

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 13, 2010

In the Matter of J. D. WOOLL, Minor.

No. 295158
Ionia Circuit Court
Family Division
LC No. 09-000367-NA

In the Matter of J. D. WOOLL, Minor.

No. 295283
Ionia Circuit Court
Family Division
LC No. 09-000367-NA

Before: TALBOT, P.J., and FITZGERALD and DAVIS, JJ.

PER CURIAM.

Respondents appeal as of right from an order terminating their parental rights to the minor child. Respondent father's parental rights were terminated pursuant to MCL 712A.19b(3)(b)(i). Respondent mother's parental rights were terminated pursuant to MCL 712A.19b(3)(b)(ii), (i), and (l). 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. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). The five-week-old child suffered numerous rib and leg fractures. Medical testimony established that the child had fractures at various stages of healing that indicated that the child was injured on three separate occasions. The testimony indicated that a first rib fracture is a rare occurrence, and that the force needed to effectuate such a break would have to be intentionally inflicted and that daily care giving activities would not result in the type of injuries that the child suffered. Neither respondent could offer a reasonable explanation for the child's injuries. Although they suggested that perhaps their dogs had trampled the child, medical testimony indicated that the injuries were not of the "crushing" type. The child did not have brittle bone disease or any other underlying health conditions that would have explained his injuries.

The 18-year-old respondent father admitted that he was the child's primary caregiver and that he had constant access to the child. They lived with the maternal grandmother and her

boyfriend, but those individuals were not interested in the child's day-to-day care. Respondent father had an admitted problem with anger management. He also believed himself to be bipolar. Respondent mother admitted that she saw the father handle the baby when he was frustrated. She believed that she asked too much of him by placing the childcare responsibility in his hands at such a young age. Randy Smith, a "jailhouse snitch," testified that respondent father told him he violently shook the baby and threw him back down in his bassinette. Smith had an extensive criminal history and the trial court acknowledged that such testimony is generally suspect; nevertheless, the trial court concluded that Smith's testimony was credible, which was its right as the finder of fact. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). The child suffered extensive and severe injuries. That respondent father was the cause of those injuries was a reasonable conclusion. Therefore, the trial court did not clearly err in finding that respondent father's acts caused the physical injury and that there was a reasonable likelihood that the child would suffer from injury or abuse in the foreseeable future if placed in respondent father's home. It was also in the child's best interests to terminate respondent father's parental rights. MCL 712A.19b(5). The child suffered severe abuse that might have life-long consequences. He was entitled to safety and security out of his father's care.

The trial court also did not err in terminating respondent mother's parental rights. Respondent mother returned to work within a week of the child's birth. She worked 36 or more hours a week, leaving respondent father to be the child's primary caregiver. Respondent mother admitted that respondent father was young and inexperienced. She saw respondent father handle the baby while he was frustrated. The child was obviously in distress based on his prolonged crying. Respondent mother arguably had the opportunity to prevent the abuse and failed to do so.

Additionally, the prior termination of respondent mother's parental rights to three of her children in 2008 supported the termination of her parental rights in this case. The prior terminations were the result of respondent mother's substance abuse, untreated mental health issues, lack of housing and income, and her continued association with her abuser. Even assuming that the prior terminations were not based on serious or chronic neglect, such a finding is not necessary pursuant to subsection 19b(3)(l). Respondent mother tested positive for marijuana in November 2009. She briefly reunited with her abuser in 2009, even though he was one of the primary reasons she lost custody of the three children. Additionally, at the time this child was removed from her care, respondent mother was sharing a one-bedroom apartment with her mother and two other adults. The apartment had not been assessed since termination was the goal from the outset of the case. The same issues that resulted in the prior terminations continued to exist. There was no evidence of reform.

It was also in the child's best interests to terminate respondent mother's parental rights. She had three prior terminations due to her failure to place her children's needs above her own. She had a history of neglect and also failed to keep this child safe. It could not be said that any appreciable bond existed or that any such bond outweighed the child's need for safety and security.

Additionally, contrary to respondent mother's assertions, the trial court did not abuse its discretion when it denied her motion requesting a court-appointed medical expert. *In re Bell*, 138 Mich App 184, 187; 360 NW2d 868 (1984). It was clear that respondent mother was not disputing the medical findings that the child did not suffer from brittle bone disease; instead,

respondent mother was concerned because the doctors who initially evaluated the child failed to find all of his injuries. However, as a doctor testified at trial, the failure to initially identify all of the injuries was due to the recent occurrence of some of the fractures. As the bones healed, the fractures were easy to see on the x-rays. So while it may have appeared that the child had a certain number of fractures when he was first evaluated, that was because many of them were newer, and subsequent x-rays made it easier to identify the extent of his injuries. Respondent mother does not argue that the doctor was wrong in her conclusion that the child did not suffer from brittle bone disease or any other underlying condition that would help to explain his injuries. She also did not intimate at any time that the doctor was somehow biased against her. There was simply no reason to grant the motion for a court-appointed expert. *Id.* at 187-188.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Alton T. Davis