STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
December 28, 2010

In the Matter of WYATT, Minors.

No. 298147
Wayne Circuit Court
Family Division
LC No. 10-492272

Before: SHAPIRO, P.J., and SAAD and K.F. KELLY, JJ.

PER CURIAM.

Respondent mother appeals an order that terminated her parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(*ii*), (b)(*i*), and (k)(*vi*). For the reasons set forth below, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Respondent admitted to beating and starving her two-month-old daughter to death. The two young boys at issue in this appeal are the infant's older brothers. At the time of the infant's death, they were under a legal guardianship with their maternal grandmother. Respondent argues that, because the children were safe with their grandmother, the court erroneously asserted jurisdiction over the children. Respondent's position is entirely without merit.

To properly exercise jurisdiction, the trial court must find by a preponderance of the evidence that a statutory basis for jurisdiction exists. *In re BZ*, 264 Mich App 286, 294; 690 NW2d 505 (2004); *In re Toler*, 193 Mich App 474, 476; 484 NW2d 672 (1992). Jurisdiction over the children was sought pursuant to MCL 712A.2(b)(1), which provides:

> (b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:
>
> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship.

The doctrine of anticipatory neglect provides that a child may come within the jurisdiction of the court based solely on a parent's treatment of another child. *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995), superseded in part on other grounds *In re Jenks*, 281 Mich App 514,

517-518 n 2; 760 NW2d 514 (2008). Abuse of the children subject to the trial court's jurisdiction is not a prerequisite for jurisdiction. *In re Gazella*, 264 Mich App 668, 680-681; 692 NW2d 708 (2005).

Respondent's reading of the statute -- that a child under a guardianship cannot be the subject of a trial court's jurisdiction -- is patently erroneous. This Court has held that the parental rights of a non-custodial parent may be terminated, even if the child safely resides with the custodial parent, because "the Legislature envisioned and intended that the probate court could terminate the parental rights of just one parent." *In re Marin*, 198 Mich App 560, 566; 499 NW2d 400 (1993). In *In re Ramsey*, 229 Mich App 310; 581 NW2d 291 (1998), the probate court refused to assert jurisdiction over a child because the father who had attempted to kill her was in prison and the child was no longer in danger from him. The circuit court agreed. *Id.* at 312-313. On appeal, this Court soundly rejected that theory and held that the probate court's interpretation "would lead to the incongruous result that a petition filed the day before a respondent parent's conviction would result in the probate court's finding of jurisdiction, whereas the same petition filed the day after the parent's conviction would not. We are not willing to jeopardize the welfare of a child on the basis of such a technicality." *Id.* at 317.

The father's imprisonment in *Ramsey* was deemed insufficient to protect the child. Here, the fact that the children were in a guardianship with their maternal grandmother did not preclude the assumption of jurisdiction. These were court-ordered guardianships that were in place because respondent abused and abandoned the children. Leaving the parental rights of respondent intact simply because of their guardianship would allow respondent to challenge the guardianship or try and be a part of the children's lives -- rights that she cannot exercise because of her own heinous conduct. Respondent killed the two-month-old sister of these children. If the infant had survived respondent's brutal attack, there is absolutely no question that she would have come within the court's jurisdiction and, under the theory of anticipatory neglect, so would her two siblings. It would be absurd to hold that, because jurisdiction cannot attach to the murdered child, her siblings should remain at risk of harm from an atrociously brutal parent. Just as the statute cannot be read to preclude the assumption of jurisdiction over a child who was safely abiding with a custodial parent, it cannot be read to preclude the assumption of jurisdiction over children who were in a guardianship.

When the grandmother petitioned for guardianship over the older child in June 2008, the child had been diagnosed with failure to thrive and had a burn mark on his back. The younger boy came into the grandmother's care approximately two months later when he was four months old. CPS contacted the grandmother to take the younger child after respondent left him with someone who did not have appropriate housing. From February 2008 until October 2009, the children's grandmother did not know where respondent was living. Respondent visited the children only once in the summer of 2008 and she provided nothing for the children. Under the theories of abandonment and anticipatory neglect, the trial court did not err in asserting jurisdiction over the children.

Remarkably, respondent maintains that the trial court erred in terminating her parental rights. Clearly, the trial court correctly ruled that statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000).

In her initial statement to police, respondent admitted that she struck the baby on the legs with a leather belt approximately four or five times. She asserted that her boyfriend, Leon, then hit the baby with the belt in the face, chest, arms, legs, and feet, and then flipped her over and struck her on the legs, back and butt. Respondent picked up the baby and heard her take one deep breath before her tongue came out of her mouth and her heart stopped beating. They put the baby in a dumpster before they changed their minds and tried to bury her. Respondent admitted that she had no particular reason for striking the baby. She struck the baby with the belt on at least five prior occasions and Leon did so daily. Respondent fed the baby five ounces of formula twice daily. In her second statement to police, respondent admitted that she was the one who struck the baby on her head, face, and body with the leather belt and that Leon only struck the baby once.

Dr. Nirubama Kannikeswaran testified that the baby was dead when she was brought to the emergency room. The baby was "marasmic," meaning she had no body fat on her and her skin was shriveled like an old man. There were bruises on her right temple, right upper eyelid, and the left temple. She also had a deformity on her right wrist. A bone survey revealed that the baby had many healing rib fractures. She also had an acute fracture to the right ulna and radius. There was also compression of the spine, generally associated with shaking a baby. The injuries were non-accidental. The baby actually weighed less at the time of her death than when she was released from the hospital after her birth.

Again, the evidence established that respondent murdered her two-month-old child by beating and starving her. It was clearly correct for the trial court to terminate her parental rights pursuant to subsections 19b(3)(b)(*i*) and (k)(*vi*). Respondent had also deserted the two children at issue for purposes of subsection 19b(3)(a)(*ii*). The fact that the children were in a guardianship did not relieve respondent of her obligation to communicate with and support the children. See *In re Sears*, 150 Mich App 555, 561; 389 NW2d 127 (1986).

The trial court was also clearly correct when it ruled that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5). The CPS worker acknowledged that the two children appeared to be well cared for and that CPS had no intention of removing them from the grandmother's care. She also believed that adoption would provide the children with the permanence they need. The children are entitled to permanence and stability but, more importantly, the children are also entitled to be kept safe from any future contact with respondent.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Henry William Saad
/s/ Kirsten Frank Kelly