

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ISSAC SOLOMON, a/k/a ISSAC
BARBER, and IVORY SOLOMON, Minors.

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

UNPUBLISHED
November 21, 2006

Petitioner-Appellee,

v

EBONY LATOYA SOLOMON, a/k/a EBONY
BARBER,

No. 267588
Wayne Circuit Court
Family Division
LC No. 05-442516-NA

Respondent-Appellant.

Before: Hoekstra, P.J., and Meter and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). We affirm in part, reverse in part, and remand for additional proceedings.

Respondent's parental rights to four-month-old Issac Solomon and his two-year-old sister, Ivory, were terminated at the initial disposition just four months after the children were removed from respondent's home upon evidence that Issac had suffered non-accidental head injuries. Although the perpetrator of the physical abuse suffered by Issac was never positively identified, there was evidence that the abuse may have occurred while Issac was in the care of his then-putative father, sixteen-year-old Rodney Barber, who was at that time living at the home of a friend whom it is not disputed disliked and had previously threatened to harm respondent. Citing respondent's decision to leave Issac with Barber, as well as her failure to immediately remove the child from Barber's care after observing scratches on the child's face, petitioner asserted that the children should not be returned to respondent's care because respondent was so irresponsible with regard to Issac's well-being that she was not fit to care for either of the children. The trial court agreed and, after finding jurisdiction appropriate under MCL 712A.2(b)(1) and (2), terminated respondent's parental rights to the minor children at the initial disposition. On appeal respondent argues that the trial court erred in assuming jurisdiction of the minor children and in finding statutory grounds for termination of her parental rights. Although we find no error in the trial court's exercise of jurisdiction, we agree that the evidence presented in this matter was insufficient to warrant termination of respondent's parental rights at this time.

To properly exercise jurisdiction, a trial court must find that a statutory basis for jurisdiction” has been established by a preponderance of the evidence. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). This Court reviews the trial court’s decision to exercise jurisdiction for clear error in light of the trial court’s findings of fact. *Id.* Here, the trial court did not err in finding that a preponderance of the evidence established its jurisdiction over the minor children under both MCL 712A.2(b)(1) and (2). MCR 3.972(C)(1). Contrary to respondent’s assertion, it was shown by a preponderance of the evidence that respondent’s poor judgment and carelessness with regard to Issac’s care resulted in the child sustaining serious injuries. Because such evidence was sufficient to show neglect of the “care necessary for [the] health” of the children, MCL 712A.2(b)(1), and that respondent’s home was “an unfit place for the juvenile[s] to live in,” MCL 712A.2(b)(2), we reject respondent’s assertion that the trial court erred in exercising jurisdiction over the minor children.

We agree, however, that the trial court erred in finding that the statutory grounds for termination of respondent’s parental rights were established by clear and convincing evidence. This Court reviews for clear error a trial court’s decision terminating parental rights. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding qualifies as clearly erroneous when, although evidence exists to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

The trial court determined that termination of respondent’s rights was warranted under MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). Subsections 19b(3)(b)(i), (b)(ii), and (j) each require clear and convincing evidence that there is a “reasonable likelihood” that the children will be harmed, injured, or abused within the foreseeable future if placed in respondent’s home, while subsection (g) requires that there be “no reasonable expectation” that respondent could provide proper care or custody within a reasonable time considering the children’s age. We do not find within the instant record clear and convincing evidence that the children would be so harmed, or that respondent could not reasonably be expected to provide proper care or custody for the children.

Petitioner did not argue, nor did the trial court find, that respondent inflicted the abuse suffered by Issac. Rather, it was argued and concluded that termination was indicated because respondent left the child with his young, putative father, and failed to immediately remove the child from such care after observing scratches on the child’s face. However, while we agree that respondent exercised poor judgment in entrusting Issac to Barber’s care, the record developed during the short period between removal of the children from respondent’s care and termination of her parental rights suggests that respondent otherwise provided suitable physical and emotional care for the children prior to their removal from her care. Indeed, the emergency room physician who examined and discovered Issac’s injuries testified that aside from the bruise and scratches for which respondent sought treatment of her son, Issac appeared to be happy and well cared for. And, regarding the scratches on Issac’s face, the Child Protective Services worker assigned to this case, Jeff Jozsa, declined at trial to characterize respondent’s failure to more immediately react to these injuries as “medical neglect.” Jozsa further testified that he believed respondent acted “appropriately” upon discovering that the child had been bruised. Moreover, the evidence established that by the time of trial Barber had been excluded as the possible father of Issac, consequently, there was no reason to believe that respondent would again entrust Issac

to Barber's care. Additionally, because no efforts toward reunification were made during the four-month proceeding, little was revealed about the personalities, abilities and propensities of respondent. Under the circumstances, and considering the absence of any history or allegation of respondent's neglect of the physical or emotional needs of her children while in her care, we are left with a definite and firm conviction that the trial court erred in finding that statutory grounds for termination of respondent's parental rights were established. *Conley, supra*.

Affirmed in part, reversed in part, and remanded to the trial court for additional proceedings. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Pat M. Donofrio