

STATE OF MICHIGAN
COURT OF APPEALS

In re KRUKOWSKI, Minors.

UNPUBLISHED
June 21, 2016

No. 330868, 330869
Saginaw Circuit Court
Family Division
LC No. 15-034371-NA

Before: FORT HOOD, P.J., and RONAYNE KRAUSE and GADOLA, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the trial court’s order terminating their parental rights to their minor children, RTK and EMK, pursuant to MCL 712A.19b(3)(b)(i) (parent caused physical injury), (b)(ii) (parent failed to prevent physical injury), (g) (failure to provide proper care and custody), and (j) (risk of harm if child returned to parent). We affirm.

The cornerstone of these proceedings is the abuse inflicted on RTK during the first weeks of his life. Before he was three months old, the child had sustained life-threatening injuries. Indeed, medical caregivers told an investigator that when the child came to the emergency room in late February 2015, he was on the brink of death. Medical testing revealed the presence of fluid and hemorrhages around the child’s brain. A medical specialist testified that based on his expertise, these injuries occurred at different times. He also testified that there was evidence of a fracture on the left side of RTK’s head. A chest X-ray showed a callus formation along two of RTK’s ribs, suggesting that there were healing fractures. RTK was also diagnosed with a retinal hemorrhage and a fractured wrist. The medical report indicated that multiple members of the medical team suspected “nonaccidental trauma” and abuse, and they notified authorities.

In docket number 330868, respondent-father first argues that the trial court erred in finding statutory grounds for termination. “To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). We review for clear error a trial court’s finding that a statutory ground for termination has been established. *Id.* “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *Id.*

The trial court terminated respondent-father’s parental rights pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). Because only one ground for termination of parental

rights need be established, *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012), we only analyze the court's decision pursuant to MCL 712A.19b(3)(b).¹ MCL 712A.19b(3)(b) permits termination when:

(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.

As discussed above, RTK suffered significant injuries. The record revealed that RTK's injuries were highly indicative of abuse and inconsistent with accidental injury. RTK's only two caregivers were respondents. Moreover, when confronted, respondents gave insufficient and inconsistent explanations for the injuries that failed to contradict the medical evidence. For instance, respondent-father claimed that RTK's head injuries were caused when he dropped RTK in the bathtub nearly two weeks before bringing the child into the hospital. However, the medical evidence showed that RTK's head injuries were at different stages of healing, indicating that RTK had been harmed on two different occasions, and doctors stated that RTK's newest injuries were two to three days old. In response to these allegations, respondent-father stated that he had also fallen down the stairs in mid-January with the child. Meanwhile, respondent-mother stated that the head injuries could have occurred when RTK was born by C-section. However, RTK's newborn medical records indicate that he had "bruising to extremities and left ear," but that he was "healthy-appearing." Respondent-mother explained that the child's rib fractures could have been caused by the chiropractic treatment that RTK was receiving, but the treating chiropractor stated that he never adjusted the child's ribs. Further, respondents provided no explanation for why RTK suffered a fractured wrist.

Although it did not determine which respondent directly injured RTK, the trial court concluded that grounds for terminating respondents' parental rights existed under (b)(i) and (b)(ii) because either one (or both) of them injured the child while the other had the opportunity to prevent it but failed to do so. The fact that the trial court did not, and could not, determine which parent inflicted these injuries does not undermine the court's finding. "When there is severe injury to an infant, it does not matter whether respondents committed the abuse at all, because under these circumstances there was clear and convincing evidence that they did not provide proper care." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

¹ Although not specifically addressed, we note that we have reviewed the record and respondent-father's arguments regarding MCL 712A.19b(3)(g) and (j), and concluded that the trial court did not clearly err in its determination that termination was also proper under those grounds.

Overall, the court did not clearly err in finding that termination was proper given the evidence presented in the record. RTK's only two caregivers were respondents. RTK's injuries were highly indicative of abuse and were inconsistent with accidental injury. As indicated above, respondents provided no plausible explanation for the injuries and did not contradict the medical evidence. Regarding EMK, MCL 712A.19b(3)(b) states that termination is appropriate if the child or the child's sibling suffers physical injury. Therefore, termination based on MCL 712A.19b(3)(b)(i) and (b)(ii) was also proper as to respondents' parental rights to both RTK and EMK.

Respondent-father next argues that the trial court erred in finding that termination of parental rights was in the children's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child[ren]'s best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App at 40; MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child[ren] must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App at 90. This Court reviews the court's determination regarding the children's best interests for clear error. *In re Olive/Metts*, 297 Mich App at 40. "In deciding whether termination is in the child[ren]'s best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *Id.* at 41-42 (internal citations omitted). A child's placement with relatives is a factor the trial court must explicitly consider, which weighs against termination; however, the trial court may still terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests. *Id.* at 43.

The trial court properly considered all relevant factors and did not clearly err in determining that termination was in the children's best interests. The court noted that there was a loving bond between the children and both respondents and acknowledged the evidence that respondents' parenting skills were appropriate during parenting-time sessions. On the other hand, the court recognized the need for all children to grow up in a safe environment, and it highlighted the significant and severe injuries to RTK. Both respondents gave multiple and unsatisfactory explanations for RTK's life-threatening injuries. There was also evidence that respondents' housing situation was unstable and concerns regarding domestic violence against respondent-mother by respondent-father. After weighing these considerations, the trial court determined that termination was in the child's best interests. Based on the record, we are not left with a definite and firm conviction that the trial court erred.

The court also considered the children's relative placement with respondent-father's brother and sister-in-law. Both relatives testified that they were unsure whether they would be willing to participate in a long-term guardianship with the children. The court concluded that it was not convinced that leaving respondents' parental rights intact in favor of this relative placement would provide a safe and secure environment for the children. Given the evidence, the trial court did not clearly err in determining that, irrespective of this placement, it was in the children's best interests that respondent-father's parental rights be terminated.

In docket number 330869, respondent-mother first argues that her attorney was ineffective for failing to object to several alleged errors at trial. We disagree. "In analyzing claims of ineffective assistance of counsel at termination hearings, this Court applies by analogy

the principles of ineffective assistance of counsel as they have developed in the criminal law context.” *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). Because respondent-mother did not raise this issue in the trial court, this Court’s review is limited to errors apparent on the record. *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012).

“To demonstrate ineffective assistance of counsel, a defendant must show that his or her attorney’s performance fell below an objective standard of reasonableness under prevailing professional norms and that this performance caused him or her prejudice.” *People v Nix*, 301 Mich App 195, 207; 836 NW2d 224 (2013), citing *People v Armstrong*, 490 Mich 281, 289-290; 806 NW2d 676 (2011). “To demonstrate prejudice, a defendant must show the probability that, but for counsel’s errors, the result of the proceedings would have been different.” *Nix*, 301 Mich App at 207. It is presumed that trial counsel used effective trial strategy, and a defendant has a heavy burden to overcome this presumption. *People v Payne*, 285 Mich App 181, 190; 774 NW2d 714 (2009).

Respondent-mother first asserts her attorney should have objected to the untimely production of RTK’s medical records. According to respondent-mother, counsel should have requested that the tardy documents be deemed inadmissible, or requested additional time to adequately review the records. Pursuant to MCR 3.973(E)(3), the parties to a termination proceeding “must be given an opportunity to examine and controvert written reports.” See *In re Hudson*, 483 Mich 928, 936 n 9; 763 NW2d 618 (2009). While it appears that there was difficulty in obtaining records in preparation for trial, there was no record evidence that respondent-mother did not receive the records or lacked sufficient time to review them. Indeed, the record suggests that her counsel did have time to review the records because counsel stipulated to the admission of the evidence and used the evidence during cross-examination. Accordingly, we reject this claim of error.²

Respondent-mother also asserts that her counsel was ineffective for failing to object to the admission of a videotaped interview she gave to police. This interview was admitted to impeach respondents’ expert witness report, which provided an alternate explanation for some of RTK’s injuries. In regard to this evidence, petitioner admits that it did not provide the video to respondent-mother until the day before the dispositional hearings began. The trial court gave respondent-mother time to view the video and present the court with an argument regarding the admissibility of the videos. After review, respondent-mother’s counsel stipulated to the admission of the interview. On appeal, respondent-mother summarily states that her attorney improperly stipulated to the evidence, failing to explain why or if the evidence would be

² Respondent-mother also implies that petitioner improperly filed the petition for termination of parental rights because it did not have the complete medical records at the time of filing. However, respondent-mother can point to no deficiency in the petition, and the records were eventually produced for use during trial.

inadmissible.³ “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority.” *Payne*, 285 Mich App at 195. Thus, respondent-mother has abandoned her claim.

Respondent-mother next argues that the trial court erred in finding that termination of parental rights was in the children’s best interests. Again, while the court considered respondent-mother’s bond with the child and the possible placement with relatives, the court ultimately concluded that those factors were outweighed by the children’s need for safety and stability.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Amy Ronayne Krause
/s/ Michael F. Gadola

³ Respondent-mother suggests that her counsel was ineffective in failing to consider the impact the video recording may have on her criminal trial. However, respondent-mother fails to explain why this amounted to error, or show how this prejudiced her.