

STATE OF MICHIGAN
COURT OF APPEALS

In re C. STEELE, Minor .

UNPUBLISHED
March 21, 2017

Nos. 333798, 333839
Ingham Circuit Court
Family Division
LC No. 16-000378-NA

Before: BECKERING, P.J., and O'CONNELL and BORRELLO, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother appeals by right the trial court's order terminating her parental rights to the minor child, CS, under MCL 712A.19b(3)(b)(ii) (failure to prevent physical injury to sibling); MCL 712A.19b(3)(g) (failure to provide proper care and custody); and MCL 712A.19b(3)(j) (reasonable likelihood of harm). Respondent father appeals by right the court's termination of his parental rights to CS under MCL 712A.19b(3)(b)(i) (parent's act caused physical injury to sibling), MCL 712A.19b(3)(g), MCL 712A.19b(3)(j), and MCL 712A.19b(3)(k)(iii) and (v) (sibling abuse/battering, torture, other severe physical abuse/life-threatening injury). For the reasons set forth in this opinion, we affirm.

A. BACKGROUND

Respondents were before this Court with respect to prior termination proceedings. This Court issued an unpublished opinion affirming the trial court's termination of respondent father's parental rights to two other children, OS and RD, under MCL 712A.19b(3)(g) and (j), and the termination of respondent mother's parental rights to three other children, DF, AL, and RD, under MCL 712A.19b(3)(b)(iii), (g), and (j). *In re Lynch/Mapp/Fillmore Minors*, unpublished opinion per curiam of the Court of Appeals, issued November 17, 2016 (Docket Nos. 331826, 331829, 331871). The termination of those children arose after JW, respondent mother's four-year-old son, was abused and died in the care of respondent father while respondent mother was at work. The transcript of the termination proceeding was admitted in the instant proceeding and a review of the circumstances surrounding JW's death is warranted.

Prior Proceeding Concerning OS, RD, DF, AL

At the prior termination proceeding, Detective Joel Mires, who interviewed respondent father during his investigation of JW's death, testified that respondent father told him that respondent mother and the children moved into an apartment he was renting in Lansing "around June 12." Detective Mires testified that respondent father said "he was on SSI" and that he was

“the caregiver while [respondent mother] works. He watches the children.” According to Detective Mires, respondent father explained that “he had to discipline the kids and that they needed a father figure.” Respondent father told the officer that “he liked to discipline the kids with a belt or use like a military timeout where he has them standing in the corner.” Respondent father stated that he used the belt and “would tear up the legs and butts,” which Mires interpreted to mean that he would “whip them until he tore them up, leaving marks.” Respondent father “whipped [the children] all over the place.”

Detective Tracy Jones testified that respondent mother told him that respondent father “is the disciplinarian in the household and that he spans the kids.” Jones testified that respondent mother maintained “the kids are normally disciplined when she is not there.”

Detective Victoria Nevins, who interviewed OS, RD, and AL on July 27, 2015, testified that when she asked OS, nine years old at the time, what happens when his father “provides whoopings,” he said “you get . . . whooped . . . a belt and he described making a swoosh, swoosh, swoosh sound.” RD, seven years of age at the time, claimed, “You get a whooping” for breaking a household rule.

Mires testified that respondent father “offered to show him the text messages” he exchanged with respondent mother from the evening before JW’s death. According to Mires, in a message sent to respondent mother, who was at work around 6:00 p.m., respondent father informed her that JW

got a whooping for eating DM[‘s] food and I put him in the corner and he threw up. I put him in the tub and back in the corner and he stood there and s--- on himself. I whooped his ass again and told him to get back in the corner and he told me no. This n----- gonna make me f--- him up for real.

Mires testified that respondent father told him that JW, then four years old, was “very frail.”

According to Nevins, RD stated that JW “was put in a corner where there’s no TV with his head covered up.” Mires testified that respondent father said he was informed by one of the children that JW, who had been diagnosed with asthma, was having difficulty breathing and that respondent father “did go check on him and he was breathing hard under the covers.” Nevins indicated that OS told her that respondent father “kicked” JW after he “put the covers over [JW’s] head.” Nevins testified that RD told her she observed JW throwing up after “he banged his head on the floor,” and further explained that “Junior” (presumably OS) was “hitting” JW before he “banged his head.”

Mires testified that respondent father stated that “he had to whip [JW] again seven or eight times because he wasn’t following his instructions.” Mires relayed the following text message from respondent father to respondent mother: “I finally made his ass go to sleep. He was trying to go to sleep standing up. After all them whoopings you would have thought he’d been [a]sleep a long time ago.”

Detective Jones testified that respondent mother told him she arrived home from work on July 26 between 8:30 p.m. and 9:00 p.m. and that she was greeted by JW. Jones said respondent mother observed “[m]arks on his shoulder and marks on his chest also,” and “thought . . . that

[respondent father] must have done something to” JW. Jones stated that respondent mother “described [JW] as being . . . somewhat ill” and indicated that she gave him Ibuprofen, although Jones later clarified that he thought respondent mother gave JW the Ibuprofen for “a different incident” and that JW was not given Ibuprofen that night. According to Jones, respondent mother did not provide JW any medical attention but did give him water. Jones believed the children “were placed in bed shortly after 9 o’clock.” Nevins testified that OS told her that JW “kept going to the bathroom and wanted water. And then all of a sudden he laid down and went to sleep again and he was whimpering.” Nevins stated that RD said JW vomited “four times” that night.

Detective Mires testified that respondent father told him that when he attempted to awaken JW the next morning, “he was cold and clammy and he . . . knew right away that it wasn’t good.” Mires stated that respondent father “started doing CPR until the ambulance got there.” JW was pronounced dead at the hospital.

Dr. Stephanie Dean, a forensic pathologist, testified that there was no definitive cause of JW’s death. Dean testified that she found recent “abrasions or scrapes and contusions or bruises” on JW’s face, neck, chest, abdomen, arms, and legs. Dean testified that her internal examination revealed “a small tear or laceration on . . . the posterior surface of the liver” and explained that “there was approximately 20 to 30 milliliters of blood in the abdominal cavity” as a result of that injury. She explained that examination of JW’s vitreous fluids indicated “that he was becoming dehydrated.” She stated that a swab of JW’s nasal passages detected “para influenza three,” a “pretty common virus” that “can cause the common cold.” Dean testified that “It’s favored that a combination of all these findings did cause or contribute to his cause of death.” She later clarified that she could not “say with certainty that all of these findings . . . could have in and of themselves or the combination of them led to his death.” Dean testified that her findings did not suggest “an acute asthma attack.”

Present Proceeding Concerning CS

At the May 2016 adjudication concerning CS, Holbrook testified that it was discovered during the investigation of JW’s death that respondent mother was pregnant by respondent father. CS was born on February 26, 2016. Gina Jorgensen, a CPS investigator, said that respondents provided her with a copy of an affidavit of parentage signed by respondent father.

Jorgenson investigated respondents’ Lansing residence at the beginning of March 2016. Jorgenson indicated that Wayne County CPS was investigating respondent father’s multiple households, as he “has other children by other mothers.” Jorgenson obtained “apprehension orders” and CS was removed from respondents’ care on March 9, 2016 (she was less than two weeks old). Jorgenson agreed that the “basis of [her] concern was the death of the child in [respondents’] care seven months before.” A petition to terminate the respondents’ parental rights to CS was filed the next day. The petition alleged that JW “died due to the injuries he sustained from [respondent father] physically abusing him” and that respondent mother “failed to seek medical care for her child, which likely resulted in him dying from his injuries.” The petition concluded that “[CS] is at risk of threatened harm due to physical abuse and improper supervision in the care of [respondents].”

At the adjudication, the trial court, considering “the testimony today as well as the . . . transcript of the prior proceedings,” determined that there was sufficient evidence to assume jurisdiction over the child. The court acknowledged that the “medical examiner’s cause of death for [JW] was inconclusive,” but noted that it previously found that respondent father “absolutely caused and inflicted a tremendous amount of pain and suffering on [JW] prior to his death.” The court had also previously found that respondent mother “knew that it was going on from text messages” and “failed to protect [JW]” and also failed “to seek any medical treatment. . . .” The court noted “there was a lot of evidence” of respondent father “physically disciplining the children,” and although respondent mother “didn’t really like that,” she “still didn’t do anything to prevent it.” Under “the doctrine of anticipatory neglect, meaning the way the parents treat one child can be used as evidence or to show an indication that that’s how another child would be treated,” the court found by a preponderance of the evidence that both respondents failed “to provide proper medical care necessary for the health or morals of a child” and “unfit home by reason of neglect and cruelty.”

The hearing then proceeded to the disposition phase. Kristina Duckworth, the foster-care worker assigned to CS, testified that CS was “doing really well” in her non-relative placement. Duckworth said that CS was “developing and meeting all of the age appropriate milestones . . . and there are no concerns at this time.” Duckworth stated that the foster parents “would like to be considered for adoption.”

Duckworth stated that respondents were participating in supervised parenting visits twice per week and that “for the most part the parents have attended the visits that have been offered to them.” Duckworth found it “difficult” to answer a question regarding respondents’ parenting skills because of CS’ “minimal” needs as a newborn, “but they do change her diaper and they do feed her and they’re able to calm her when she’s upset.” Duckworth testified that “to a certain extent,” there was a bond between respondents and CS. Duckworth noted that at one visit respondent father was emitting the smell of “alcohol very strongly” and that he admitted “to drinking the night before. . . .”

The court ultimately terminated respondents’ parental rights to CS. The court summarized the evidence presented at “the trial regarding prior children of the parties” and discussed caselaw pertaining to the doctrine of anticipatory neglect. The court acknowledged “that there still is an open criminal investigation regarding [JW’s] death.” But it was “clear to the Court based upon the demeanor of both parents as well as their comments and gestures during these proceedings that neither take any responsibility not in just [JW’s] death but in his injuries and pain and suffering that led to his death. The court noted that respondent mother “failed to cooperate with [CPS] just months prior to [JW’s] death,” and the court was “concerned as to what appears to be the entrenched nature of the abuse and neglect.” The court was also concerned that respondent mother “remained with [respondent father] knowing how he treated [JW] and the other children knowing that she was having another baby.” The court concluded that the doctrine of anticipatory neglect was “absolutely appropriate in this case” and that “[h]ow the parents have treated [JW] and the other children is highly probative as to how [CS] would be treated and is not speculative.”

The court found clear and convincing evidence to terminate respondent father’s parental rights under MCL 712A.19b(3)(b)(i), as there was “no question in the Court’s mind that

[respondent father] caused physical injury to [JW] who was [CS'] brother and that [CS] would suffer from injury or abuse in the foreseeable future if placed in his home.” The court also found that there was clear and convincing evidence to terminate respondent father’s parental rights under MCL 712A.19b(3)(k) because he abused [JW], CS’ sibling, in a manner that “included battery, torture, or other physical abuse as well as life threatening injury.”

The court found clear and convincing evidence to terminate respondent mother’s parental rights under MCL 712A.19b(3)(b)(ii) because respondent mother “had the opportunity to prevent physical injury” to [JW] “and failed to do so.” The court found clear and convincing evidence to terminate both respondents’ parental rights under MCL 712A.19b(3)(g) and (j) based on the history of “physical abuse” and respondents’ failure to obtain appropriate medical care for the children.

The court then determined that termination of respondents’ parental rights to CS was in her best interests. Respondents’ parenting ability was “something that obviously causes the Court the most concern” and “weighs heavily in favor of termination.” The court found that CS’ need for permanency and stability was “absolutely high” and that respondents would be unable to provide it for her. The court also found that the advantages of the foster home “absolutely weighs heavily [in] favor of termination,” considering the safe, “loving, nurturing environment” the foster parents were providing. This appeal ensued.

B. ANALYSIS

I. COURT’S ASSUMPTION OF JURISDICTION

In Docket No. 333839, respondent mother argues that the court erred in assuming jurisdiction over CS.

We review “the trial court’s decision to exercise jurisdiction for clear error in light of the court’s findings of fact.” *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *Id.* at 296-297.

“In child protective proceedings, the trial court must first determine whether it may exercise jurisdiction over the child.” *In re PAP*, 247 Mich App 148, 152; 640 NW2d 880 (2001). “To acquire jurisdiction, the factfinder must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2[.]” *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993); see also MCR 3.972(C)(1). A court cannot terminate parental rights “unless jurisdiction exists under MCL 712A.2(b)[.]” *In re Ramsey*, 229 Mich App 310, 314; 581 NW2d 291 (1998). “[T]he rules of evidence generally apply” to a trial held to determine if there are statutory grounds for jurisdiction, “i.e., an adjudication.” *In re Sanders*, 495 Mich 524, 529-530; 852 NW2d 524 (2014).

The trial court found clear and convincing evidence to assume jurisdiction pursuant to MCL 712A.2(b)(1) and (2), which provide in pertinent part that a court has authority to assume jurisdiction where:

(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. . . .

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

Respondent mother argues that the trial court erred in finding jurisdiction when there was no evidence that she failed to provide proper medical care or a fit home to CS. However, a court may rely on the doctrine of anticipatory neglect when deciding whether it may exercise jurisdiction over a minor child. *In re BZ*, 264 Mich App at 296. “The doctrine of anticipatory neglect recognizes that ‘[h]ow a parent treats one child is certainly probative of how that parent may treat other children.’ ” *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001), quoting *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973).

Here, the record evidence showed that in the hours proceeding JW’s death, respondent mother was informed via text message from respondent father that respondent father repeatedly beat JW and that JW vomited and defecated on himself and there is no indication in the record that respondent mother inquired into JW’s health while she was at work. Nor is there evidence in the record that she looked into the child’s condition in any significant way after she got home. Moreover, there was evidence DM fell out of a second story window while under her care, resulting in “an orbital cranial fracture,” and respondent mother lied to a CPS worker about the cause of the accident. Furthermore, there was evidence that DM suffered a fractured forearm, but there was no record of it being treated and not one of the other children could recall DM wearing a cast.

Respondent mother notes that she “sought prenatal care” for CS. While commendable, respondent mother’s attending to prenatal care does not negate the impact of her history of failing to provide for her children’s medical needs after birth, including such serious matters as seeking treatment for a fractured arm or for a child who was beaten and was vomiting and suffering from diarrhea, especially knowing that respondent father was viewing JW’s symptoms as failure to follow instructions. In short, respondent mother failed to take any action in response to the abuse perpetrated against JW and there was evidence that her other children were also abused. Respondent mother remained in a relationship with respondent father despite him being the individual who perpetrated the abuse. This evidence, considered in the aggregate, supported the trial court assuming jurisdiction over CS under MCL 712A.2(b)(1).

Additionally, there was evidence to support the court assuming jurisdiction under MCL 712A.2(b)(2). As a result of respondent father’s cruelty and respondent mother’s neglect,

respondents' home was an unfit place for CS to live. While respondent mother testified that she did not agree with respondent father's use of physical discipline, she nonetheless left her children in his sole care. When respondent mother was informed that respondent father was "whooping" JW and threatening to "f-- him up for real," respondent mother did not protest. She did nothing to abate the beatings. Accordingly, the trial court did not clearly err in finding that an unfit home existed for CS based on the abuse perpetrated on her sibling. *In re Dittrick*, 80 Mich App 219, 222; 263 NW2d 37 (1977).

II. STATUTORY GROUNDS FOR TERMINATION

Both respondents argue that the court erred in finding that statutory grounds for termination existed. We review a trial court's finding that a statutory ground for termination has been proved by clear and convincing evidence for clear error. MCR 3.977(K); *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App 261, 263; 817 NW2d 115 (2011).

Under the Juvenile Code, MCL 712A.1 *et seq.*, a trial court may terminate a parent's parental rights upon finding clear and convincing evidence that the following circumstances exist:

(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.

With respect to MCL 712A.19b(3)(b)(i), respondent father does not dispute that he caused JW's physical injury. The child's autopsy revealed numerous abrasions, including "overlapping bruises" on JW's "right hip region . . . and right buttock." Those injuries are fairly attributable to respondent father, considering that he repeatedly beat JW right before his death. Moreover, respondent father admitted to police that he would "tear up" the children's legs and buttocks when he whipped them with a belt. Given that respondent father found it appropriate to whip JW, a "very frail" four-year-old child when the child was ill, it is reasonable to conclude that respondent father was not hesitant to physically abuse very young children under his care. Based on respondent father's treatment of CS' siblings, the trial court did not clearly err in finding that respondent father caused an injury to CS' sibling, and that there was a reasonable likelihood that CS would suffer from injury or abuse in the foreseeable future if placed in respondent father's home. MCL 712A.19b(3)(b)(i).

Respondent father argues that he should have been offered an opportunity to participate in services before his rights were terminated. However, petitioner "is not required to provide

reunification services when termination of parental rights is the agency's goal," *In re HRC*, 286 Mich App 444, 463; 761 NW2d 105 (2009), as was the case here. Moreover, the trial court determined that services "would not be appropriate" in this case in part because of respondents' "lack of taking any responsibility for the physical abuse in their household" During closing arguments, respondent father stated, "They call me all kind of abuse. I didn't abuse nobody." Respondent father's apparent lack of awareness of, or the ability to take responsibility for the consequences of his behavior, supports a finding that he would not be able to benefit from services within a reasonable time.

Because the trial court did not clearly err in terminating respondent father's parental rights under MCL 712A.19b(3)(b)(i), we will not address the other statutory grounds the trial court relied on. See *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011) ("Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights. . . .")

Respondent mother argues that there was insufficient evidence to terminate her parental rights when she was not given an opportunity to participate in services. As with respondent father, petitioner was not required to provide services because termination was the goal of the proceedings. *In re HRC*, 286 Mich App at 463. Further, petitioner is required to seek termination of parental rights at the initial disposition "if a parent . . . 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." MCL 722.638(2).

Furthermore, there was clear and convincing evidence to terminate respondent mother's parental rights under MCL 712A.19b(3)(b)(ii). There was evidence that respondent mother "had the opportunity to prevent physical injury . . . to [JW] and failed to do so." Respondent mother was aware respondent father physically hit the children. On the evening before JW died, respondent did not object when respondent father informed her via text message that he "whooped [JW's] ass again" for defecating on himself after he recently vomited, or respondent father's statement that "[t]his n----- gonna make me f--- him up for real." Respondent father created an unreasonable risk of serious abuse when he repeatedly beat a sickly child. Respondent mother's acquiescence to respondent father's treatment of the child amounted to sufficient evidence of the existence of a reasonable likelihood that CS would suffer injury in the foreseeable future if returned to respondent mother's home where respondent father resided. In addition, respondent mother remained in a relationship with respondent father after the physical abuse and there was no indication that respondent mother appreciated the potential for abuse. The trial court did not clearly err in terminating respondent mother's parental rights under MCL 712A.19b(3)(b)(ii). Given there was one ground for termination, we need not address the other statutory grounds relied upon by the trial court. *In re Ellis*, 294 Mich App at 32.

III. BEST INTERESTS

Finally, both respondents argue that the trial court erred in deciding that termination of parental rights was in CS's best interests. "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). The petitioner must

prove by a preponderance of the evidence that termination of parental rights is in the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review a trial court's finding that termination is in a child's best interests for clear error. *In re HRC*, 286 Mich App at 459.

Here, the record evidence showed that respondent father perpetrated severe physical abuse against CS' sibling JW that coincided with JW's death. In addition, there was evidence that respondent mother's other children were physically abused at the hand of respondent father. Respondent mother failed to take appropriate action to prevent the abuse and failed to procure medical care for JW and another child who suffered an arm fracture. Respondent mother did not cooperate with CPS in a prior investigation and there was no evidence that she appreciated the risk of harm that respondent father presented to the children. Similarly, respondent father denied that he abused the children even though he admitted in a text message that he beat a frail four-year old child and informed police that he would use a belt to "tear up" the legs and buttocks of the children. Neither parent accepted responsibility after JW's death and there was a clear risk that CS would be physically harmed if she remained in respondents' home. In contrast, CS was thriving in her foster home and her foster parents wanted to adopt CS. On this record, the trial court did not clearly err in finding that termination was in CS' best interests.

Affirmed.

/s/ Jane M. Beckering
/s/ Peter D. O'Connell
/s/ Stephen L. Borrello