

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of CHLOE LEWIS and HANNAH  
LEWIS, Minors.

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

UNPUBLISHED  
January 12, 2006

Petitioner-Appellee,

v

STACY LEWIS,

Respondent-Appellant.

No. 263545  
Ionia Circuit Court  
Family Division  
LC No. 05-000048-NA

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Before: Zahra, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(i), (j), and (k)(iii). We affirm.

A petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). We review for clear error both the trial court's decision that a ground for termination was proven by clear and convincing evidence and the court's decision regarding the child's best interests. *Id.* at 209. Respondent argues that MCL 712A.19b(3)(k)(iii), which applies when the parent's abuse of a child constituted "battering, torture, or other severe physical abuse," does not apply to one isolated shaking. The subsection's express language does not require multiple incidents. There is some ambiguity regarding the scope of "severe physical abuse," which is not defined in the statute. However, MCL 722.628(3)(c) defines "severe physical injury" to include skull fractures and subdural hematomas, which respondent's baby suffered. The baby also suffered retinal hemorrhaging. Shaking a baby hard enough to cause subdural hematomas is severe physical abuse. The subsection does not require an intent to injure; respondent did not accidentally move her arms in a shaking motion, regardless whether she considered the consequences of her actions. The lower court did not clearly err when it found clear and convincing evidence of a statutory ground to terminate respondent's parental rights under MCL 712A.19b(3)(k)(iii).

Moreover, establishment of only one statutory ground is sufficient, and the court did not clearly err in finding grounds for termination under MCL 712A.19b(3)(b)(i)(parent caused physical injury to child or a sibling of child and there is a reasonable likelihood of injury in the

foreseeable future) and (j)(reasonable likelihood child will be harmed if returned to parent). There was sufficient record support to uphold the court's findings. Additionally, the issue whether respondent was reasonably likely to harm the child again was relevant to the best interests analysis.

When a lower court finds a statutory ground for termination, it must terminate parental rights unless termination was clearly against the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 352-353; 612 NW2d 407 (2000). There is no specific burden on either party to present evidence of the child's best interests; rather, the trial court should weigh all the evidence available. *Id.* at 354.

The primary evidence that termination was clearly against the children's best interests was their bond with respondent and the opportunity for respondent to provide needed financial support and parenting assistance to the children's young father. There was also mixed evidence regarding whether it was psychologically better for the children to make an immediate break to avoid confusion or make every effort to ensure respondent could not safely parent them before terminating her rights.

However, there was clear evidence that respondent was reasonably likely to hurt the children again and that her treatment efforts would likely be erratic. She admittedly threw objects during fights with the father and threatened murder or suicide to get his attention. The father testified that respondent ruined their apartment by making holes in the walls and breaking windows when she threw objects. He further testified that respondent once came after him with a knife. Respondent's oldest child was briefly removed six months earlier, and after her return respondent failed to continuously follow through with therapy and medication recommendations. Even after the shaking incident, her therapy attendance was admittedly inconsistent. This behavior was consistent with the psychological evaluation that she was erratic and unpredictable. Shared custody might provide respite; however, even part-time parenting results in stressful situations similar to that which overwhelmed respondent and led her to shake her not yet three-month-old baby.

The trial court did not err when it held that termination was not clearly against the children's best interests and when it terminated respondent's parental rights.

Affirmed.

/s/ Brian K. Zahra  
/s/ William B. Murphy  
/s/ Janet T. Neff