

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of MARIO WHITLOW, Minor.

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DEPARTMENT OF HUMAN SERVICES, f/k/a  
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARIO JONES,

Respondent-Appellant,

and

YULANDA WHITLOW and JAMAL GARTH,

Respondents.

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In the Matter of DESHAWN WHITLOW,  
CATHERINE WHITLOW, and MARIO WHITLOW,  
Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a  
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

YULANDA WHITLOW,

Respondent-Appellant,

and

JAMAL GARTH and MARIO JONES,

Respondents.

UNPUBLISHED  
November 29, 2005

No. 262015  
Wayne Circuit Court  
Family Division  
LC No. 04-436176-NA

No. 262016  
Wayne Circuit Court  
Family Division  
LC No. 04-436176-NA

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Before: Davis, P.J., and Fitzgerald and Cooper, JJ.

PER CURIAM.

In these consolidated appeals, respondents Mario Jones and Yulanda Whitlow appeal as of right from the trial court order terminating their parental rights to the minor children. Mr. Jones's parental rights to his infant son Mario were terminated pursuant to MCL 712A.19b(3)(b)(ii),<sup>1</sup> (g),<sup>2</sup> and (j).<sup>3</sup> Ms. Whitlow's parental rights to all three children<sup>4</sup> were terminated pursuant to MCL 712A.19b(3)(g), (j), (k)(iii), (k)(iv), and (k)(v).<sup>5</sup> We affirm.

### I. Factual Background

Respondents' parental rights were terminated following an incident on November 6, 2004, resulting in severe brain damage to their infant son, Mario. Respondents testified that their relationship began to deteriorate with the birth of their son. Both testified that they argued on a

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<sup>1</sup> Pursuant to MCL 712A.19b(3)(b)(ii), termination is proper where

The child . . . has suffered physical injury or physical . . . abuse [and] [t]he parent who had the opportunity to prevent the physical injury or physical . . . 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.

<sup>2</sup> Termination is supported under subsection (3)(g) when "[t]he 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."

<sup>3</sup> Termination is further supported under subsection (3)(j) when "[t]here 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."

<sup>4</sup> Jamal Garth is the legal father of DeShawn and Catherine. He has not appealed the order terminating his parental rights.

<sup>5</sup> MCL 712A.19b(3)(k) provides, in relevant part:

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.

(iv) Loss or serious impairment of an organ or limb.

(v) Life threatening injury.

regular basis. Ms. Whitlow alleged that Mr. Jones once hit her. When Mario was only three months old, the two argued while Ms. Whitlow was driving the family to the home of Mr. Jones's father. Mr. Jones left the vehicle and began walking in the opposite direction. Ms. Whitlow then pulled over, left Mario in his infant carrier on the side of the street, and drove away.

Ms. Whitlow asserted that Mr. Jones moved out on November 5, and returned to his parents' home.<sup>6</sup> On November 6, Ms. Whitlow called Mr. Jones, angry and screaming. She told him that she wanted money for diapers for Mario, who was then five months old. Ms. Whitlow testified that Mr. Jones refused to talk to her because he stated that he had to go to work. Mr. Jones testified that he told Ms. Whitlow to come over and he would give her some money. Shortly thereafter, Ms. Whitlow arrived at Mr. Jones's home with all three children in the car. She pulled up to the curb and left the car running. She carried Mario in his infant carrier and sat him in the front yard while she argued with Mr. Jones. She told Mr. Jones that if he did not give her money for diapers that she would leave the infant in his care. Ms. Whitlow then left Mario and returned to her car. Mr. Jones opened the front passenger side door and attempted to place Mario inside.<sup>7</sup> However, Ms. Whitlow drove off, knocking Mr. Jones down and causing Mario to be thrown from his carrier and the car. Mario's head hit the cement and Ms. Whitlow ran over his head as she drove off.

Mr. Jones took Mario to Henry Ford Hospital in Detroit where a neurosurgeon performed emergency surgery. A part of Mario's skull was removed to relieve the pressure from his swelling brain. Mario's skull was completely fractured, a portion of his brain had been exposed, and he had facial and scalp abrasions consistent with tire marks. Mario was transferred to Children's Hospital later that day and immediately underwent further surgery to relieve the swelling. A subsequent surgery was necessary to replace the bones in his skull. After that surgery, Mario appeared to be blind, suffered from seizures, and required respiratory assistance. As of the final termination proceedings, Mario, who was then ten months old, was still being tube-fed. He did not roll over, lift his head, or have control over his body functions. He had very low brain activity and function. The doctors treating Mario indicated that this condition was not likely to improve with time, nor was it likely that Mario would ever walk or regain his vision. While criminal charges were not brought against Mr. Jones with regard to this incident, Ms. Whitlow pled no contest to second-degree child abuse,<sup>8</sup> operating a motor vehicle without insurance,<sup>9</sup> and operating an unregistered vehicle.<sup>10</sup>

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<sup>6</sup> Mr. Jones denied that he ever lived with Ms. Whitlow.

<sup>7</sup> Mr. Jones contends that he was attempting to buckle the carrier into the seat. Ms. Whitlow contends that Mr. Jones threw the carrier into the car.

<sup>8</sup> MCL 750.136b(3).

<sup>9</sup> MCL 500.3102(2).

<sup>10</sup> MCL 257.215.

## II. Termination of Parental Rights

Both respondents contend that the trial court improperly terminated their parental rights and assert that termination was not in the children's best interests. We review a trial court's decision to terminate parental rights for clear error.<sup>11</sup> 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 the respondent's parental rights unless it finds from the record evidence that termination is clearly not in the child's best interests.<sup>12</sup> We also review the trial court's determination regarding the child's best interests for clear error.<sup>13</sup>

Due to the reckless behavior of his parents, the infant suffered a traumatic brain injury. It is unlikely that Mario will progress beyond his current level of functioning. He will require constant daily medical and nursing care for the rest of his life. Ms. Whitlow pled no contest to second-degree child abuse with regard to this incident. She was placed on probation for three years, during which time she is forbidden from having contact with minor children. Moreover, Mr. Jones failed to protect his son and his own reckless behavior played a role in the cause of Mario's injuries. Mr. Jones attempted to force Ms. Whitlow to take Mario, rather than caring for his son himself.<sup>14</sup> Mr. Jones still has not accepted any responsibility for the cause of Mario's injuries.

In light of the harm their reckless behavior caused, the trial court properly determined that statutory grounds existed to terminate both respondents' parental rights to Mario, and that termination was in Mario's best interests. The trial court also properly determined that Ms. Whitlow's conduct left DeShawn and Catherine in continuing danger. Accordingly, termination was also not contrary to the best interests of Ms. Whitlow's other children.

Affirmed.

/s/ Alton T. Davis  
/s/ E. Thomas Fitzgerald  
/s/ Jessica R. Cooper

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<sup>11</sup> MCR 3.997(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

<sup>12</sup> MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

<sup>13</sup> *Id.* at 356-357.

<sup>14</sup> Mr. Jones also admitted that his mother was available to care for Mario that day.