STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ASHLEY YA SHONE'Y SPELL, BRIAN AARON SPELL, DEVIN MAURICE COPELAND, and TAIJI LAILA COPELAND, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SEAN NOEL COPELAND,

Respondent-Appellant,

and

SAIEDIA ROCHELL, a/k/a ROCHEAL SPELL, and ISHOLA SOLOMON ADEWALE,

Respondents.

UNPUBLISHED
February 10, 2004

No. 249114
Wayne Circuit Court
Family Division
LC No. 02-411912

Before: Cavanagh, P.J., Gage and Zahra, JJ.

PER CURIAM.

Respondent Sean Noel Copeland appeals as of right from the trial court's order terminating his parental rights to the minor children, Devin and Taiji, pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). We affirm.

Respondent first argues his attorney was denied an opportunity to review certain medical records or to present testimony at the jurisdictional phase. However, the record indicates counsel was afforded an opportunity to review the "voluminous" medical records before trial, but failed to make arrangements to do so. Moreover, counsel stated on the record that she had no witnesses to present on the question of jurisdiction.

Respondent also argues the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree. We review the trial court's findings of fact for clear error. *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000). If the trial court determines that the petitioner has proven by clear and convincing

evidence the existence of one or more statutory grounds for termination, the court must terminate parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 353-354. We review a trial court's decision to terminate parental rights for clear error. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

We hold that the trial court did not clearly err in finding petitioner established by clear and convincing evidence the existence of one or more statutory grounds for the termination of respondent's parental rights. The instant case arose when six-week-old Taiji was admitted to the hospital "for seizures and vomiting." Respondent and the mother were Taiji's sole caretakers. X-rays revealed "at least four healing posterior rib fractures, multiple old posterior rib fractures and one lateral rib fracture indicating traumatic injury." Further examination revealed that Taiji's numerous rib fractures had occurred at different times. Taiji would have been in "substantial" pain for several weeks as a result of the numerous rib fractures. Taiji had "an acute fracture of the proximal right arm," which was probably suffered less than two weeks before hospitalization. Also, Taiji had a subdural hematoma, or "bleed," on the left side of her brain, a "type of injury [which] can occur only with very severe force," such as "a very erratic acceleration and deceleration of the head." An expert witness in child neurology who examined Taiji concluded that Taiji's head injury was "non accidental." The one inconsistency between Taiji's condition and shaken baby syndrome was that Taiji did not have any sign of retinal hemorrhage, while "80-90 percent" of shaken babies have retinal bleeding. However, a pediatric neurosurgeon testified that while the presence of retinal hemorrhages "would speak strongly towards [sic] non-accidental trauma," "[t]he absence of retinal hemorrhages does not rule out non-accidental trauma."

Petitioner presented evidence of a history of apparent abuse to children in respondent's care. One of respondent's children, Brittany, died in 1988 when she was just over one-month old, from injuries consistent with shaken baby syndrome. Brittany's death certificate lists the cause of death as "multiple blunt force and whiplash injuries of the head," and lists the nature of her death as "undeterminable." Respondent's explanation for Brittany's injuries was that she fell from an infant swing. However, according to a protective services report made at the time of Brittany's death, the family did not tell emergency service personnel "anything concerning a swing." Moreover, the EMS workers "did not notice a swing" in the home.

Another of respondent's children, Sean Jr., was removed from respondent's home at four months of age after suffering fractures to seven of his ribs and to his tibia. Respondent said that Sean Jr. was injured at a photographer's studio, when the photographer was positioning three or four-month-old Sean Jr. for a picture. Later, respondent said that Sean Jr.'s "leg swole [sic] up"[] about a day and a half after the alleged incident, respondent and his wife took the child to the hospital. Respondent said he "knew nothing about any broken ribs" until a court hearing regarding Sean Jr., and had no explanation for Sean Jr.'s broken ribs.

Here, evidence of physical abuse to Taiji, clearly and convincingly supports the trial court's conclusion that respondent either caused or failed to protect the child from abuse. Accordingly, there is a reasonable likelihood the children will suffer injury or abuse in the foreseeable future if returned to respondent's home. MCL 712A.19b(3)(b)(i), (ii). Next, evidence of undue delay in seeking medical care for Taiji while she was suffering from several fractures that occurred at different times clearly and convincingly shows that respondent failed to

provide proper care and custody. Given respondent's failure to care for Taiji's severe ongoing injuries, there is no reasonable expectation that respondent will be able to provide proper care and custody considering the children's tender ages. MCL 712A.19b(3)(g). Last, the evidence showed that, over the years, three of respondent's infant children suffered serious, inadequately explained injuries, and one child died as a result. How a parent treats one child is probative of "how that parent may treat other children." *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995). Here, the trial court's conclusion that there is a reasonable likelihood, based on respondent's conduct or capacity, the children would be harmed if returned to respondent's home is supported by clear and convincing evidence. MCL 712A.19b(3)(j). Therefore, the trial court did not err in finding several statutory grounds to terminate respondent's parental rights.

Finally, we agree with the trial court that the evidence on the whole record indicates that termination is in the child's best interests. MCL 712A.19b(5). Here, there is overwhelming evidence supporting the trial court's findings that termination of respondent's parental rights is proper under several statutory grounds. We therefore conclude that the trial court did not clearly err in finding termination is in the child's best interests. MCR 5.974(I); *In re Sours*, *supra* at 633.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Hilda R. Gage
/s/ Brian K. Zahra