

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TAE'SHANAY JANIYA
GREELY, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHANEKA WASHINGTON,

Respondent-Appellant.

UNPUBLISHED

December 27, 2007

No. 279494

Berrien Circuit Court

Family Division

LC No. 2007-000062-NA

Before: Murray, P.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (j), (k)(iii) and (vi), and (l). We affirm.

On May 2, 2007, respondent gave birth to the minor child, Tae'Shanay Greely a/k/a Tae'Shanay Washington. Tae'Shanay was immediately placed into protective custody as petitioner filed an original permanent custody petition. Tae'Shanay's siblings (Janiya, Kaniya, Fantaega, and Omarion Washington) had previously been severely physically abused by respondent. The abuse was discovered on February 20, 2007, after Janiya was rushed to the hospital in distress and having difficulty breathing. Janiya suffered from craniocerebra trauma (two occipital subgaleal contusions, a linear fracture of left occipital bone, and bilateral subdural and retinal hemorrhages) and had multiple contusions on her face and extremities. Janiya died two days later. The manner of death was ruled a homicide. Tae'Shanay's sister and Janiya's twin, Kaniya, had multiple skull fractures, most likely the result of inflicted head trauma, as well as small bruises and an abrasion under her eye. Tae'Shanay's brother Omarion had raw, red loop marks (caused by a belt or a cord) on his back and older, healing marks on his thighs. Her sister Fantaega had a bruise on her back that resembled two loop marks or fingerprints. By the time of Tae'Shanay's birth three months later, respondent was in jail awaiting trial on charges of first-degree felony murder, third-degree child abuse, and first-degree child abuse (two counts) arising out of these incidents.

On appeal respondent argues that the requisite statutory grounds for termination were not established. We disagree.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *Trejo, supra* at 356-357. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(c); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989).

Here, there was no dispute that Janiya, Kaniya, Fantaega, and Omarion all suffered severe physical injury at the hands of respondent. Janiya's physical abuse was so harsh that it resulted in her death. Testimony and medical evidence demonstrated that the children's injuries were not consistent with respondent's explanation. Janiya's medical records revealed that her injuries were consistent with blunt force trauma, shaking, and being hit. With the exception of respondent's sister and brother, who had watched the children only one time each, respondent was the children's only caregiver and the only one who could have inflicted the fresh, raw injuries on them. Respondent did not present any evidence that someone else could have abused or did abuse the children. By her own admission, respondent used a belt to discipline Omarion.

Evidence of respondent's mistreatment of Janiya, Kaniya, Fantaega, and Omarion is probative of how she would treat Tae'Shanay. *In re Youmans*, 156 Mich App 679, 689; 401 NW2d 905 (1986). Given the extreme nature and extent of the abuse, there is a reasonable likelihood that Tae'Shanay would have suffered similar abuse in respondent's care. Thus, Tae'Shanay was at risk of harm pursuant to MCL 712A.19b(3)(j) and (3)(k)(iii) and (vi).

In regard to the termination of respondent's parental rights under MCL 712A.19b(3)(g), she was incarcerated at the time of the termination hearing, awaiting trial for first-degree felony murder, third-degree child abuse and first-degree child abuse. She was unavailable to parent her children due to her incarceration, and if convicted of and sentenced for those offenses she will not be able to provide proper care to Tae'Shanay in the near or distant future.¹

Respondent had a long history of receiving petitioner's services, including parenting aides, extension services, Early On, nutrition assistance, Families First, etc. Despite this extensive assistance, respondent did not benefit from the exhaustive list of services provided and was unable to give her children proper care or utilize appropriate disciplinary techniques. Focusing on the "reasonable time" language in MCL 712A.19b(3)(g), respondent argues that the

¹ The Michigan Department of Corrections' Offender Tracking Information System now indicates that respondent was convicted of felony murder and two counts of first-degree child abuse. She was sentenced on September 10, 2007, to life imprisonment for the murder conviction and ten to fifteen years' imprisonment for each of the child abuse convictions. She has an appeal pending in this Court from that criminal case. Docket No. 281621.

lower court did not determine the specific time frame it would take her to work toward reunification with Tae'Shanay.² However, the court need not determine a specific time limit by which respondent must be able to provide proper care. The statute only requires the court to find that respondent would not be able to parent within a reasonable time. This Court has recognized the need for quick resolution of child protection matters. See *In re JS & SM*, 231 Mich App 92, 97; 585 NW2d 326 (1998). Given respondent's history of support and services, and the lack of evidence suggesting improved parenting skills, there was no reason to believe she would be able to provide proper care to Tae'Shanay within a reasonable time.

Respondent also argues that the trial court should have adjourned and delayed the permanent custody hearing until after her criminal case was completed so that she could testify on her own behalf. In *In re Stricklin*, 148 Mich App 659; 384 NW2d 833 (1986), this Court held that a trial court's refusal to adjourn a child protective proceeding pending the outcome of the circuit court criminal action did not violate the defendant's rights to self-incrimination. Non-incriminating testimony is not the sort of compulsion prohibited by the Fifth Amendment. *Id.* at 664-665. In this case, denial of an adjournment was appropriate because respondent could have limited her testimony to non-incriminating statements, called other witnesses, or refuted the evidence presented with her own exhibits. The trial court's responsibility is to determine, even in the absence of a criminal conviction, whether a preponderance of the evidence shows that respondent engaged in criminal behavior. See, e.g., *In re MU*, 264 Mich App 270; 690 NW2d 495 (2004).

In regard to MCL 712A.19b(3)(l), respondent's parental rights to another child, Cornessa Williams, were terminated on July 19, 2000. Thus, given respondent's history of prior termination of parental rights, severe physical abuse and failure to implement the services previously offered by petitioner, Tae'Shanay would have been at risk of harm if returned to respondent's care.

Finally, respondent argues that no services were provided to her by petitioner because she was incarcerated throughout the entire case. When a case proceeds under an original permanent custody petition for termination of parental rights, as in the instant case, a treatment plan is not required, nor are reasonable efforts required for reunification. MCL 712A.19b(4); MCR 3.977(E).

Affirmed.

/s/ Christopher M. Murray
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder

² Although respondent does not expand her argument further, she appears to suggest that because the lower court did not determine the time frame it would take her to work toward reunification, the lower court cannot claim that respondent will not be able to provide proper care within a reasonable time.