

Court of Appeals, State of Michigan

ORDER

In re Ashley Martell-Sanchez, Minor

Docket No. 288617

LC No. 08-478653-NA

Kathleen Jansen
Presiding Judge

Joel P. Hoekstra

Jane E. Markey
Judges

The Court orders that the May 26, 2009 opinion is hereby AMENDED. The opinion contained the following clerical error: Respondent Jennifer Martell-Sanchez is erroneously referred to as Ashley Martell-Sanchez in the first line of the opinion.

In all other respects, the May 26, 2009 opinion remains unchanged.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN 10 2009

Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ASHLEY MARTELL-
SANCHEZ, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JENNIFER MARTELL-SANCHEZ,

Respondent-Appellant,

and

HECTOR RENE TUBENS-MENDEZ and
RONALD MULLINS,

Respondents.

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Respondent Ashley Martell-Sanchez appeals as of right the trial court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were proven by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

The almost two-year-old minor child was taken to the hospital by respondent and her live-in boyfriend, Mr. Comarena, because the child had been vomiting and had a loss of appetite. The initial diagnosis was possible hepatitis because of elevated liver enzymes. An ultrasound revealed fluid in the abdomen, and a CT scan confirmed the fluid as blood and revealed a laceration to the liver. The liver laceration was considered a moderate laceration. On further physical examination, bruises were found on the bridge of the minor child's nose, her abdomen, the back of her hand, and her leg. The bruises were suspicious because of their locations.

Respondent and Mr. Comarena were questioned about whether the minor child had been in an automobile accident or had had a fall from a significant distance. They denied any accidents. They were also questioned about the possibility of intentional blunt trauma to the minor child's abdomen and denied this as well. Respondent telephoned the minor child's babysitter who denied knowledge of any accidents, falls, or intentional blunt trauma. Respondent reported that the only people who cared for the minor child were herself, Mr. Comarena, and the babysitter.

Three physicians, all of whom had been qualified as experts in their field pursuant to MRE 702, testified with regard to the diagnosis of a lacerated liver, the potential causes of a lacerated liver, and their conclusion that the injury had been intentionally inflicted absent the occurrence of an accidental trauma. Respondent failed to accept the diagnosis of a lacerated liver and argued that the minor child's symptoms arose as the result of an antibiotic prescribed for a rash in the minor child's ears and a vaccine for hepatitis A. She continued a relationship with the minor child's babysitter and continued to live with Mr. Comarena, despite the experts' diagnosis that the minor child had suffered a lacerated liver as the result of intentional blunt trauma to her abdomen.

The evidence is clear and convincing that respondent did not provide proper care and custody with respect to the minor child. The minor child suffered a moderately severe liver laceration. Respondent's failure to recognize the severity of the situation and take steps to insure that the minor child would not be intentionally injured again is evidence of her inability to provide proper care and custody within a reasonable time considering the age of the minor child. Moreover, her failure to take necessary steps so that this would not happen again is evidence that there is a reasonable likelihood that the minor child would be harmed if returned to respondent's care.

While medical science is not exact, and there are situations where mistakes are made and adverse reactions occur that have not been reported in the medical literature, there is no question that the minor child suffered a lacerated liver. Respondent does not even acknowledge that this injury occurred. The experts opined that typically this type of injury occurs as the result of some type of blunt force, whether it is accidental or intentional. They did not believe that a hepatitis A shot could have resulted in the lacerated liver. While respondent raised some doubt, albeit small, with regard to the possibility of the liver injury being the result of the hepatitis A shot, respondent was unwilling to look at the other possible causes of the minor child's injury. If the minor child had been intentionally injured, and respondent had not herself caused the injury, a reasonable parent would explore the other causes of injury and remove them from the environment where they would have access to the minor child. A reasonable parent would do what was in her power to insure that the minor child was not injured again.

Respondent raises seven arguments as challenges to the trial court's determination. This Court does not reverse the lower court's decision based on any of these arguments. Respondent's arguments that the trial court may not terminate her parental rights based on circumstantial evidence, without direct evidence regarding the cause of the injury, and without evidence that respondent's actions or inactions caused the injury, are without merit. There is no question that the child was injured while in the care and custody of respondent, that respondent failed to acknowledge the injury, and that respondent failed to take reasonable steps to insure that the injury would not happen again. Respondent's argument that her poor English skills prohibited her from understanding all of the proceedings fails to take into account the interpreter

that was provided to her throughout the proceedings. Moreover, several instances occurred throughout the trial in which the witness was asked to slow down to accommodate the interpreter. Respondent's argument that the trial judge incorrectly failed to admit evidence from the manufacturer of the hepatitis A vaccine does not acknowledge that the information respondent attempted to admit was not relevant because it applied to the adult vaccine and not the child vaccine. While respondent argues that she did not know what happened to the minor child and should not be blamed for the injury, this ignores the fact that she refused to acknowledge that the injury existed and failed to take reasonable steps, in absence of a plausible explanation, to insure the minor child's safety in the future. Finally, criminal proceedings are not a precursor or requirement to termination of a parent's parental rights. See *In re Mu*, 264 Mich App 270, 279; 690 NW2d 495 (2004).

"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 shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). This Court reviews for clear error the trial court's best interests decision. *Trejo*, *supra* at 356-357.

The trial court did not clearly err in its best interests determination. While it appeared that respondent had taken good care of the minor child in the past, respondent did not care for the minor child in a manner that was in her best interests with respect to the incident that resulted in the filing of the petition. Respondent chose to ignore the experts' opinions with regard to the injury sustained by the minor child, refusing to acknowledge her daughter's lacerated liver. She did not question whether the minor child's babysitter or Mr. Comarena could have been responsible for the injury, instead choosing to blame it on the hepatitis A vaccine the minor child received five days before and/or an antibiotic the minor child was taking. It was in the best interests of the minor child to terminate respondent's parental rights under these circumstances. Returning the minor child to respondent's care would put the child at risk of harm.

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jane E. Markey