

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of J.A. GREENE and D.J.B.
FREEMAN, Minors.

UNPUBLISHED
October 26, 2010
No. 297067
St. Clair Circuit Court
Family Division
LC No. 09-000302-NA

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

PER CURIAM.

Respondent appeals as of right the order of the trial court terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (b)(iii), (c)(i), (c)(ii), (i), (j), (k) (iv), and (l). We affirm in part, vacate in part, and remand for further proceedings.

This case involves two children, JG who was just over one at the time of termination, and DF, who was 15 at the time respondent's parental rights were terminated. Respondent does not challenge the trial court's finding that a statutory ground existed for termination of her rights to both children. Instead, she argues only that the trial court clearly erred by failing to find that termination of her parental rights was in the best interests of the children. We agree in part.

It is well-settled that once the petitioner has established a statutory ground for termination by clear and convincing evidence, a trial court is required to affirmatively find that termination is in the child's best interests before ordering termination. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354, 356-357; 612 NW2d 407 (2000). In this case, the trial court affirmatively found that termination of respondent's parental rights was in the children's best interests, though it did not articulate why it found that way. However, the evidence of record pertaining to JG was more than sufficient to support the trial court's conclusion, so we may affirm that decision. MCR 2.613(A).

The evidence revealed that JG is a medically fragile infant who suffered numerous bone fractures while in respondent's custody. It was never established who injured the younger child, but respondent routinely left the infant in the sole care of the older child and at other times with respondent's boyfriend, who respondent admitted had thrown the medically fragile infant onto the couch, and that the boyfriend had had the care of the infant shortly before the infant's injuries were discovered. This evidence is sufficient to conclude that the trial court did not err in finding that termination of respondent's rights to JG was in his best interests.

However, the evidence was not nearly as clear as to the older child, DF. After reviewing the transcripts and trial court opinion it seems clear that the focus on this trial and case was on the treatment, or lack thereof, of the younger child. Though the care provided by the older child

to the younger child on one occasion was a focus in this case, it was relevant to respondent's care for and protection of the youngest child. It had little to do with respondent's ability to care for the older child, and what sort of relationship existed between the child and mother. Other than a couple isolated comments made by respondent about the older child, there was no evidence relied upon by the trial court to show that it was clearly in the oldest child's best interests to have his mother's rights terminated. The trial court's rationale for both of its findings was as follows:

A preponderance of the evidence at trial establishes that there is temporary jurisdiction of the children pursuant to MCL 712.A.19b(1)(2). The evidence further establishes that there is clear and convincing evidence to terminate the parental rights of the respondent mother . . . pursuant to MCL 712.A.19b(3)(b)(i)(ii)(iii), (c)(i)(ii), (i), (j), (k)(iv) and (1). The Court further finds that there is clear and convincing evidence that termination of parental rights of respondent mother . . . is in the best interests of the minor children. At the time of his injury, JG, was a premature six-month old baby with developmental deficits, who was left by his mother in the care of his fourteen-year old half-brother who is emotionally impaired and has Asperger's syndrome. Respondent mother clearly failed to protect JG from the serious injuries that he sustained, and clearly demonstrated a lack of understanding and concern for her children's welfare. Therefore, the referee recommends entry of an order terminating the parental rights of respondent mother . . . to the minor child.

There is nothing in these findings related to the older child, DF. In addition, there were only minimal findings as to any difficulties respondent had in caring for the older child. There is no suggestion in the record of abuse, a dangerous home environment for the oldest child, or other environmental problems. We recognize that the older child experienced numerous difficulties, including suspension from school for threatening to kill others while under respondent's care. However, it was also undisputed that the older child suffered from Asperger's disease, and there was a good deal of evidence suggesting that respondent had, over the six years preceding the hearing, taken appropriate action with the older child and had only isolated difficulties with the child at home and school.

We acknowledge and have applied the appropriate deference to the trial court's superior ability to make findings of fact. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). But, in this case, on the particular best interest issue relative to the older child, DF, the factual findings—if any—do not support the trial court's conclusion as to DF. The evidence itself equivocates on the issue. Therefore, we vacate the trial court's best interest determination regarding DF, and remand to the trial court for further evidence and findings on this issue. We do not retain jurisdiction.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion.

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