STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DARREN BUFFEN, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KOLOREAN KERSHAW,

Respondent-Appellant,

and

ARIC BUFFEN,

Respondent.

UNPUBLISHED
June 16, 2009

No. 287978
Wayne Circuit Court
Family Division
LC No. 08-478169-NA

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DEPARTMENT OF HUMAN SERVICES,

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and

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Wayne Circuit Court
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Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), (k)(iii), and, with regard to respondent father only, (l). We affirm. These appeals have been decided without oral argument pursuant to MCR 7.214(E).

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); MCL 712A.19b(3). Medical evidence showed the two-month-old minor child suffered several fractured ribs on three different occasions, a pulmonary hemorrhage, and a fractured tibia. In addition, his failure to thrive was a chronic condition and he fell below the five-percentile mark in weight for children his age. A medical doctor testified that his injuries were not accidental, but caused by abuse. Given the severity of the injuries petitioner followed the legislative mandate in requesting termination of parental rights at the initial disposition. MCL 722.638(1)(a)(iii), (a)(v), (b)(i), and (2). Petitioner did not offer reunification services.

Respondents argue that the trial court clearly erred in finding sufficient evidence to terminate their parental rights because there was no direct evidence showing they injured or had the opportunity to prevent injury to the minor child. However, review of the record provides ample circumstantial evidence supporting the trial court's decision. Respondents resided together with the minor child, and no other persons were present in the home or provided childcare except the paternal grandmother, who was later deemed suitable for the child's placement after a background check and home study. Respondents were unable to explain how the child sustained multiple serious injuries other than respondent mother's moderate pressing on the child's abdomen to relieve gas. Respondent mother suffered from bipolar disorder, psycho-schematic schizophrenia and postpartum depression, and did not resume a medication regime after the child's birth. Respondent father stated he was unaware of respondent mother's mental health issues even though she stopped taking medication during the pregnancy, and he later became apprehensive about the child's safety in her care but failed to take timely and sufficient measures to prevent repetitious injury to the child. Neither respondent adequately addressed the child's malnutrition.

Given that the child was primarily in respondents' care and respondents were unable to explain several instances of multiple injuries and failed to notice the child's injuries until he suffered a life-threatening pulmonary hemorrhage, the trial court did not err in finding sufficient evidence to conclude, with respect to §§19b(3)(b)(i), (b)(ii), and (k)(iii), that these subsections applied to respondents. Further, respondents continued to reside together and previous parenting classes had not helped respondent mother prevent the child's abuse and neglect. Therefore, the trial court did not err in finding under §§19b(3)(b)(i), (b)(ii), and (j) that there was a reasonable likelihood that the child would suffer injury or abuse in the foreseeable future if placed in respondents' home.

The abuse and neglect the child suffered clearly showed respondents' failure to provide proper care or custody. The legislature mandates petitioner to request termination in the event of severe and life-threatening non-accidental injury, and that mandate justified petitioner's refusal

to provide services. MCL 722.638(1) and (2). The trial court did not err in terminating respondents' parental rights under §19b(3)(g) because without extensive services there was no reasonable likelihood they would, within a reasonable time, become able to provide the child with proper care.

The trial court had terminated respondent father's parental rights to another child in October 1997, and the trial court took judicial notice of that order. The trial court need not have relied upon the additional statutory ground in §19b(3)(l) because only one ground is needed to terminate parental rights, but in light of the evidence that respondent did not have custody of his three other children, was unemployed, and either perpetrated or failed to prevent this minor child's severe abuse, the court did not err in finding that respondent father had not substantially improved his ability to parent since his prior termination.

Respondent father argues that the trial court erred in reviewing and relying on his criminal records after the adjudication trial, thereby depriving him of the opportunity to refute any inaccuracies in those records. The trial court stated its intent to review his criminal records and respondent did not object. Therefore, he has not preserved that issue for review. *Phinney v Verbrugge*, 222 Mich App 513, 544; 564 NW2d 532 (1997). Regardless, we note that with or without evidence of respondent father's criminal history, there was substantial evidence supporting the termination of his parental rights.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Deborah A. Servitto