FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-887

P.R., Natural Father of F.R.,
Minor Child,

Appellant,

v.

DEPARTMENT OF CHILDREN AND
FAMILIES,

Appellee.

On appeal from the Circuit Court for Columbia County.
Leandra G. Johnson, Judge.

February 15, 2022

RAY, J.

The father, P.R., appeals from a final judgment terminating his parental rights to his child, F.R. We affirm.

I

F.R. was five weeks old when her mother brought her to the emergency room with a spiral fracture of her upper arm and a fractured collarbone. While she was treated, additional fractures to one of her posterior ribs and left lower leg were discovered. Those two injuries occurred seven to ten days earlier but had gone untreated. The mother gave several conflicting explanations to the

Child Protective Investigator and a sheriff's office deputy about how the infant was injured. First, she claimed she fell forward while holding the infant. But the next day, she claimed she fell backward. Then she said the father was the one who fell on the infant. Investigators listened-in on a controlled phone call between the mother and father when he told her he tripped over a fan and fell while holding the infant.

Even so, when the deputy interviewed the father at his home, he first blamed the mother for falling with the infant. The father's story changed when the deputy told him she had listened to his phone conversation with the mother and the updated medical reports did not match his story. He then admitted that he was the one who was home alone with the infant and had injured her. As for her arm and collarbone fractures, he said he grabbed her too hard while picking her up from a swing. He also admitted shaking her out of frustration about two-and-a-half weeks earlier. He blamed his anger on his hormone therapy and the mother who often left him at home alone to care for the infant. He said they decided to lie about what happened because they were afraid their child would be taken from them.

The Department of Children and Families ("DCF") filed an emergency shelter petition based on the severity of the infant's injuries, her continued vulnerability, the parents' failure to seek medical care, and their attempt to hide the truth from hospital staff, DCF, and law enforcement. The trial court granted the petition, and the infant was placed with her maternal grandparents.

DCF then petitioned the court to terminate the parental rights of both parents pursuant to section 39.806(1)(f), Florida Statutes, contending they engaged in egregious conduct threatening the life, safety, or physical, mental, or emotional health of the child.

At the adjudicatory hearing on the petition, Dr. Zachary Gohsman, a pediatrician specializing in child abuse, testified as the examining physician. In his opinion, the infant's arm and collarbone fractures were not consistent with the mother's explanation of falling backward with the infant on top of her

because the mother's body would absorb the impact of the fall. Instead, a spiral fracture occurs when the arm is grabbed and twisted, which can also cause a piece of the collarbone to break off. Those types of fractures require a great deal of force because an infant's bones are primarily made of cartilage; the fractures would not be caused by normal play with the infant. Nor were they consistent with the father's explanation of grabbing her as she fell from a swing; that would cause a dislocation rather than a fracture.

Dr. Gohsman also testified that the infant's rib fracture was healing and had been inflicted at least seven to ten days earlier. Rib fractures are highly specific for physical abuse, especially for a five-week-old who cannot walk yet. He explained that those fractures are typically caused by squeezing the rib cage, not just picking the infant up or during normal play; they require a great deal of force. Her lower leg fracture was also classically associated with child abuse—it is the most specific abusive injury one can find on an infant. He explained that her ankle was torn away from the main part of the leg bone, which was caused by someone shaking her with enough velocity or grabbing and pulling the ankle with tremendous force.

Dr. Gohsman testified that an infant would feel pain from all these injuries, particularly the older fractures to her rib and leg. The rib cage expands while breathing, and it would also hurt anytime someone picked the infant up. Any caregiver would know that the infant was in pain or distress. He also confirmed that the infant's injuries were life-threatening because the fractures could disrupt nerves, cut veins or arteries, and puncture her lung. In addition, she could suffer complications later on as they healed, and delayed treatment could lead to an impairment of or inability to use a limb.

A family care counselor and the guardian ad litem testified that the maternal grandparents were caring for and bonding with the infant since she was sheltered. Severing parental ties would not harm her because she has been with her grandparents since she was a newborn, and they want to adopt her. The maternal grandmother testified that the mother called her from the emergency room and told her the father fell on the infant, but the

mother said she would tell DCF that she had fallen with the infant instead.

For his part, the father asked the trial court to deny the petition. He explained that upon learning of the infant's hospitalization, he experienced mental distress and was taken to a mental health facility. He could not receive follow-up mental health care because he was detained in relation to this case. Upon release from incarceration, he plans to get back on his feet and obtain housing and income.

At the end of the hearing, the trial court granted the petition, terminating the rights of both parents and placing the infant up for adoption. In a detailed order that followed, the trial court determined that DCF established by clear and convincing evidence the ground for termination under section 39.806(1)(f). The trial court considered the relevant factors under the manifest best interest test, discussing each individually, to conclude that clear and convincing evidence supports the determination that termination of the father's parental rights is in the manifest best interest of the child. The trial court specifically addressed the credibility of the father, "find[ing] the father's testimony and statements made prior to trial lack sufficient indicia of reliability." Further, the trial court found DCF's witnesses credible, especially finding "the uncontroverted testimony of Dr. Gohsman very compelling."

This appeal followed.

II

For termination of parental rights to occur, a trial court must find two statutory requirements satisfied by clear and convincing evidence: the existence of a ground for termination under section 39.806, Florida Statutes, and that termination would be in the child's manifest best interests under section 39.810, Florida Statutes.

Further, because there is a fundamental liberty interest in being a parent to a child, "constitutional principles and case law require that DCF demonstrate that some action short of

termination of parental rights could have been undertaken by the State before filing a petition to terminate the parent's right, indicating that termination is the least restrictive means of protecting the child from harm." *S.M. v. Dep't of Children & Families*, 202 So. 3d 769, 777 (Fla. 2016) (citing *Padgett v. Dep't of Health & Rehab. Servs.*, 577 So. 2d 565, 570 (Fla. 1991)). But "where there is clear and convincing evidence of the parent having engaged in the egregious conduct described in section 39.806(1)(f)," termination "is warranted and constitutional upon sufficient proof" that it is in the child's manifest best interests "without the need to judicially imply the extra, least-restrictive-means element into the text." *E.K. v. Dep't of Child. & Fams.*, 326 So. 3d 149, 153 (Fla. 1st DCA 2021) (reaffirming that when termination stems from extraordinary circumstances such as egregious abuse, termination is necessarily the least restrictive means to protect the child from harm).

A trial court's finding that evidence is clear and convincing is presumed correct and will not be overturned unless it is clearly erroneous or lacking in evidentiary support. *N.L. v. Dep't of Child. & Fam. Servs.*, 843 So. 2d 996, 999 (Fla. 1st DCA 2003). Under this highly deferential standard, an order terminating a parent's rights that is supported by sufficient evidence will be affirmed despite that parent's improvements or desire for reunification. *See J.B. v. C.S.,* 186 So. 3d 1142, 1143 (Fla. 1st DCA 2016).

A

As a threshold matter, the father failed to preserve his arguments on appeal. In each of them, he argues that the evidence could not support termination of his parental rights. But he failed to move for a dismissal below. At the close of DCF's case, the mother's attorney moved for dismissal, but the father's attorney did not; she only conferred with him about whether he would testify. Nor did he move for dismissal at the close of his case. This Court has repeatedly held that a motion to dismiss is necessary to preserve for appellate review claims related to the sufficiency of evidence adduced at trial, and the failure to make such a motion constrains this Court to affirm the trial court. *See O.T. v. Dep't of Child. & Fams.*, 116 So. 3d 1290, 1290 (Fla. 1st DCA 2013) (affirming the termination of the father's parental rights because

he did not preserve any issues by moving for a judgment of dismissal at either the close of DCF's case or at the close of his own); *K.J. ex rel. A.J. v. Dep't of Child. & Fams.*, 33 So. 3d 88, 89 (Fla. 1st DCA 2010); *J.D. v. Dep't of Child. & Fams.*, 825 So. 2d 447, 447 (Fla. 1st DCA 2002).

Even if the issues had been properly preserved, none of them warrant reversal. As discussed below, there is competent, substantial evidence in the record to support the termination order.

B

The father first argues that his parental rights were terminated based on mere allegations, and no evidence showed that he caused the infant's injuries or otherwise engaged in conduct that constitutes a ground for termination. We disagree.

Under section 39.806(1)(f), Florida Statutes, termination of parental rights is authorized if a parent "engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental or emotional health of the child." "Egregious conduct" is statutorily defined as "abuse, abandonment or neglect, or any other conduct that is deplorable, flagrant, or outrageous by a normal standard of conduct," and it "may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child." § 39.806(1)(f)2., Fla. Stat.

Here, the father admitted that he grabbed the infant, causing the arm and collarbone fractures that sent her to the emergency room. He also admitted that he shook her in anger, causing the earlier fractures to her rib and lower leg. Neither he nor the mother sought medical care for those earlier injuries. Dr. Gohsman testified that none of the explanations given by the parents fit with the infant's injuries. Instead, they were classical signs of physical abuse that required a significant amount of deliberate force, and all of them could be life-threatening to an infant less than five weeks old—particularly when the earlier fractures went untreated. The pediatrician's unchallenged testimony also

established that the infant would be in serious pain from those fractures, and anyone around her could see that something was wrong. When the infant was eventually brought to the emergency room, both parents repeatedly lied to healthcare workers, DCF, and law enforcement to cover up what really happened. The infant was in the exclusive care of both parents when these injuries were inflicted, and neither of them blamed a third-party for what happened.

Thus, there is sufficient evidence that the father either engaged in egregious abuse of his child or failed to protect her from such abuse. Even assuming there was no evidence that the father was the one who inflicted her injuries, evidence that the injuries occurred while the child was under the parents' exclusive care is enough to show that the father knowingly failed to protect the child from egregious conduct. *See M.B. v. Dep't of Child. & Fams.*, 326 So. 3d 72, 75–76 (Fla. 4th DCA 2021). Expert testimony established that the infant's injuries were caused by abuse and were so severe that they would have been noticed by a caregiver. Under these circumstances, parental rights can be terminated even though it cannot be determined which parent inflicted the abuse. *See In re D.L.H.*, 990 So. 2d 1267, 1271–72 (Fla. 2d DCA 2008), *superseded by statute on other grounds as explained in In re B.F.(1)*, 198 So. 3d 706, 708 (Fla. 2d DCA 2016); *D.O. v. S.M.*, 981 So. 2d 11, 17 (Fla. 4th DCA 2007).

Additionally, the failure to seek prompt medical care for a child is a basis for establishing egregious abuse. *See J.R. v. Dep't of Child. & Fams.*, 28 So. 3d 117, 118 (Fla. 5th DCA 2010) (affirming the termination of the father's parental rights based on egregious conduct when he delayed seeking medical attention for his daughter's injuries for over six hours); *T.M. v. Dep't of Child. & Fams.*, 971 So. 2d 274, 278 (Fla. 4th DCA 2008) (affirming the termination of the mother's parental rights based on egregious conduct when the parents delayed taking their injured baby to the hospital for more than twenty-four hours). The evidence here proved that neither parent sought timely, necessary, and critical medical care after the first set of inflicted injuries. And the facts are that multiple injuries were inflicted over time, causing obvious pain and distress to the child.

Whether the father participated in the infliction of the injuries, failed to protect the infant, or failed to timely seek medical care, competent substantial evidence supports the trial court's determination that grounds for termination exist under section 39.806(1)(f), Florida Statutes.

C

Next, the father argues that terminating his parental rights was not in the child's manifest best interests because he was scared that he may have hurt his newborn after he shook her, he was Baker Acted after he found out she was hospitalized, and he will soon be able to provide a home for her.

"[A] manifest best interests decision is not made to protect the legal rights of the parents; it is made to ensure the best interests of each child." *T.H. v. Dep't of Child. & Fams.*, 226 So. 3d 915, 919–20 (Fla. 4th DCA 2017) (quoting *K.D. v. Dep't of Child. & Family Servs.*, 132 So. 3d 877, 879 (Fla. 2d DCA 2014)). To evaluate whether termination of parental rights is in the manifest best interests of the child, a trial court must consider all of the eleven factors enumerated in section 39.810, Florida Statutes. A trial court need only "make findings sufficient for an appellate court to determine whether an abuse of discretion has occurred" when reviewing those factors. *J.P. v. Fla. Dep't of Child. & Fams.*, 183 So. 3d 1198, 1205 (Fla. 1st DCA 2016).

Here, both orally at the end of the adjudicatory hearing and in its written order, the trial court thoroughly addressed each of the statutory factors and found that termination of the father's parental rights was in the child's manifest best interests. The court's decision rested on the parents' egregious abuse of the infant, their efforts to cover up what happened, their inability to provide for and protect her, the grandparents' ability to provide for and bond with the infant since she was placed with them, their desire and capacity to adopt her, the lack of emotional ties that the infant has with her parents, and the recommendations of DCF and the GAL. This Court cannot reweigh or reconsider these factors as argued by the father. *See J.P.*, 183 So. 3d at 1204 (holding that where the trial court's findings are "sufficient for appellate review, and there was evidence to support the findings[, r]eweighing the

evidence at the appellate level would violate the highly deferential standard we must apply").

D

Finally, the father argues that the order terminating his parental rights should be reversed because he was not given a case plan, there was no evidence that continuing his relationship with the infant would harm her, and the order failed to determine that terminating his rights was the least restrictive means to protect the child. Again, his arguments lack merit.

Termination of parental rights without a case plan or goal of reunification is permitted when it is based on section 39.806(1)(f), Florida Statutes, as in this case. § 39.806(2), Fla. Stat. ("Reasonable efforts to preserve and reunify families are not required if a court of competent jurisdiction has determined that any of the events described in paragraphs (1)(b)–(d) or paragraphs (1)(f)–(m) have occurred.").

And this Court recently reaffirmed that when parental rights are terminated for egregious conduct under section 39.806(1)(f), termination *is* the least restrictive means of protecting the child, and "there is no least-restrictive-means element to be proven." *E.K.*, 326 So. 3d at 153, 155 (citing *Padgett v. Dep't of Health & Rehab. Servs.*, 577 So. 2d 565, 571 (Fla. 1991)). Here, there was sufficient evidence that the father engaged in the egregious conduct described in section 39.806(1)(f) and that termination of his parental rights was in the child's manifest best interests.

III

For these reasons, we affirm the termination of the father's parental rights with respect to his child, F.R.

AFFIRMED.

OSTERHAUS and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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