# STATE OF MICHIGAN

# COURT OF APPEALS

*In re* I. M. BEASLEY, Minor.

UNPUBLISHED
September 15, 2016

No. 331422, 331423
Wayne Circuit Court
Family Division
LC No. 15-520059-NA

Before: GADOLA, P.J., and WILDER and METER, JJ.

PER CURIAM.

In these consolidated appeals, both respondents appeal as of right the trial court's order terminating their parental rights to their minor child, I. M., under MCL 712A.19b(3)(b)(*i*) or (b)(*ii*) (a sibling suffered physical injury and the parent's act caused the injury or the parent who had the opportunity to prevent the injury failed to do so), (g) (failure to provide proper care or custody), (j) (risk of harm if returned to parent), and (k)(*iii*) through (k)(*vi*) (a parent abused the child or a sibling of the child and the abuse included severe physical abuse, serious impairment of an organ or limb, life-threatening injury, or murder or attempted murder). We affirm.

## I. FACTUAL BACKGROUND

The younger sibling of I. M. was born prematurely with numerous physical problems, spent the first three months of her life in intensive care, and was then released to respondents' care. When the sibling was eight months old, she died. Less than two months before her death, during a hospital stay, a child abuse expert discovered the sibling had seven intentionally inflicted broken bones, including fractures in two of her ribs, a fracture in the humerus, a fracture in each femur, and a fracture in each tibia. The child abuse expert testified that the fractures would require a strong, violent force to inflict. Respondents could not offer any reasonable explanation for the injuries. After her death, it was discovered that the infant had new fractures underneath her collar bone and to her ribs. The infant also sustained internal bruises to her lungs, liver, spleen, and bowel, lacerations on her upper and lower gums, and a laceration on her chin that extended to the inside of her mouth. The medical examiner ruled out all possible natural or accidental causes of death, determined that the child had been intentionally suffocated, and ruled the death a homicide. Respondents provided confusing, inconsistent, and unconvincing testimony. Their only explanation for the injuries was that I. M., who was 21 months old when his sister died, tried to pick up the infant by her ribs. The trial court assessed respondents' credibility and determined that each respondent had either abused I. M.'s sibling or

had failed to protect her from the other parent's abuse. Accordingly, the court terminated both respondents' parental rights to I. M.

## II. STANDARD OF REVIEW

On appeal from termination of parental rights proceedings, this Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). This Court also reviews for clear error "both the trial court's decision that a ground for termination of parental rights has been proved by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interests." *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *Id.* at 209-210. Further, regard must be given to the special opportunity of the trial court to judge the credibility of the witnesses who appear before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

## III. APPLICABLE LEGAL STANDARDS

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). Below, the trial court relied on the following statutory grounds to terminate respondents' parental rights:

> (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
>
> (*i*) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
>
> (*ii*) The parent who had the opportunity to prevent the physical injury or physical or sexual 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.
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> * * *
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> (g) The 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.
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> * * *
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> (j) There 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.

(k) 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.

(*vi*) Murder or attempted murder.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). In making the best-interest determination, courts may consider the parent's parenting ability, the child's bond to the parent, the child's safety and well-being, the parent's ability to provide a permanent, safe, and stable home, and the child's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). A trial court's determination regarding a child's best interests must be supported by a preponderance of the evidence. *Moss*, 301 Mich App at 90.

## IV. RESPONDENT-MOTHER

In Docket No. 331422, respondent-mother argues that termination of her parental rights was inappropriate because she was not given an opportunity to plan for I. M., she was not counseled regarding the consequences of her choice to remain with respondent-father, and she was not provided any reunification services. These arguments lack merit. Given the facts that were known at the time the Department of Health and Human Services (DHHS) filed the petition, DHHS was required to file an initial petition seeking termination of parental rights. MCL 722.638(1)(a)(*iii*) through (*vi*), and (2).[1] When the goal is termination rather than reunification, DHHS is not required to provide reunification services. *Moss*, 301 Mich App at 91; *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008). Therefore, DHHS was required to file a petition seeking termination of respondent-mother's parental rights at the initial dispositional hearing and was not required to provide reunification services after filing the petition.

[1] Under MCL 722.638(1)(a)(*iii*) through (*vi*), DHHS is required to submit a petition if a parent, guardian, or other adult who resides in the child's home has abused the child or a sibling of the child, and the abuse includes "[b]attering, torture, or other severe physical abuse," "[l]oss or serious impairment of an organ or limb," "[l]ife threatening injury," or "[m]urder or attempted murder." Pursuant to MCL 722.638(2), that petition must include a request for termination of parental rights at the initial dispositional hearing "if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk . . . ."

Respondent-mother also contends that the trial court should have implemented a guardianship instead of terminating her parental rights because it would have given her time to comply with a treatment plan. Respondent-mother never raised the issue of a guardianship in the trial court. Therefore, this issue is not preserved for appeal, and our review is limited to plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). We find no plain error in the trial court's decision to proceed with termination under the circumstances. The minor child's sibling was brutally murdered while in respondent-mother's care and custody, and she had no plausible explanation for the sibling's injuries. The medical examiner ruled out all possible natural or accidental causes of death. The trial court did not clearly err by concluding that respondent-mother either inflicted the abuse or knew who inflicted the abuse. In addition, her testimony was contradictory and not credible. There could be no circumstances under which another child would be placed in respondent-mother's care. Accordingly, this is not a situation in which the court should have considered a guardianship.

Next, relying on *In re B & J*, 279 Mich App 12; 756 NW2d 234 (2008), respondent-mother contends that DHHS violated her due process rights because it took action that virtually assured the creation of a ground for termination and based its decision to pursue permanent custody on respondent-mother's past conduct. Respondent-mother's argument is misplaced. Unlike the circumstances in *B & J*, 279 Mich App at 20, there is no evidence in this case that DHHS took any action to create a ground for termination and then "s[ought] termination on that very ground." Rather, DHHS became involved in respondent-mother's life after both of her children were born testing positive for marijuana. Before filing the termination petition for I. M., DHHS learned that his sibling had fractures in various stages of healing in April 2015, and that the infant died the next month as the result of suffocation with numerous new fractures and bruised internal organs. I. M.'s sibling was brutally abused while in respondent-mother's care, and respondent-mother had no plausible explanation for the infant's injuries. Therefore, it is clear that respondent-mother created the situation that led to DHHS's involvement.

The trial court also did not clearly err by finding that clear and convincing evidence established statutory grounds to terminate respondent-mother's parental rights. The evidence was overwhelming that I. M.'s sibling suffered brutal physical injuries while in the care and custody of respondents, and that either respondent-mother caused the physical injuries or respondent-father caused the injuries and respondent-mother knew about the abuse, had the opportunity to protect her child from further injuries, and failed to do so.[2] Despite this knowledge, respondent-mother continued her relationship with respondent-father and, with her testimony, tried to protect him from any involvement or responsibility. It was clear that her relationship with respondent-father was more important to respondent-mother than the safety and well-being of her children. Evidence of how a parent treats one child is evidence of how he or

[2] Similar to this case, in *In re VanDalen*, 293 Mich App 120, 139-140; 809 NW2d 412 (2011), two infant children suffered serious injuries while in their parents' sole care and custody, but the record did not directly implicate either parent in the abuse. Affirming the termination of both parents' parental rights under MCL 712A.19b(3)(g) and (j), this Court held that it did not matter which parent committed the abuse and which failed to protect the children from the abuse. *Id.*

she may treat other children. *In re Hudson*, 294 Mich App 261, 266; 817 NW2d 115 (2011); *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). Therefore, the evidence established a reasonable likelihood that I. M. would suffer injury or abuse in the foreseeable future if placed in respondent-mother's care. The trial court did not clearly err by finding that sufficient evidence established MCL 712A.19b(3)(b)(*i*) or (b)(*ii*), (g), (j), and (k) with regard to respondent-mother.[3]

Lastly, respondent-mother contends that termination was not in the best interests of I. M. We disagree. The court presented a thorough analysis of the factors involved in a decision regarding a child's best interests. Overwhelmingly, the factors weighed in favor of terminating respondent-mother's parental rights. Given the multiple serious injuries suffered by I. M.'s sister while in respondent-mother's care and the infant's ultimate death, we find no error in the trial court's determination that it was in I. M.'s best interests to terminate his mother's parental rights.

## V. RESPONDENT-FATHER

In Docket No. 331423, respondent-father first argues that MCL 712A.19b(3)(b)(*i*), (b)(*ii*), and (k) cannot apply to him because he is not a "parent." Respondent-father testified at the termination hearing that there was some question about whether he was the sibling's biological father. DHHS set up a paternity test for June 2, 2015; however, the infant died before the test could be administered. Therefore, respondent-father was not the sibling's legal father, but was her putative father, at the time of her death. He was I. M.'s legal and biological father.

In *LE*, 278 Mich App at 22, the respondent argued in connection with MCL 712A.19b(3)(g) that his conduct before establishing legal paternity could not be considered because he did not yet owe the child a legal duty. This Court disagreed, explaining that while a putative father did not yet have a legal duty to care for a child, "he did have, as her biological father, a clear moral duty to do so." *Id*. at 23. Further, failure to promptly take steps to formally acknowledge paternity could be used as evidence of the father's failure to provide care and custody. *Id*. at 24. Additionally, the existence of statutory grounds involving siblings, such as MCL 712A.19b(3)(b), (i), (*l*), (m), and (k), indicate that "termination of parental rights may be based on conduct occurring before a child is even conceived." *Id*.

Respondent-father's argument that the statute cannot be applied to terminate his parental rights to I. M. is without merit. A "sibling" is someone who has one or both parents in common. *Hudson*, 294 Mich App at 266. Subsections (3)(b)(*i*) and (b)(*ii*) require a finding that "[t]he child or a sibling of the child" suffered physical injury, the parent's act caused the physical injury or the parent who had the opportunity to prevent the physical injury failed to do so, and there is a reasonable likelihood that the child would suffer injury or abuse in the foreseeable future if placed with the parent. Likewise, subsection (3)(k) provides that termination is

[3] See also *In re Ellis*, 294 Mich App 30, 35-36; 817 NW2d 111 (2011) ("[T]ermination of parental rights under MCL 712A.19b(3)(b)(*i*), (b)(*ii*), (j), and (k)(*iii*) is permissible even in the absence of definitive evidence regarding the identity of the perpetrator when the evidence does show that the respondent or respondents must have either caused or failed to prevent the child's injuries.").

warranted if "[t]he parent abused the child or a sibling of the child . . . ." Under the clear language of the statute, respondent-father cannot use the fact that he had not established legal paternity to avoid termination of his parental rights. The statute does not require that respondent-father be the legal father of the "sibling of the child" for the statute to apply to him. The "child" in this case is I. M., and respondent-father was I. M.'s legal father. The child who suffered physical injury and died was, at the very least, the child of respondent-mother and therefore was I. M.'s "sibling." As we stated previously, the trial court did not err by finding that respondent-father either caused the physical injury to I. M.'s sibling or that he had the opportunity to prevent the physical injury, and there was a reasonable likelihood that I. M. would suffer injury or abuse in the foreseeable future if placed in respondent-father's care.

Respondent-father argues that he never cared for the sibling and he was not living with respondent-mother and was not anywhere near the infant during the two weeks before her death. Therefore, he argues, there was not clear and convincing evidence to terminate his parental rights. Again, we disagree. "When there is severe injury to an infant, it does not matter whether [the] respondents committed the abuse at all, because under these circumstances there was clear and convincing evidence that they did not provide proper care." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). When a child suffers severe, nonaccidental injuries and at least one of the parents must have caused the injuries, a joint denial of knowledge of the source of injuries supports the conclusion that a child would suffer injury if returned to one of the parents. *Id*. at 34. Accordingly, "termination of parental rights under MCL 712A.19b(3)(b)(*i*), (b)(*ii*), (j), and (k)(*iii*) is permissible even in the absence of definitive evidence regarding the identity of the perpetrator when the evidence does show that the respondent or respondents must have either caused or failed to prevent the child's injuries." *Id*. at 35-36.

Although respondent-father argues that he was completely uninvolved with the sibling, respondent-mother testified that she showed him how to adjust the infant's oxygen and he testified that he saw I. M. try to pick up his sibling by her ribs. Respondents told different versions of events at different hearings regarding respondent-father's involvement in the sibling's life, and contradicted themselves in their testimony. The trial court found that respondents were not credible. On such matters, we defer to the trial court, which had a superior opportunity to evaluate respondents' credibility. MCR 2.613(C); *Miller*, 433 Mich at 337.

In this case, the evidence showed that I. M.'s sibling suffered heinous physical injuries and that either respondent-father caused the physical injuries or respondent-mother caused the injuries and respondent-father had the opportunity to prevent the physical injuries and failed to do so. The injuries were brutal and I. M.'s sibling was ultimately smothered to death. Despite this fact, respondent-father continued his relationship with respondent-mother and, through his testimony, tried to protect himself from any involvement or responsibility. Because evidence of how a parent treats one child is evidence of how he or she may treat other children, *Hudson*, 294 Mich App at 266; *AH*, 245 Mich App at 84, the record established a reasonable likelihood that I. M. would suffer injury or abuse in the foreseeable future if placed in respondent-father's care. Therefore, the trial court did not clearly err by finding that sufficient evidence established MCL 712A.19b(3)(b)(*i*) or (b)(*ii*), (g), (j), and (k) with regard to respondent-father.

Finally, respondent-father contends that the trial court clearly erred by finding that termination of his parental rights was in I. M.'s best interests. We disagree. The trial court

considered on the record appropriate best-interest factors and the opinions of the experts, case workers, and the guardian ad litem. Given that I. M.'s sibling was the victim of severe abuse that led to her death, and neither parent accepted any responsibility for the injuries or the death, the trial court did not clearly err by finding by a preponderance of the evidence that it would be in the best interests of I. M. to terminate his father's parental rights.

Affirmed.

/s/ Michael F. Gadola
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter