STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of AKEYRA LANIECE NELSON-WILLIAMS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DONNELL EUGENE WILLIAMS,

Respondent-Appellant,

and

LADONNA SHANEA NELSON,

Respondent.

UNPUBLISHED
July 30, 2009

No. 289472
Wayne Circuit Court
Family Division
LC No. 08-477195-NA

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LADONNA SHANEA NELSON,

Respondent-Appellant,

and

DONNELL EUGENE WILLIAMS,

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No. 289495
Wayne Circuit Court
Family Division
LC No. 08-477195-NA

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

PER CURIAM.

In these consolidated appeals, respondents appeal as of right an order that terminated their parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). We reverse and remand for further proceedings.

On February 27, 2008, four-month-old Akeyra was seen at Children's Hospital with fractured ribs and a possible fracture to her wrist. Respondents were both 20 years old, and Akeyra was their first child. They admitted to being Akeyra's primary caregivers but could provide no explanation for her injuries. Respondent mother explained that, approximately one month before going to hospital, she and respondent father heard a "popping" sound coming from Akeyra's chest. Respondent mother called the pediatrician's office and spoke with Dr. Balinga, who asked respondent mother a series of questions to determine whether Akeyra needed to be seen in the emergency room. Because Akeyra did not seem unusually fussy, was still eating, and did not appear to be in any pain, Dr. Balinga advised respondent mother that Akeyra would be fine until her next scheduled routine visit, which was on February 18, 2008. Dr. Balinga saw Akeyra for that appointment. He noticed that she had a bump on the left side of her chest. He palpated the area and Akeyra did not seem to be in any distress. Dr. Balinga told respondent mother to take Akeyra for an x-ray, which was taken on February 25, 2008. When the x-ray revealed that the child had numerous rib fractures, respondent mother was told to take Akeyra to Children's Hospital, which she did. The worker testified that respondents appeared genuinely concerned and were cooperative during the interview process while at the hospital. Respondents indicated that Akeyra was not rolling over yet, eliminating a possible fall from a bed or couch as the cause of her injuries. Both denied dropping Akeyra or abusing her in anyway. Still, because of the severity of Akeyra's injuries and because no explanation was offered for how she fractured her ribs, DHS filed a petition seeking termination at original disposition.

On the advice of their attorneys, respondents pleaded no contest to the allegations in the petition. The trial court found clear and convincing evidence to terminate respondents' parental rights based on the hospital's medical records. At a later hearing, the trial court also found that it was in Akeyra's best interests to terminate respondents' parental rights. Respondents now argue that the trial court clearly erred in finding that a statutory basis for termination existed and in finding that it was in Akeyra's best interests to terminate their parental rights. We agree.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination 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 and the trial court finds "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). On appeal from termination of parental rights proceedings, this Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(J); *Sours, supra* at 633. 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); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). To be clearly erroneous, a decision must be more than maybe or probably wrong. *Sours*, *supra* at 633. Further, 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); *Miller, supra* at 337.

In general, when a child is removed from her parents' care, the petitioner must make reasonable efforts to rectify the conditions that caused the child to come into care by adopting a case services plan. MCL 712A.18f(1), (1), and (4); *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). However, when a petition requests immediate termination of parental rights, the petitioner need not offer the parents a treatment plan. MCL 712A.19b(4); MCR 3.977(E). Reasonable efforts toward reunification are unnecessary if a parent caused or created an unreasonable risk of serious physical injury to a child. MCL 712A.19a(2)(a); MCL 722.638(1) and (2). There is no dispute that Akeyra suffered rib fractures for which no explanation was offered. Given the seriousness of the injuries and respondents' failure to offer any insight into what may have happened, petitioner claims that a treatment plan would have been futile. We disagree, as did the child's guardian ad litem, who told the trial court:

> I guess what my gut tells me is that these parents, perhaps with proper parenting classes, probably could be good parents. I find nothing in the testimony, nothing in the records that would indicate to me that there was any intentional acts or malicious acts, or quite frankly, even negligent acts. They went for the one-month check-up, two-month check-up. Doctors testified there's nothing in this record to show there was anything wrong. Something was wrong. They called the doctor, followed every instruction that he gave them. I think they're trying. They may have unintentionally injured this child all on their own. I don't know. I think that if they take the right classes and maybe at some point even they'll realize, maybe I did something this day that escapes them now because of the fact that this is their first child and they're very young, but I guess at this point in the game, based on the testimony that I have heard, I don't think it's in the best interest to terminate these young people's parental rights because I have no reason to believe that they can't be good parents, and I have no reason to believe that they have any way – have any direct responsibility for what has unfortunately happened to this child.

The evidence demonstrated that Akeyra was born prematurely to two very young parents. Respondent mother took Akeyra for her medical visits. She appeared to be developing appropriately and was well nourished. There were no outward signs of abuse or neglect. When respondents heard the popping sound coming from Akeyra's chest some time in late January or early February 2008, respondent mother immediately called the pediatrician's office. Akeyra's primary care physician was unavailable, so respondent mother spoke to one of his associates, Dr. Balinga. Dr. Balinga had an independent recollection of the telephone conversation because respondent mother's concerns about a popping sound in her child's chest were unusual. Dr. Balinga testified that a child's ribs are very pliable and it would take a great deal of force to fracture them. Absent trauma, unexplained broken ribs were often indicative of child abuse. Still, Dr. Balinga did not pursue the case as one of abuse.

Respondents both admitted that they were Akeyra's primary caregivers, receiving help on occasion from both grandmothers. Both the court and the petitioner contend that respondents "changed their story" at the time of trial. That is not true. Respondents continued to maintain that they were Akeyra's primary caregivers. They simply testified that Akeyra was handled by many visiting family members from respondent father's large family. This was not an attempt to

claim that Akeyra was cared for by a variety of others, only that she was visited by many in the presence of her parents.

The origin of Akeyra's injuries may never be known. This lack of knowledge, however, was an insufficient basis for which to terminate respondents' parental rights. Notable was the fact that respondents were allowed to continue to visit Akeyra, right up until their parental rights were terminated. Still, the trial court acted as though it had only two options: terminate respondents' parental rights or return Akeyra to their unsupervised care. Respondents were desirous of a treatment plan but did not receive one. There would have been no harm to the child had the trial court simply asserted temporary jurisdiction over her and ordered petitioner to provide a case treatment plan. Absent such a plan, it was impossible to determine whether there was a reasonable likelihood that the child would suffer from injury or abuse in the foreseeable future if placed in respondents' home or whether respondents would be able to provide Akeyra with proper care or custody. " 'It is only when timely and intensive services are provided to families that agencies and courts can make informed decisions about parents' ability to protect and care for their children.' " *In re Rood*, 483 Mich 73, 98; 763 NW2d 587 (2009), quoting petitioner's Children's Foster Care Manual 722-6, p 11.

Because we are reversing the termination order, we decline to consider respondent father's contention that he was denied the effective assistance of counsel during the plea hearing.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Stephen L. Borrello