

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

June 26, 2012

In the Matter of A. FOWLER, Minor.

No. 307240

Tuscola Circuit Court

Family Division

LC No. 11-010126-NA

Before: MURRAY, P.J., and WHITBECK and RIORDAN, JJ.

PER CURIAM.

Respondent K. Lebair appeals as of right from the trial court's order terminating her parental rights to her minor child pursuant to MCL 712A.19b(3)(b)(i) (failure to protect the child or a sibling from physical injury or abuse), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that the child will be harmed if returned to parent). We affirm.

I. FACTS

In February 2011, the Department of Human Services (DHS) filed a petition to terminate Lebair's parental rights to her two-year-old child at the initial dispositional hearing after the child was injured while in Lebair's custody. The child's father, J. Fowler, initially brought the child to a hospital on January 15, 2011, after Lebair delivered the child for visitation. Fowler noticed that the child had several bruises on her face and that she was experiencing severe arm pain. Previously, the child had been in the custody of Lebair and her live-in boyfriend, who cared for the child while Lebair was at work. The hospital diagnosed the child with a broken right clavicle. A later full-body scan revealed older fractures of the child's right humerus and the left-side clavicle that were in various stages of healing. According to medical experts, the injuries were not consistent with accidental trauma, but rather were indicative of child abuse. During the pendency of the case, Lebair violated a no-contact order that prohibited her from having contact with her boyfriend. In fact, she became pregnant with her boyfriend's child.

The trial court determined that grounds for terminating Lebair's parental rights were established under MCL 712A.19b(3)(b)(i), (g), and (j), and that termination of Lebair's parental rights was in the child's best interests.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

Lebair argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination

by clear and convincing evidence.¹ We review for clear error a trial court's decision terminating parental rights.² A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.³ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁴

B. LEGAL STANDARDS

The trial court terminated Lebair's parental rights under MCL 712A.19b(3)(b)(ii), (g), and (j), which permit termination under the following circumstances:

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

* * *

(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.

* * *

(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.

C. ANALYSIS

We disagree with Lebair's argument that termination was improper under § 19b(3)(b)(ii) because there was no evidence that she should have known that the child was being abused. The evidence showed that when Lebair delivered the child to Fowler for visitation, the child was

¹ MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

² MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

³ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁴ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

experiencing severe arm pain. Lebair even commented about the child's arm. The child was subsequently diagnosed with a broken right clavicle. In addition, a later full body scan showed that the child had other older injuries, including bone fractures, which were in various stages of healing. These injuries occurred while the child was in Lebair's custody, during which time she allowed her boyfriend to care for the child while she was at work. Lebair never sought medical treatment for the child. Therefore, clear and convincing evidence supports the trial court's finding that Lebair had the opportunity to protect the child from injury and abuse, yet failed to do so.

The evidence also supports the trial court's finding that the child was reasonably likely to be injured in the foreseeable future if placed in Lebair's home. During the pendency of this case, Lebair violated a no-contact order that prohibited her from having contact with her boyfriend. In addition, she became pregnant with her boyfriend's child. These circumstances indicate that the child will continue to be at risk of injury or abuse in the future if placed in Lebair's home. Although the perpetrator of the abuse was never clearly established, termination was appropriate under § 19b(3)(b)(ii) where the evidence showed that Lebair and her boyfriend were the only persons who were caring for the child when she was injured.⁵ Accordingly, the trial court did not clearly err in finding that termination was warranted under § 19b(3)(b)(ii).

The same evidence supports the trial court's decision to terminate Lebair's parental rights under §§ 19b(3)(g) and (j). Lebair's failure to protect her child from abuse or seek medical treatment for the child's injuries demonstrates that Lebair failed to provide proper care for her child, and her continued contact with her boyfriend and her pregnancy with her boyfriend's child establishes that there is no reasonable likelihood that Lebair will be able to provide proper care and custody within a reasonable time. The child would continue to be at an unreasonable risk of harm in the future if returned to Lebair's home. Thus, termination was appropriate under § 19b(3)(g).

In sum, we conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of Lebair's parental rights.

III. BEST INTERESTS

A. STANDARD OF REVIEW

Lebair argues that the trial court erred in finding that termination of her parental rights was in the child's best interests. Once DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is in the child's best interests, then the trial court is required to order termination of parental rights.⁶ There is no specific burden on either party to present evidence of the children's

⁵ *In re Ellis*, 294 Mich App 30, 35-36; ___ NW2d ___ (2011).

⁶ MCL 712A.19b(5); MCR 3.977(H)(4); *In re Trejo Minors*, 462 Mich at 351.

best interests; rather, the trial court should weigh all evidence available.⁷ We review for clear error the trial court's decision regarding the child's best interests.⁸

B. LEGAL STANDARDS

In determining the child's best interests, a trial court may consider a variety of factors including the parent's history, unfavorable psychological evaluations, the child's age, inappropriate parenting techniques, and continued involvement in domestic violence.⁹ A trial court may also consider the strength of the bond between the parent and child, the visitation history, the parent's engaging in questionable relationships, the parent's compliance with treatment plans, the child's well-being while in care, and the possibility of adoption.¹⁰ A trial court may also consider the child's need for permanence and the length of time the child may be required to wait for the parent to rectify the conditions, which includes consideration of the child's age and particular needs.¹¹

C. ANALYSIS

The record does not support Lebair's argument that the trial court's best interests decision was based solely on the fact that the parties failed to reach an agreement to dismiss this case if Fowler was awarded sole custody of the child. The trial court's decision was based on its assessment of the child's best interests based on the evidence at the termination hearing. The evidence showed that the child received several serious injuries while in the custody of Lebair and her boyfriend, and that Lebair was unable to end her relationship with her boyfriend. While Lebair acted appropriately with the child during visits, her bond with the child was questionable. The child said that she did not want to see either Lebair or her boyfriend. In addition, the evidence showed that the child felt stable and emotionally secure in her placement with Fowler. Therefore, we conclude that the trial court did not clearly err in finding that termination of Lebair's parental rights was in the child's best interests.

We affirm.

/s/ Christopher M. Murray
/s/ William C. Whitbeck
/s/ Michael J. Riordan

⁷ *In re Trejo Minors*, 462 Mich at 353.

⁸ *Id.* at 356-357.

⁹ See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

¹⁰ See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

¹¹ See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).