

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 31, 2012

In the Matter of I. C. COWGAR, Minor.

No. 307561
Wayne Circuit Court
Family Division
LC No. 11-499357-NA

Before: DONOFRIO, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(i), (g), (j), and (k)(iii). We affirm.

I. BASIC FACTS

The minor child was brought into protective care following a referral to Children's Protective Services alleging physical abuse and neglect. The child had two bruises on her forehead, a bruise on her chin, a bruise on her buttock/upper thigh, and broken blood vessels in both of her eyes. Medical records from the hospital emergency room visit noted contusions on the child's head and buttocks. The injuries occurred while the child, who was then 4½ months old, was in the care of respondent. Respondent pleaded to some of the allegations in the petition, admitting that he spanked the child on the bottom where one of the bruises was observed, that he dropped the child while holding her causing another bruise to her chin, that he shook the child too hard, and that the child's mother had filed a Personal Protection Order against him around the same time as the child's injuries. The trial court exercised jurisdiction over the child based on this plea. At the termination hearing, respondent testified, and his psychological evaluation from the Clinic for Child Study, as well as the child's medical records, were admitted into evidence. The trial court issued a written opinion, terminating respondent's parental rights under MCL 712A.19b(3)(i), (g), (j), and (k)(iii).

II. STATUTORY GROUNDS FOR TERMINATION

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erred in finding sufficient evidence under other statutory grounds. *In re Huisman*, 230 Mich App 372, 384-385; 584 NW2d 349 (1998).

This Court reviews the trial court's termination decision for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

The trial court did not clearly err when it found the evidence clear and convincing to terminate respondent's parental rights to the minor child. Although the trial court erred in finding that MCL 712A.19b(3)(i) was established,¹ that error was harmless because other statutory grounds cited by the court were proven by clear and convincing evidence. *Huisman*, 230 Mich App at 384-385.

The evidence clearly established grounds for termination under MCL 712A.19b(3)(g),² (j),³ and (k)(iii).⁴ The infant child was observed with two bruises on her forehead, a bruise on her chin, bruises on her buttock/upper thigh, and broken blood vessels in both of her eyes. Respondent admitted that these injuries occurred while the child was in his care. At times, respondent admitted that he intentionally spanked and shook the child; at other times, he stated that the injuries were accidental. Even when he testified in court, respondent hedged on taking responsibility, stating that he was "almost fully responsible" for what had occurred. Nonetheless, the evidence was clear and convincing that the child suffered physical abuse and that respondent's acts caused the physical abuse. Respondent had a history of violence. He was discharged from the Marine Corps with dishonorable mention because he had assaulted a superior officer, was diagnosed with posttraumatic stress disorder (PTSD) and depression, and did not seek treatment until shortly before the termination hearing. When asked why he did not obtain treatment at the Veterans Administration Hospital, he stated that he was not comfortable.

Even after the minor child was removed from respondent's care, he did not seek the help he needed. He was not honest with the clinician who performed the psychological evaluation, minimizing his involvement in the child's injuries and taking on the role of the victim. He committed domestic violence against the child's mother and admitted that he violated the order of protection she had obtained against him. The evidence clearly established that there was no reasonable expectation that respondent would be able to provide the child with proper care and

¹ Petitioner concedes this error, since petitioner had moved to terminate, in part, under subsection (3)(b)(i), rather than (3)(i).

² "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." MCL 712A.19b(3)(g).

³ "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." MCL 712A.19b(3)(j).

⁴ "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." MCL 712A.19b(3)(k)(iii).

custody in a reasonable time, and that there was a reasonable likelihood that the child would be physically harmed if returned to respondent's care.

With regard to MCL 712A.19b(3)(k)(iii), respondent admits to causing the child's injuries but contends that his actions did not rise to the level of battery, torture, or severe physical abuse. Battery is "the willful and harmful or offensive touching of another person which results from an act intended to cause such contact." *Smith v Stolberg*, 231 Mich App 256, 260; 586 NW2d 103 (1998). Respondent admitted that he spanked the infant child, causing bruises on her buttock, and that he shook her too hard, which caused broken blood vessels in her eyes. Therefore, his actions constituted a battery. It was not necessary for the trial court to find that severe physical abuse or torture occurred in order to find this statutory ground established.

Respondent also contends that, prior to termination, he should have been provided services by petitioner aimed at reunifying the family. Although, generally, petitioner must make reasonable efforts to reunify the family, *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563(2000); MCL 712A.18f, certain aggravated circumstances require petitioner to seek termination of parental rights at the initial dispositional hearing and reunification services are not then required. MCL 722.638(1), (2). Aggravated circumstances include child abuse that includes battering. MCL 722.638(1)(a)(iii). Therefore, no reunification services were required before the trial court terminated respondent's parental rights. See *In re H.R.C.*, 286 Mich App 444, 463; 781 NW2d 105 (2009) ("Petitioner, however, is not required to provide reunification services when termination of parental rights is the agency's goal.")

III. BEST INTERESTS ANALYSIS

The trial court also did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5). Although respondent argues that he was not provided with visitation and, therefore, a determination could not have been made as to how he parented the child, the record shows that respondent battered the child while she was in his care and custody. Respondent did not immediately seek help for his anger issues or for his alleged depression and PTSD. He was not honest about his past or what had occurred to cause the child to come under the jurisdiction of the court. He violated a protection order that respondent-mother had obtained against him. The record shows that respondent denied or minimized his responsibility for his actions toward the child and delayed seeking treatment for his serious anger control issues. Respondent's psychological evaluation indicated that the prognosis of respondent's ability to provide a safe environment for the child was poor.

Based on respondent's battery of a less than five-month old infant, his history of domestic violence (including his violation of the order against him), his lack of honesty with the evaluator at the psychological examination, and his disregard of rules and appropriate conduct, the trial court did not clearly err when it found, in the interest of protecting the child and affording her a home in which she was safe, that termination was in the child's best interest.

Affirmed.

/s/ Pat M. Donofrio
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra