless because the trial court needed clear and convincing evidence of only one statutory ground.¹¹

⁶ *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

⁷ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000).

⁸ MCR 3.977(J); *In re Trejo*, *supra* at 351, 356-357.

⁹ *In re Trejo*, *supra* at 356, quoting *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

¹⁰ *Peters v Gunnell, Inc*, 253 Mich App 211, 221; 655 NW2d 582 (2002).

¹¹ *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Further, based on the foregoing reasons, we conclude that the trial court did not clearly err in finding that termination of Emmanuel Chapman, Jr.'s parental rights to Nicole and Emmanuel was not contrary to the children's best interests.

C. Docket No. 278022

The trial court relied, in part, on the previous termination of Rachael Townsel's parental rights to Emmanuel and Nicole as a basis for terminating her parental rights to D'Angela. Rachael Townsel argues that because the earlier termination decision was based on the trial court's erroneous reliance on Dr. Altinok's expert testimony, the latter decision is likewise erroneous. Having concluded that the trial court did not abuse its discretion in determining that Dr. Altinok was qualified as an expert, we reject this claim of error. Because Rachael Townsel's parental rights to Emmanuel and Nicole were terminated, the trial court did not clearly err in finding that termination of Rachael Townsel's parental rights to D'Angela was warranted under § 19b(3)(l).

Further, we find no merit to Rachael Townsel's conclusory argument that termination of her parental rights was not in D'Angela's best interests. Rachael Townsel had never provided a stable home to any of her children, and had never been employed. There was evidence that she used inappropriate and abusive language with Nicole, that she regularly hit the toddler, and that Emmanuel suffered several unexplained injuries while in her care. There was no reason to expect that she could provide a more stable environment to D'Angela, who had special needs. The trial court did not clearly err in finding that termination of Rachael Townsel's parental rights was not contrary to the children's best interests.

In each of the three consolidated appeals, we affirm.

/s/ William C. Whitbeck

/s/ Helene N. White

/s/ Brian K. Zahra