

STATE OF MICHIGAN
COURT OF APPEALS

In re LYNCH/MAPP/FILLMORE, Minors.

UNPUBLISHED
November 17, 2016

No. 331826
Ingham Circuit Court
Family Division
LC No. 15-000935-NA
15-000936-NA
15-000973-NA

In re O. STEELE, JR., Minor.

No. 331829
Ingham Circuit Court
Family Division
LC No. 15-000934-NA

In re R. DRAKE, Minor.

No. 331871
Ingham Circuit Court
Family Division
LC No. 15-000933-NA

Before: BOONSTRA, P.J., and SHAPIRO and GADOLA, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother appeals by right the trial court's order terminating her parental rights to her minor children under MCL 712A.19b(3)(b)(iii), (g), and (j), and respondent father appeals by right the trial court's order terminating his parental rights to his minor children pursuant to MCL 712A.19b(3) (g) and (j). We affirm.

The child protective proceedings in these cases were initiated following the death of respondent mother's four-year-old son, JW, in July 2015. At that time, respondent mother, JW, and two of her other children, AL (age six) and DM (age three), were living with respondent

father and two of his children, RD (age seven) and OS (age nine).¹ Respondents and the five children lived in a one-bedroom apartment with virtually no furniture. The five children slept in the bedroom on blankets on the floor while respondents slept on the living room floor.

Respondents had recently met while living at a homeless shelter. While living at the shelter, respondent mother's child DM fell from a second-story window and sustained a cranial fracture. Respondent mother told the CPS worker investigating the matter that DM had fallen off a swing set. Respondent mother thereafter failed to follow up with any of the services offered to her by the CPS worker.

Respondent mother thereafter joined respondent father when he obtained the apartment. Respondent mother obtained a job and while she was at work respondent father served as the children's "caregiver." Respondent father told a Lansing police detective that he disciplined the children "with a belt" or "a military timeout," which entailed the child standing in a corner. With regard to the belt, respondent father told the detective that he "whipped [the children] all over the place" and that it "would tear up the legs and butts."

Respondent father told the investigating detective that on the day before JW died, the child appeared "very frail." Nonetheless, respondent father whipped JW over eight times that day because JW "wasn't following instructions." He further told the detective that the day before JW died respondent father noticed that JW was having trouble breathing but did not seek medical care for JW. He also admitted that he had hit JW in the chest four days earlier. One of the other children, OS, told the detective that respondent father had "whooped" JW the day before he died and had kicked JW for "disrespecting" respondent father. AL told investigators that OS, then age nine, also hit JW the day before he died, and JW thereafter threw up.²

Respondent mother told investigators that she disagreed with the use of physical discipline and argued with respondent father over his use of physical discipline. Yet, the day before JW's death, respondent father, who was home with the children, and respondent mother, who was at work, exchanged the following text messages regarding JW:

Respondent father: . . . whipping this little n****r's ass. He's really trying to me today and I'm gonna f*** him up.

Respondent mother: What he doing?

Respondent father: First he got a whooping for eating DM[']s food and I put him in the corner and he threw up. I put him in the tub and back in the corner and he stood there and shitted on himself. I whooped his ass again and told him to get back

¹ Respondent mother's children and respondent father's children are not related.

² OS is the biological child of respondent father, while JW is the biological child of respondent mother.

in the corner and he told me no. This n**** gonna make me f*** him up for real.

Respondent mother: Now.

Respondent father: I finally made his ass go to sleep. He was trying to go to sleep standing up. After all them whoopings you would have thought he's been [a]sleep a long time ago.

Respondent father then texted asking respondent mother if she would like to rub his body when he got out of the shower, to which she replied "okay, baby."

When respondent mother returned home from work between 8:30 p.m. and 9:00 p.m., she observed "marks" on JW's shoulder and chest and thought respondent father "must have done something" to him. Respondent mother described JW "as being somewhat ill" and told the detective that JW was thirsty and that she gave him water. The children went to bed shortly after 9:00 p.m. RD and OS told investigators that JW vomited four times that night, and OS stated that JW "kept going to the bathroom and wanted water. And then all of a sudden he laid down and went to sleep again and he was whimpering." The next morning respondent father found JW "cold and clammy." JW was pronounced dead at the hospital.

Detective Joel Mires testified that he arrived at the hospital after JW had been pronounced dead. JW's body was lying on a stretcher in a trauma room. Mires testified that he observed bruising on JW's body, face, chest, and legs. Mires further testified that respondent mother was present in the trauma room, but showed "very flat emotion" and was texting on her phone.

An autopsy of JW revealed "abrasions or scrapes and contusions or bruises" on his face, neck, chest, abdomen, arms, and legs. The forensic pathologist who performed the autopsy testified that the most significant injury revealed by the internal examination was "a small tear or laceration on . . . the posterior surface of the liver," which resulted in twenty to thirty milliliters of blood collecting in the abdominal cavity. Also, a swab of JW's nasal passages detected "para influenza three," a "pretty common virus" that "can cause the common cold." She could not determine the cause of death but opined "that a combination of all these findings did cause or contribute to his cause of death."

Medical examinations of the other children revealed minor scars and bruises. Three of the children were diagnosed with yeast infections attributed to poor hygiene and an x-ray revealed that one child had a "healing distal forearm fracture" that apparently had never been treated. Nonetheless, the examining physician described the children as "well-developed and well-nourished."

Petitioner sought termination of respondent mother's parental rights to AL and DM, as well as DF, who was living in Texas with a grandmother.³ Petitioner also sought termination of respondent father's parental rights to RD and OS.⁴ The trial court found sufficient evidence to assume jurisdiction over the children and proceeded to find clear and convincing evidence to terminate parental rights of both respondents pursuant MCL 712A.19b(3) (g) and (j), and with regard to respondent mother only, (b)(iii). The court determined it would be in each child's best interests to have the parental rights of the respective parent terminated. This appeal followed.

To terminate parental rights, the trial court must find that at least one of the statutory grounds of MCL 712A.19b(3) has been demonstrated by clear and convincing evidence. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). If the trial court finds that at least one of the statutory grounds of MCL 712A.19b(3) has been proven by clear and convincing evidence, the trial court must then determine that termination is in the best interests of the child before terminating parental rights. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). Here, the relevant portions of that statute provide:

(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:

* * *

(iii) A nonparent adult'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 by the nonparent adult in the foreseeable future if placed in the parent's home.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(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.

³ DF resides with respondent mother's own mother. Respondent mother told investigators that she was concerned that her own mother was abusive to DF but had not taken any steps regarding the matter because she "could not be bothered" by it.

⁴ Petitioner did not seek to terminate the parental rights of the respective fathers of AL, DM, and DF, nor the parental rights of the respective mothers of RD or OS. RD's mother was adjudicated as unfit and ordered to participate in services.

We review for clear error both the trial court's finding that clear and convincing evidence was presented to terminate parental rights under one or more statutory grounds and its decision that termination of the parent's rights was in the child's best interests. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.*; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We defer to the special ability of the trial court to judge the credibility of witnesses. *Id.*

Respondent mother does not contest that a nonparent, respondent father in this case, caused a sibling of her children physical injury. The autopsy revealed numerous abrasions, including a large bruise on his right buttock and hip region. That injury is fairly attributable to respondent father given that he admitted to whipping JW at least eight times the day before his death. And we see no clear error in the trial court's finding that a reasonable likelihood existed that the children would suffer physical injury or abuse in the foreseeable future if returned to respondent mother's home. Although respondent mother claims to disagree with respondent father's physical discipline, she nonetheless subjected her children to his abuse. Moreover, testimony established that she was pregnant with respondent father's child and was continuing to live with respondent father even after JW's death.

Respondent mother argues that she should have been offered services to address her failure to prevent respondent father's excessive discipline. We disagree. Where the agency's goal is termination of parental rights, petitioner is not required to provide reunification services. *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). We also note that CPS offered respondent mother services after DM was injured and she chose not to participate in the offered services. Because the trial court did not clearly err in terminating respondent mother's parental rights under MCL 712A.19b(3)(b)(iii), we need not address the additional statutory grounds relied upon by the trial court in terminating those rights. See *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

As for respondent father, we see no clear error in the trial court's findings that he would be unable to provide proper care for his children within a reasonable time or that a reasonable likelihood existed that his children would suffer harm if they were returned to his care. Under the doctrine of anticipatory neglect, how a parent treats an unrelated child is indicative of how that parent would care for his or her own child. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). Respondent father argues that this case is similar to *In re LaFrance*, 306 Mich App 713; 858 NW2d 143 (2014), wherein we held that the trial court erred in relying on anticipatory neglect to terminate the respondent's parental rights to three older children when the petitioner's primary concerns related to whether the parents could adequately care for their young child, who had been diagnosed with cerebral palsy. *Id.* at 730-732. In *LaFrance*, it was alleged that the respondent father had not sought medical care quickly enough when the respondents' baby had become dehydrated. The respondents' three older children had been consistently well cared for by the respondents, however, and there was no sign of any abuse by the respondents of any of the children, including the baby. By contrast, respondent father in this case severely beat JW the day before his death, and told investigators that he beat all of the children with a belt. Even though JW died after a series of beatings, respondent father's subsequent statements do not evince regret or reconsideration of this method of discipline. There is no indication in the record to suggest that respondent father would treat his own children any differently in similar circumstances. The

trial court therefore did not err in finding sufficient evidence to terminate his parental rights under either MCL 712A.19b(3)(g) or (j).⁵

Both respondents argue that the trial court erred in finding that termination of their parental rights was in the best interests of their respective children. We are unpersuaded. This Court considers a variety of factors in determining whether termination of parental rights is in a child's best interests, including potentially the child's bond with the parent, the parenting ability of the parent, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Here, the trial court weighed the parental bond between respondent mother and her children and considered respondent mother's parenting ability, and determined that respondent mother would be unable to provide adequate permanency, stability, and finality for her children who had just lost their brother. The trial court recognized that the children's relative placement weighed against termination, but noted that respondent mother did not "have a connection" with those relatives that would facilitate any type of relationship with the children.

We also reject respondent mother's argument that the trial court should have considered the bond between the siblings. Although it is normally preferable to keep siblings together, ultimately the best interests of each individual child must prevail. *In re Olive/Metts Minors*, 297 Mich App at 42. Considering respondent mother's acquiescence and apparent indifference to the abuse of her four-year-old son, we cannot say that the trial court clearly erred in determining that the children's interests were best served by terminating respondent mother's parental rights.

The trial court also determined that termination of respondent father's parental rights would be in his children's best interests after considering the "deteriorated" parental bond and his "very concerning" parenting abilities. The trial court also doubted his ability to provide his children the necessary stability following a "horribly traumatic event." Respondent father asserts that the suspension of his parenting time is responsible for the deterioration of his parental bond. That may be, but the trial court did not err in suspending his parenting time, see *In re Laster*, 303 Mich App 485, 489; 845 NW2d 540 (2013), and it was not required to consider the parental bond as it previously existed. And as with respondent mother, the trial court found that relative placement did not weigh against termination in this case because respondent father

⁵ Respondent father also argues that he should have been offered services, but, as stated, petitioner was not required to do so because it was seeking to terminate his parental rights. *In re HRC*, 286 Mich App at 463.

did not have a relationship with the relatives who were caring for the children. We see no clear error in the trial court's court findings or analysis.

Affirmed.

/s/ Mark T. Boonstra

/s/ Douglas B. Shapiro

/s/ Michael F. Gadola