

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DESTINY LOVE WILSON,
ERIN NICKOLE JOELLE WILSON, and SIR
MAC SCONI, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARQUITA NIKOLE WILSON,

Respondent-Appellant,

and

ROD ISAAC,

Respondent.

In the Matter of DESTINY LOVE WILSON,
ERIN NICKOLE JOELLE WILSON, and SIR
MAC SCONI, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROD ISAAC,

Respondent-Appellant,

and

MARQUITA NIKOLE WILSON,

UNPUBLISHED

October 21, 2008

No. 284357

Wayne Circuit Court

Family Division

LC No. 02-408127-NA

No. 284358

Wayne Circuit Court

Family Division

LC No. 02-408127-NA

Respondent.

In the Matter of DE'ONTEZ DE'SHAWN
ROBINSON, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROD ISAAC,

Respondent-Appellant.

No. 284359
Wayne Circuit Court
Family Division
LC No. 02-408139-NA

In the Matter of DAMARCO E. MAC MARTIN,
MARKESE MARTIN, FORTUNE LEON-MAC
MARTIN, EMACTEE-MARTEZE MARTIN,
ALANTA ANTONIO MAC MARTIN, and LEX
LAWRENCE MAC MARTIN, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROD ISAAC,

Respondent-Appellant.

No. 284360
Wayne Circuit Court
Family Division
LC No. 02-408130-NA

Before: Meter, P.J., and Talbot and Murray, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court's order terminating respondent father's parental rights to the ten minor children and respondent mother's parental rights to three of the minor children under MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), and (k)(iii). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination of respondents' parental rights were established by clear and convincing evidence. MCR 3.977(J);

In re Miller, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court was charged with determining whether clear and convincing evidence showed the seven oldest children's battering and severe physical abuse was inflicted by respondents or, as asserted by respondent father, by scraping their buttocks repeatedly on the rough concrete surface of their swimming pool and playing rough games. The trial court found the injuries were the result of battery and severe physical abuse, which constituted failure to provide proper care and posed the likelihood of further risk of harm in respondents' home. This Court reviews the trial court's decision for clear error. MCR 3.977(J). A review of the evidence leaves no firm and definite conviction that the trial court made a mistake in finding clear and convincing evidence supporting the statutory grounds. *Miller, supra* at 337.

Medical examination and photographs supported the trial court's finding that the rectangular and circular shapes of the seven oldest children's bruises, hyperpigmented marks, and scars were consistent with being hit repeatedly over a long period of time with a wooden paddle, and not with scraping on the concrete edge of a pool. Although medical examination of the three youngest children did not reveal evidence of physical abuse, the evidence was clear and convincing that their half-siblings had suffered unconscionable long-term battery and physical abuse by both respondents since the time they had reached age six or seven and that they were made to stand in a corner for intolerably long periods of time. Factors such as age or more compliant temperaments may have been the reason the youngest three children bore no physical signs of abuse, but the evidence showed they resided in a home in which severe long-term abuse had occurred, and thus were also in danger of abuse. Pursuant to the doctrine of anticipatory neglect, respondents' treatment of the seven older children was indicative of how they would treat the three younger children, and evidence of the younger children's abuse was not required for the trial court to assume jurisdiction over and terminate respondents' parental rights to them. *In re Powers*, 208 Mich App 582, 588-589; 528 NW2d 799 (1995); *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973).

In addition to medical evidence, the trial court received testimony from several witnesses. Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it, *Miller, supra* at 337, and in this case the trial court was impressed with the matter-of-fact testimony presented by three of the children regarding their maltreatment in the home. Despite testimony of some other children that they had never been abused, witnessed abuse, or seen the paddle respondents used to beat the children, the trial court found no meaningful impeachment of the three children who testified that they had been physically abused in the home for years. While they may not have been model children and needed discipline and correction, the abused children's testimony was balanced in that they acknowledged respondents' provision for them, but consistently described improper methods of severe long-term abuse and their desire to leave respondents' home. The abused children's testimony at trial was consistent with their prior statements to protective services and medical personnel, and comported with the physical evidence of their scars. In contrast, one of the children who testified that he had never been abused had previously alleged abuse at his medical examination and bore severe scars, but he recanted that allegation at trial. The paddle was found in the home, and respondent father admitted its existence.

The trial court found respondent father's testimony self-serving, grandiose, and disingenuous. Respondent father testified that he raised well-behaved children who were on the

honor roll, who did not get into trouble, who needed little discipline other than an occasional raised voice, with whom he played and was very involved, and who thrived in respondents' care. However, he also stated the older boys lied, stole, were suspended from school, and were in need of boot camp. He admitted his need for help in parenting the older children. Given the seven children's severe scars and the strong desire of the four oldest children to leave respondents' home and not see respondents again, the trial court had reason to give a lesser degree of credibility to respondent father's testimony.

In addition to the testimony of the children, the trial court received evidence that respondent father was prone to physical violence and had the capacity to inflict the children's injuries. The mother of the seven Martin children testified that respondent had repeatedly physically abused her. Although this mother also admitted to welfare fraud, respondents' argument that this reduced her credibility runs both ways because respondent father testified that he did not feel that fraudulently collecting benefits for the children was wrong. The mother of the Robinson child reported at her son's medical examination that respondent had physically abused her in the past. The Wilson children's medical reports noted that reasons for the children's medical examinations included the school's concern for the children's safety, prior allegations of domestic violence between respondents, respondent father's very controlling nature, and respondent mother's appearing at school with bruises.

Respondents set forth various arguments alleging abuse never occurred. They argue that if the abuse was long-term and severe, others would have been told or would have noticed it. They contend that the older Martin children lied about being abused so they could reside with their mother, whose home lacked rules and structure. They assert that the children sustained injuries because they played rough. However, the evidence showed that abuse was alleged and unsubstantiated in 2002 and that the children were reluctant to report it again for fear of retaliation. The evidence showed that the oldest children desired to leave respondents' home, but their extreme lack of attachment to and dislike of respondents was out of proportion to merely wanting fewer rules and confirmed their claim that they were severely abused. The evidence also showed a marked similarity in the seven children's injuries, not likely caused by different childhood accidents, and medical personnel opined the injuries were caused by abuse and not accidental injury.

In accord with MCL 722.638, petitioner requested termination of respondents' parental rights at the initial disposition due to the aggravated circumstance of battering and severe physical abuse perpetrated by a parent. When termination is the goal, petitioner is not required to offer reunification services, and none was offered here. Respondents argue that the refusal to attempt reunification rendered it impossible for the trial court to conclusively find that they would not be able to provide proper care or custody within a reasonable time. However, given respondents' complete denial that they had inflicted abuse despite clear evidence to the contrary, and their lack of remorse for the children's injuries, the trial court did not err in finding that respondents were not likely to become appropriate parents within a reasonable time.

Given the medical, documentary, and testimonial evidence, the trial court did not err in finding that the children's injuries constituted battery and severe physical abuse inflicted or not prevented by a parent within the meaning of §§ 19b(3)(b)(i), (b)(ii), and (k)(iii), that respondents had failed to provide the children with proper care and were not expected to do so within a

reasonable time under § 19b(3)(g), and that return of the children to respondents posed a likelihood of further harm to them under § 19b(3)(j).

The evidence did not show that termination of respondents' parental rights was clearly contrary to the children's best interests. See former MCL 712A.19b(5) and *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The evidence showed that respondents severely abused the seven oldest children, and while some did not want to ever see respondents again, some may have retained a bond with respondents. Given the aggravated circumstances of a parent's inflicting severe battery upon a child and the result that the abused children's relationship with respondents would be a repressed one marred by the severe, long-term abuse they had received, in addition to the likelihood that the children would be harmed if returned home, termination of respondents' parental rights was clearly not contrary to the seven abused children's best interests.

The seven abused children were continued as temporary court wards, and respondent father argues that it was clearly contrary to their best interests to unnecessarily sever the parent-child bond because they would be placed in the custody of their mothers. While the Robinson child had been placed with his mother, the six Martin children had not yet been placed in the custody of their mother, and it was uncertain whether they ever would. Both mothers had previous substance abuse issues, both had been physically abused and intimidated by respondent father, both had voluntarily relinquished custody of their children to respondent father, and both had failed to maintain sufficient contact with their children to protect them from serious abuse. Completely severing respondent father's parental rights and preventing him from asserting a right to their custody again at a later time was not clearly contrary to these seven children's best interests.

Respondent mother's three children were bonded to respondents and bore no outward sign of abuse. Respondent mother argues that she had no prior protective services history and that the children were not abused, but thriving, in her care. However, the evidence showed that both respondents beat the seven older children and allowed the other to do so for a period of time approximating ten years, which clearly showed both respondents had the capacity to severely abuse the three younger children. Under the doctrine of anticipatory neglect, termination of respondents' parental rights to the three Wilson children was warranted. *Powers, supra* at 588-589; *LaFlure, supra* at 392. In addition, respondent mother did not admit her abuse of the seven older children, express remorse, or indicate she had distanced herself from respondent father or engaged in attempts to become a more appropriate parent. Given the elevated threat of physical abuse in respondents' home, termination of their parental rights was not clearly contrary to the three youngest children's best interests.¹

¹ We would find no basis for reversal even if we were to analyze this issue using the updated version of MCL 712A.19b(5), which states:

If the court finds that there are grounds for termination of parental rights
and that termination of parental rights is in the child's best interests, the court

(continued...)

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Talbot
/s/ Christopher M. Murray

(...continued)

shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made. [Emphasis added.]

We note, however, that the prior version was in effect at the time of the lower court proceedings. It stated:

If the court finds that there are grounds for termination of parental rights, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made, *unless the court finds that termination of parental rights to the child is clearly not in the child's best interests*. [Emphasis added.]