

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TAYLOR ANN SEABOLT,
CHRYSTAL LYNN HALE, LONDON
EMMANUEL HALE, and KAITELYNNE ELISE
HALE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JONATHON HALE,

Respondent-Appellant,

and

BRANDALYN WERTZ HALE and JOLIANNE
CONLEY,

Respondents.

In the Matter of TAYLOR ANN SEABOLT,
CHRYSTAL LYNN HALE, LONDON
EMMANUEL HALE, and KAITELYNNE ELISE
HALE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BRANDALYN WERTZ HALE,

Respondent-Appellant,

and

JONATHON HALE,

UNPUBLISHED
June 15, 2004

No. 252846
Branch Circuit Court
Family Division
LC No. 03-002583-NA

No. 252864
Branch Circuit Court
Family Division
LC No. 03-002583-NA

Respondent.

Before: Hoekstra, P.J., and O'Connell and Donofrio, JJ.

PER CURIAM.

In these consolidated appeals, respondents Jonathan Hale and Brandalyn Wertz Hale appeal as of right from the trial court order terminating respondent father's parental rights to the minor Hale children: Landon, Kaitelynn, and Chrystal, and respondent mother's parental rights to the minor children Taylor Seabolt and Chrystal Hale, under MCL 712A.19b(3)(b) and (j). We affirm.

This case came to the attention of the Family Independence Agency when Kaitelynn, then nearly three, was brought to the emergency room by her mother, Jolianne Conley, and was found to be dehydrated with extremely high, life-threatening blood sodium levels. Landon, age four, was brought to the emergency room in similar condition by police several hours later. According to the testimony of a pediatric intensivist who cared for Landon and Kaitelynn while they were hospitalized, their condition could only have resulted from the intentional withholding of water. The fact that they were not more debilitated implied that their sodium levels rose over a protracted period of five to seven days. Several other medical witnesses, including one presented by respondent mother, indicated that the condition could result from water deprivation or salt poisoning.¹ Both children had been in the custody of respondent mother and father for the preceding week. Respondent mother's child from a previous relationship, Taylor, and her child with respondent father, Chrystal, both of whom were also in respondent mother and father's custody, were examined and found to have normal sodium levels.

The trial court did not err in finding that the statutory grounds for termination were established by clear and convincing evidence with respect to both respondents. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); MCL 712A.19b(3). Respondent father's parental rights were properly terminated on the ground that he had the opportunity to prevent physical injury or abuse to his children or, with regard to Chrystal, the siblings of his child, but failed to do so. MCL 712A.19b(3)(b)(ii). When a state trooper and a social worker initially interviewed respondent father, he stated that he realized some things were going on and that respondent mother treated her own children much better than Landon and Kaitelynn. He stated that the first thing the children asked for when he came home from work was a drink of water and that he had seen respondent mother hitting Landon with a belt just before the police had arrived. The night the children were hospitalized, respondent father stated in a conversation with Jodie Green, the maternal grandmother of Landon and Kaitelynn, that he knew respondent mother was doing things to the children, putting things in their food and drinks, and that people

¹ Dr. Robertson, who testified for respondent mother, opined that diarrhea was the most likely cause of the children's extreme dehydration and elevated sodium. However, that theory was not supported by other evidence.

had tried to tell him about her but “I guess it took this for me to wake up.” The trial court found the witnesses who testified to these admissions to be credible, and the court’s judgment is entitled to deference. *In re Miller, supra* at 337. This evidence is sufficient to support the trial court’s conclusion that respondent father failed to prevent injury or the abuse of his children when he had the opportunity to do so.

The trial court also did not clearly err in finding that respondent father would not protect the children in the future. Respondent father and mother married some six weeks after the events in question and during the pendency of these proceedings. At the termination trial, respondent father denied his earlier admissions and testified that he had no suspicions concerning respondent mother and no information that she had done anything to cause Landon and Kaitelynn’s condition. Given respondent father’s denial of any abuse or injury, the trial court was justified in concluding that he remained unable to protect his children from future abuse or injury. Based on the same reasoning, we conclude that the trial court was clearly justified in terminating respondent father’s parental rights to Kaitelynn and Landon under MCL 712A.19b(b)(iii) (nonparent caused injury or abuse to child or sibling).²

Respondent mother’s parental rights were properly terminated on the grounds that she caused injury or abuse to the siblings of her children. MCL 712A.19b(3)(b)(i).³ The medical evidence, much of which we have already noted, convincingly established that Kaitelynn and Landon’s condition could only have resulted from water deprivation or salt poisoning. The children were primarily in the care of respondent mother the week before they were hospitalized, with respondent father returning home in the early evening. Respondent mother’s theory that the children’s extreme condition was caused by diarrhea is not supported by the evidence. The medical witnesses were in agreement that diarrhea would have to be severe to cause the

² However, this section cannot support the termination of respondent father’s parental rights with respect to Chrystal because respondent mother is her parent. MCL 712A.13a(g).

³ We note that there was argument in the trial court about whether statutory subsection (b) could be relied upon for the termination of respondent mother’s parental rights to Taylor, because she is not the biological sibling or half sibling of Landon or Kaitelynn. She did become their stepsibling by virtue of the respondents’ marriage. It is not clear from the record whether the trial court relied on statutory subsection (b) to terminate respondent mother’s parental rights to Taylor.

We conclude that Landon and Kaitelynn may be considered “siblings” of Taylor. The children are in fact stepsiblings who would jointly be under the care of respondent mother on at least a part time basis but for the instant proceedings. Under this factual scenario, there exists no rational basis for treating Chrystal differently from Taylor merely because Chrystal shares genetic material with Landon and Kaitelynn while Taylor does not. In any event the definition of sibling is not determinative of the outcome of this appeal since we also find that the trial court properly terminated respondent mother’s parental rights under statutory subsection (j). Termination need be based on only one statutory subsection. *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999).

extremely elevated sodium levels found in the children. Respondent mother herself testified that on the day she began to believe Kaitelynn and Landon were ill, she was aware of no diarrhea for Landon and only one loose stool for Kaitelynn. Significantly, respondent father, who was in the home every evening during the week, had no knowledge of either of the children having diarrhea. Based on this evidence, the trial court was amply justified in its specific finding that the condition of the children was not caused by diarrhea. Further, respondent mother's theory that the giving of pedialyte to the children was a cause or a contributing cause of their elevated sodium also lacks credibility. The medical evidence consistently indicated that pedialyte would not cause the sodium levels found. Moreover, respondent mother stated to the police on the day the children were hospitalized that she was giving pedialyte to all the children, but testified at trial that she was giving it only to Kaitelynn and Landon because Taylor and Chrystal would not drink it. We conclude that the trial court was justified in rejecting the contention that the children's life-threatening condition was caused by the consumption of pedialyte.

The trial court did not clearly err in finding a reasonable likelihood that respondent mother's children will suffer from injury or abuse in the foreseeable future if placed in her care. The evidence gave rise to a strong inference that respondent mother salt poisoned or withheld water from Kaitelynn and Landon. Those medical witnesses who offered an opinion on the matter were in agreement that the children's condition came about over a period of several days to a week. The fact that Taylor and Chrystal were in normal and healthy condition while Landon and Kaitelynn were severely dehydrated with extremely elevated sodium levels strongly suggests different treatment of the two sets of children and, therefore, intentional action. Even though respondent mother's own children were unscathed in this instance, we are in agreement with the trial court that a person who committed abuse that could have ended the lives of two young children clearly cannot be entrusted with the care of any child. Various cases recognize that "[h]ow a parent treats one child is certainly probative of how that parent may treat other children." *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001), quoting *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). Certainly the emotional well being of a child who is witness to other children in her mother's care being deprived of water nearly to the point of death is severely at risk. We are not left with a definite and firm conviction that the trial court erred in finding a reasonable likelihood that respondent mother's children would suffer injury or abuse if placed in her home.

The trial court also terminated the parental rights of both respondents under MCL 712A.19b(3)(j), and we affirm on that basis as well. The evidence showing that the children are likely to suffer abuse or injury if returned to their respective parents also establishes under statutory subsection (j) that, because of respondents' conduct or capacity, there is a reasonable likelihood that the children will be harmed if returned to their care.

The record as a whole does not indicate that termination is clearly contrary to the best interests of the children. MCL 712A.19b(5). Landon and Kaitelynn are in the care of their mother, who has been their primary caretaker for the majority of their lives. Chrystal, now two, was committed to the Michigan Children's Institute for adoption. On a record indicating respondent father lacks either ability or inclination to protect his children, termination cannot be said to be contrary to their best interests. Taylor, the child of respondent mother only, is now in the care of her father. The evidence indicated that Taylor and Chrystal are well bonded with respondent mother. However, on the entire record, including strong evidence that respondent

mother intentionally abused Kaitelynn and Landon, it does not appear that termination was clearly contrary to the best interests of Taylor and Chrystal.

Finally, respondent mother contends on appeal that the trial court improperly considered evidence beyond the plea taken at the adjudication of this matter to terminate her parental rights at the initial dispositional hearing. However, MCR 3.977(E)(3), effective at the time of the instant proceedings, allows for termination at the initial dispositional hearing based on legally admissible evidence introduced at the trial, plea proceedings, or the dispositional hearing. Therefore, the trial court did not err in relying upon legally admissible evidence admitted at the dispositional hearing to terminate respondents' parental rights.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell
/s/ Pat M. Donofrio