

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of MARINA ALEXIS BURCK and  
ANGEL MARIE BURCK, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SIAN BURCK,

Respondent-Appellant,

and

CASSIE GLATZ,

Respondent.

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UNPUBLISHED

January 29, 2008

No. 279745

St. Clair Circuit Court

Family Division

LC No. 07-000035-NA

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In the Matter of MARINA ALEXIS BURCK,  
PATRICK HERALD GUNNELLS, and WINTER  
JOSEPH GUNNELLS, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CASSIE GLATZ,

Respondent-Appellant,

and

SIAN BURCK,

Respondent.

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No. 279746

St. Clair Circuit Court

Family Division

LC No. 07-000035-NA

Before: Saad, C.J., and Borrello and Gleicher, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father Sian Burck appeals as of right the order terminating his parental rights to the minor children, Marina Burck and Angel Burck, and respondent-mother Cassie Glatz appeals as of right the same order terminating her parental rights to Marina Burck, Patrick Gunnells and Winter Gunnells. Termination was ordered pursuant to MCL 712A.19b(3)(b)(i) or (ii), (g), (j) and (k)(iii). For the reasons set forth in this opinion, we affirm.

The evidence showed that respondents had neglected infant Marina's nutritional needs to the point where she suffered from severe malnourishment. Respondents failed to recognize her malnourished condition, but did finally take her to a pediatrician on January 23, 2007, for what they believed were cold symptoms after Marina had been fussy for about two weeks. The pediatrician observed that Marina was "extremely emaciated." She was five months old and weighed seven pounds, fifteen ounces, which was only about two pounds greater than her birth weight and was below the fifth percentile for infants her age. The pediatrician also characterized Marina as severe failure to thrive. The pediatrician advised respondents to take Marina to a hospital that day, but they did not take her to the hospital until the next day, when a Children's Protective Services worker insisted that they do so and then, accompanied by a state police officer, followed them to the hospital. At the hospital, doctors discovered that Marina had suffered from two significant fractures, one in her left arm, and the other in her left leg. At the time the breaks were discovered, they had already significantly healed; the breaks were at least ten to fourteen days old and probably two to three weeks old. Testimony from a pediatrician indicated that the broken bones were significant traumatic injuries that would have caused Marina significant pain. There was also evidence that Marina had suffered a remote fracture of one of her ribs on the right side. All four children were removed from respondents' home and placed in foster care on about January 30, 2007.

Based on this evidence, we conclude that the trial court did not clearly err in determining that at least one statutory ground had been established by clear and convincing evidence to terminate respondents' rights to Marina. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Marina suffered physical abuse in the form of significant fractures to her left arm and left leg and also a fracture of a rib. Respondents both argue that there was not clear and convincing evidence that either of them inflicted these physical injuries upon Marina. Respondent-father suggests that perhaps over the holidays, a visitor accidentally dropped Marina and failed to inform respondents. Respondent-father does not, however, suggest the identity of such a person, or indicate under what circumstances such an accident may have occurred. He also acknowledged that his older children had not said anything about dropping Marina. Furthermore, respondent-mother testified that she could not recall any possible instance when Marina could have suffered a fracture to her left arm or left leg. It is true that there is no direct evidence regarding the cause of Marina's physical injuries. However, as one pediatrician testified at trial, Marina was "developmentally unable to put [herself] in [a] position to cause traumatic injury." Furthermore, respondents were Marina's sole caretakers and, contrary to respondent-father's suggestion that a visitor accidentally dropped Marina, there was no evidence to suggest another cause of Marina's physical injuries. Therefore, even in the absence of direct

evidence regarding who injured Marina or how she was injured, there was clear and convincing evidence that either respondent-mother or respondent-father, or both, were responsible for Marina's injuries and that the other parent failed to protect Marina from the abuse. Given that respondents continue to live together, returning Marina to respondents' home would place her in daily contact with her abuser. Respondents' denial of committing the abuse also indicates that there is a reasonable likelihood that Marina would suffer from an injury or abuse if placed in respondents' home. Termination of respondents' rights to Marina was proper under MCL 712A.19b(3)(b)(i) or (ii).

Termination of respondents' parental rights was also proper under MCL 712A.19b(3)(g) and (j). Respondents were unable to provide proper care and custody of Marina. They failed to ensure that she received adequate nutrition and one or both of them physically abused her. Given respondents' denial of the abuse, there was no reasonable expectation that they would be able to provide Marina with proper care within a reasonable time given her age. Respondents continue to live together, and returning Marina to respondents' home would thus place her in daily contact with at least one abuser and another parent who failed to protect her from such abuse. In light of the nutritional neglect and physical abuse that Marina suffered while in respondents' care, Marina would be at serious risk of future harm if she were returned to respondents' home. Termination of respondent-parents rights to Marina was proper under MCL 712A.19b(3)(g) and (j).

Furthermore, termination was not clearly contrary to Marina's best interests given the severity of her physical injuries, the extent of her malnutrition and her need for safety and permanence. Marina was nine months old at the start of the termination trial and had made substantial progress in recovering from the severe nutritional neglect and developmental delays. In the four months since she had been in foster care, Marina had gained approximately eleven pounds. Furthermore, Marina was thriving and was slightly ahead developmentally. According to one pediatrician, after being placed in foster care, Marina "absolutely skyrocketed back up to the normal growth chart" with no medical treatment, only proper nutrition. The same pediatrician stated that he had never seen such an improvement in a child in such a short period of time. Based on the risk of nutritional neglect and physical abuse to Marina if she were returned to respondents' home, the trial court did not clearly err in determining that termination of respondents' parental rights was not clearly contrary to Marina's best interests. MCL 712A.19b(5); *In re Trejo*, *supra* at 354-355.

The trial court also did not clearly err in terminating respondent-father's rights to Angel and respondent-mother's rights to Patrick and Winter. MCL 712A.19b(3)(k)(iii) permits the termination of parental rights if the parent abused the child or the child's sibling and the abuse included battering, torture, or other severe physical abuse. There was evidence that Marina suffered severe physical abuse in the form of significant fractures to her left arm and leg and also a fracture of a rib. Although respondents both deny inflicting the physical injuries to Marina, for the reasons we stated above, there is clear and convincing evidence that respondent-mother or respondent-father, or both, inflicted the abuse and that the other parent failed to protect Marina from the abuse. Thus, there was clear and convincing evidence to terminate respondents' parental rights to the other children under MCL 712A.19b(3)(k)(iii). Based on the risk to the other children in light of respondents' abuse and neglect of Marina, the trial court did not clearly err in determining that termination of respondent-father's parental rights to Angel and

respondent-mother's parental rights to Patrick and Winter was not clearly contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 354-355.

Affirmed.

/s/ Henry William Saad

/s/ Stephen L. Borrello

/s/ Elizabeth L. Gleicher