

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 16, 2010

In the Matter of OWENS, Minors.

No. 296347
Wayne Circuit Court
Family Division
LC No. 08-479698-NA

Before: BECKERING, P.J., and JANSEN and TALBOT, JJ.

PER CURIAM.

Respondent appeals by right the trial court order terminating her parental rights to the three minor children pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (j), and (k)(iii). We affirm.

I

The conditions that led to adjudication involved a May 2008, incident wherein respondent brought her four-month old child into the emergency room and reported that he was irritable, not eating, and not urinating. An examination revealed swelling of the child's head. X-rays revealed skull fractures on both sides of the back of the child's head, areas where the skull was cracked, and areas where the bone was pushed into the brain tissue. A CAT scan showed swelling and blood on the left back side of the brain and an area of the brain that had been deprived of blood for a period of time. A pediatric physician, who the trial court recognized as an expert in the medical aspects of child abuse, opined that the type of injuries sustained were not consistent with respondent's story that the child fell off her lap when respondent fell asleep after taking Motrin for a toothache. Instead, they were consistent with abusive head trauma that occurred as a result of one or more traumatic events.¹ On June 1, 2008, security was called to the child's hospital room because of an argument between the parents, and domestic abuse was suspected. On June 4, 2008, petitioner filed a permanent custody petition to

¹ The expert testified that the child's head injuries would be expected given a history of being involved in a car accident or dropped out of a window, but the mother did not provide a history that could explain the type and magnitude of the child's injuries.

remove the parents' two children from the home and to terminate the parental rights of both parents.²

The trial court held a multiple-day bench trial that spanned from September 16, 2008 to January 29, 2010. On November 9, 2009, the trial court found that the head injuries suffered by the child happened while he was in the care of the parents, occurred without an adequate explanation, and were the result of physical abuse. Based on the evidence presented, the trial court found that it had jurisdiction of the children under MCL 712A.2(b)(1) and (b)(2), and that clear and convincing evidence existed to support termination under MCL 712A.19b(3)(b)(i), (b)(ii), (j), and (k)(iii). Before making a best interests determination, the court ordered a Clinic for Child Study interview, in part to assist the court in evaluating whether either of the parents could be expected to protect the children appropriately if the court were to terminate the rights of one parent but not the other. On January 29, 2010, after taking into account all of the testimony and other evidence gleaned during the course of the proceedings, including a letter respondent wrote wherein she took responsibility for the child's injuries, as well as the court's finding that respondent's testimony was "replete with statements of deception," the court found that respondent was the parent responsible for the child's injuries and that termination of respondent's parental rights was in the best interests of the children under MCL 712A.19b(5).

II

Respondent's parental rights were terminated under MCL 712A.19b(3)(b)(i), (b)(ii), (j), and (k)(iii), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

* * *

² Respondent gave birth to a third child during the course of the proceedings, and that child was later added to the petition already pending as to the other children.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

* * *

(iii) Battering, torture, or other severe physical abuse.

A petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence. *In re JK*, 468 Mich. 202, 210, 661 N.W.2d 216 (2003). On appeal from termination of parental rights proceedings, this Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appear before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

III

Respondent first argues that the court erred when it failed to follow the recommendation of Dr. Kai Anderson of the Clinic for Child Study who recommended that, before the court made its decision on termination, it should offer respondent the opportunity to participate in a parent/agency agreement and services and work toward reunification. We disagree. Dr. Anderson did not see any of the medical reports and documentation and did not hear any of the testimony. She made it clear that her opinion and recommendations were based on respondent's statements only. Dr. Anderson's evaluation was just one piece of evidence among the many that the court had to consider. Over the course of a year and a half, the trial court had access to information and documentation not available to Dr. Anderson and was able to judge respondent's credibility over a long period of time. During the best interests phase of the termination hearing, the court may consider any and all evidence on the record to determine the best interests of the children. *In re Trejo*, 462 Mich 341, 354-355; 612 NW2d 407 (2000); MCL 712A.19b(5). Based on the entire record, the court did not believe that respondent would benefit from services. The fact that the trial court did not follow the recommendations of Dr. Anderson's evaluation does not constitute clear error.

Respondent also contends that there was not clear and convincing evidence to support the statutory grounds for termination. We disagree. There was clear and convincing evidence from medical records, x-rays, CAT scans, and expert opinion that respondent's then four-month-old child suffered serious physical injury that was not accidental and did not result from a fall from respondent's lap to the floor. Both parents consistently testified that the child was in their care at all times. Thus, it was clear that the injury was caused by one of the parents. The evidence revealed serious non-accidental physical injuries, demonstrating that they could have been prevented. In addition, the evidence showed that respondent had an uncontrollable temper. An abundance of evidence supported the trial court's conclusion that the statutory grounds for

termination of respondent's parental rights were established. Respondent's failure to notify the court and the agency about her pregnancy with her third child, her lies to the court about the newborn child's whereabouts and paternity, her lies and evasive statements about the dates when she went to the dentist and received the prescription for Motrin, and her failure to produce documentation concerning her medical appointments and residences supported the court's conclusion that she was not credible. These same facts were sufficient to support the court's conclusion that respondent was responsible for the injuries, and her failure to accept this responsibility was clear and convincing evidence to support a conclusion that there was a reasonable likelihood that respondent's children would suffer from injury or abuse in the foreseeable future if placed with respondent. Thus, we find the court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(b)(i), (b)(ii), (j), and (k)(iii).

Finally, the same facts support the court's finding that it was clearly in the children's best interests to terminate respondent's parental rights. MCL 712A.19b(5). Accordingly, the trial court did not clearly err in terminating respondent's parental rights under the stated statutory grounds.

Affirmed.

/s/ Jane M. Beckering

/s/ Kathleen Jansen

/s/ Michael J. Talbot