STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
October 19, 2010

In the Matter of PATTISON/PATTISON-BENTLEY/BENTLEY, Minors.

No. 297167
Wayne Circuit Court
Family Division
LC No. 06-458979-NA

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Before: MURRAY, P.J., and K.F. KELLY and DONOFRIO, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the order terminating their parental rights to the minor children[1] pursuant to MCL 712A.19b(3)(b)(*i*), (g), and (j). We affirm.

Respondent-father challenges the sufficiency of evidence. This Court reviews for clear error a trial court's decision that clear and convincing evidence supported a statutory ground for termination. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

Ample evidence existed on the record to support the trial court's decision to terminate respondent-father's parental rights pursuant to MCL 712A.19b(3)(b)(*i*). It was undisputed that the oldest boy's neck was injured by scratches. Although respondent-father claimed those scratches were made by the cat, other evidence clearly and convincingly established that respondent-father caused the physical injury. Statements made by the two oldest children were admitted into evidence pursuant to MCR 3.972(C)(2), and indicated that respondents disciplined the children by spanking and that respondent-father had grabbed the oldest boy's neck and dug in

[1] Respondent-father was the father of only the three youngest children.

his nails in an attempt to make him stop screaming. The evidence also clearly and convincingly established that there was a reasonable likelihood that the oldest boy would suffer from injury in the foreseeable future if placed in respondent-father's home. Despite participating in counseling and parenting classes during a prior protective proceeding, respondent-father continued to employ inappropriate discipline methods. In addition, respondent-father's denial of responsibility for the scratches showed that he had not accepted responsibility for his behavior and, as such, was unlikely to change that behavior.

The trial court also properly relied upon MCL 712A.19b(3)(g) when terminating respondent-father's parental rights. The fact that the youngest boy was covered in feces and there was feces spread throughout the home provided sufficient evidence of a past failure by respondent-father to provide proper care or custody for the children. In addition, respondent-father failed to properly care for the two boys when he left them in their room for such extended periods of time that one of them was forced to defecate on the bedroom floor. Next, although respondent-father admitted on the day of the children's removal that the substance spread throughout the house and covering a child was feces, he changed his story by the time of the initial dispositional hearing where he identified the substance as mud or chocolate pudding. This denial about the feces showed there was no reasonable expectation that respondent-father would be able to provide proper care and custody within a reasonable time considering the children's young ages.[2]

We next turn our attention to respondent-mother's argument that the trial court erred when it failed to grant her request for a Clinic evaluation prior to the best interests determination, thereby depriving her of the opportunity to obtain best interests evidence. Respondent-mother cites *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997), for the proposition that she had the burden of going forward with evidence to show that termination of parental rights was not in the children's best interests. However, our Supreme Court specifically rejected that proposition in *In re Trejo*, where the Court held "that under subsection 19b(5), the court may consider evidence introduced by any party" when making its best interests determination and, "even where no best interest evidence is offered," the court may make its determination based on "evidence on the whole record." *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). Furthermore, respondent-mother had the opportunity to present best interests evidence and, in fact, did present testimony that was sympathetic to herself. She also had the opportunity to present additional evidence on the issue had she so desired. Therefore, the trial court did not commit clear error when it failed to grant her request.[3]

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[2] Though not necessary to resolve this appeal, we also conclude that termination of respondent-father's parental rights was properly ordered pursuant to MCL 712A.19b(3)(j). As discussed above, there was a reasonable likelihood that the oldest boy would suffer from physical injury in the foreseeable future if placed in respondent-father's home. In addition, the children's health would be at great risk of harm had they been returned to a home that was reasonably likely to become unsanitary and unhealthy once again.

[3] Though neither respondent has challenged the trial court's finding that termination of their

Affirmed.

/s/ Christopher M. Murray
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio

(…continued)

rights was in the best interests of the children, our review of the record reveals no clear error in the trial court's conclusion.