# STATE OF MICHIGAN

# COURT OF APPEALS

*In re* R. R. K. CANTU, Minor.

UNPUBLISHED
November 19, 2020

No. 353284
Saginaw Circuit Court
Family Division
LC No. 19-035850-NA

Before: REDFORD, P.J., and RIORDAN and TUKEL, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court's order terminating her parental rights to her child under MCL 712A.19b(3)(b)(*ii*) (failure to protect the child from physical abuse), (g) (failure to provide proper care and custody), (j) (likelihood of harm to child if returned to parent), and MCL 712A.19b(3)(k) (severe physical injury).[1] We affirm.

## I. FACTUAL BACKGROUND

During June 2019, the 11-week-old child appeared to be having seizures. Respondent-mother did not take the child to a doctor or the nearby hospital because the child's father refused, but later they took her to a hospital in Saginaw the evening of June 24, 2019. The child's treating physician found that she had a swollen ear, hemorrhaging in her eyes, a swollen right elbow, numerous bone fractures, low hemoglobin, and possible internal bleeding. Because of the severity of her injuries, on June 25, 2019, the hospital transferred the child by life flight helicopter to the Children's Emergency Services at the University of Michigan for treatment. The medical examinations and tests performed there determined that the child had numerous bone fractures in various states of healing, two brain hemorrhages, severe retinal hemorrhages, and lacerations to her brain. Dr. Bethany Mohr, the consulting physician concluded that most of the fractures were consistent with chronic child abuse.

Respondent-mother asserted that she did not to know how the child's injuries occurred. She testified, however, that she had seen respondent-father pulling on the baby's limbs and that he

[1] The trial court also terminated the parental rights of the child's father, but he has not appealed.

played roughly with the infant. Respondent-mother testified further that respondent-father told her that the child fell off a couch two or three times, said once that the child fell off a chair, and remarked that something happened to the child every week or other week. Respondent-father invoked his right not to incriminate himself when asked how the child's injuries happened.

The Department of Health and Human Services (DHHS) petitioned for removal of the infant child and the termination of respondent-parents' respective parental rights. The DHHS sought to terminate respondent-mother's rights under MCL 712A.19b(3)(b), (g), (j), and (k), and the trial court ordered DHHS not to provide respondent-mother services because the petition sought termination of parental rights. After a trial, the trial court terminated respondent-mother's rights on the ground that she should have known that the child was being injured and failed to protect her from respondent-father's abuse.

## II. STANDARDS OF REVIEW

We review for clear error the trial court's factual findings and ultimate determinations regarding the statutory grounds for termination. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). We also review for clear error the trial court's determination regarding the child's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Further, we review for clear error a trial court's findings of fact regarding whether petitioner made reasonable efforts to provide respondent with reunification services. *In re Smith*, 324 Mich App 28, 43; 919 NW2d 427 (2018). A finding is clearly erroneous if, after reviewing the entire record, this Court is definitely and firmly convinced that the trial court made a mistake. *Mason*, 486 Mich at 152.

## III. STATUTORY GROUNDS

Respondent-mother argues that the trial court should not have terminated her parental rights because she could not have known that the child was being abused since she did not witness the abuse and the injuries were not visible. We disagree.

The petitioner has the burden to prove by clear and convincing evidence the existence of a statutory ground for termination of parental rights. *Mason*, 486 Mich at 152. Clear and convincing evidence is clear, direct, and weighty evidence that allows the finder of fact to reach a conclusion without hesitancy. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995). This Court defers to the special ability of the trial court to judge the credibility of witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Under MCL 712A.19b(3)(b)(*ii*), the trial court may terminate a parent's rights if a child has suffered physical injury and "[t]he 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." Under MCL 712A.19b(3)(g), the trial court may terminate a parent's rights if

> [t]he parent, although, in the court's discretion, financially able to do so, 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.

Under MCL 712A.19b(3)(j), the trial court may terminate parental rights if "[t]here 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." MCL 712A.19b(3)(k) in relevant part provides that the trial court may terminate parental rights if

> [t]he parent abused the child or a sibling of the child and the abuse included 1 or more of the following:
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> * * *
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> (*iii*) Battering, torture, or other severe physical abuse.
>
> (*iv*) Loss or serious impairment of an organ or limb.
>
> (*v*) Life-threatening injury.

Termination is appropriate under MCL 712A.19b(3)(b)(*i*) and (*ii*), (j), and (k)(*iii*) "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." *In re Ellis*, 294 Mich App 30, 35; 817 NW2d 111 (2011).

In this case, Dr. Mohr testified that the child's numerous fractured bones were highly specific for abuse because of the types of fractures and the fact that nonmobile infants cannot sustain such injuries and many of the injuries the child suffered are not caused by falls. She testified that some of the fractures indicated that they resulted from a mechanism of twisting, pulling, and yanking on the child's limbs and squeezing the child's ribcage. Dr. Mohr concluded that the child suffered life threatening injuries.

Respondent-mother testified that respondent-father repeatedly stated that the child fell. Despite respondent-father's explanations that the infant child fell off surfaces, respondent-mother did nothing to prevent him from being alone with the child. Further, respondent-mother testified that she observed respondent-father "play" with the child by "[y]anking on her arms," and that as a result, the child would yell and cry. Respondent-mother told respondent-father that he acted too roughly with the child, but she continued to allow respondent-father to care for the child. Respondent-mother knew that a friend had reported concerns about how respondent-father handled the child to Children's Protective Services (CPS) a few days before the child was hospitalized, but respondent-mother did not respond to the card CPS left.

The record reflects that respondents lived together and had responsibility for the care and custody of the child. The child suffered numerous nonaccidental injuries, and the explanations they provided were inconsistent with the extent and nature of the child's injuries. The injuries were numerous, severe, and highly indicative of child abuse. The fact that many of the injuries were in various stages of healing showed that the child suffered multiple instances of abuse within the first three months of her life. From this evidence, the trial court could properly find that respondent-mother knew or should have known that respondent-father abused the child and respondent-mother failed to protect her.

Further, evidence established that respondent-mother delayed seeking medical treatment for the child. Respondent-mother testified that she noticed the child's bruised and swollen arm a few days before her hospitalization. Dr. Mohr testified that the child's medical records contained no record of a doctor visit related to the child's arm injury. On the morning of the child's seizures, respondent-mother testified that she noticed that the child shivered. Respondents went to visit a friend where the child began seizing and vomiting. Despite respondent-mother testifying that she wanted respondent-father to take the child to a hospital, respondents instead went to the house of the child's maternal grandmother, who told them to take her to the hospital right away. Respondents, however, did not have the child admitted to the hospital until after 9:00 p.m. on the day of her seizures. The trial court did not clearly err by finding that respondent-mother delayed medical treatment for the child.

Respondent-mother additionally argues that she was not offered the opportunity to participate in services, that she has disabilities and should have been tested to determine her needs, and that she demonstrated a willingness to complete services on her own. Respondent-mother's argument lacks merit because she lacked entitlement to services because petitioner sought termination of her parental rights in the initial petition due to the severity of the abuse perpetrated upon the child.

Generally, DHHS must provide a case service plan that facilitates returning children to their parents. See MCL 712A.18f(2); *Mason*, 486 Mich at 156. However, the Department need not provide services to every family in every situation. *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). See MCL 712A.18f(1)(b). "Services need not be provided where reunification is not intended." *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008), overruled in part on other grounds by *In re Sanders*, 495 Mich 394, 422; 852 NW2d 524 (2014).

In this case, DHHS sought to terminate respondent-mother's parental rights at the initial dispositional hearing under MCL 712A.19b(3)(b), (g), (j), and (k). The trial court ordered that respondents not be provided with services because doing so would be detrimental to the child's health and safety. The trial court did not err by ordering that respondent-mother receive no reunification services because this case involved severe abuse and reunification was not intended.

Respondent-mother also briefly argues that her parental rights should not have been terminated and she should have been given services because she was a victim of domestic violence. We disagree.

Trial courts are not permitted to terminate a parent's parental rights "solely because he or she was a victim of domestic violence." *Plump*, 294 Mich App at 273. In this case, respondent-mother's parental rights were not terminated on the ground that she was a victim of domestic violence. The record reflects that respondent-mother and respondent-father both committed domestic violence against each other on a daily basis. Although the trial court considered this evidence, the record indicates that the trial court properly based the termination of respondent-mother's parental rights on the grounds that she knew or should have known that respondent-father abused the child and respondent-mother failed to protect her.

Clear and convincing evidence existed establishing a statutory ground for termination of respondent-mother's parental rights under MCL 712A.19b(3)(b)(*ii*). She had the opportunity to

prevent the physical injury and abuse but failed to do so and a reasonable likelihood existed that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home. Because we conclude that the trial court did not clearly err by finding one statutory ground for termination, we need not address the additional grounds. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). The trial court did not err and respondent-mother is not entitled to relief.

## IV. BEST INTERESTS

Respondent-mother argues that termination of her parental rights did not serve the child's best interests because she should have been given services and because a family member was willing to care for the child. We disagree.

When a statutory ground for termination is proven, the trial court shall order termination of parental rights if termination of parental rights is in the child's best interests in light of the evidence as set forth in the whole record. MCL 712A.19b(5). The determination is to be made on the basis of the evidence on the whole record and is reviewed for clear error. *In re Trejo*, 462 Mich 341, 353-354, 356; 612 NW2d 407 (2000). A trial court must find by a preponderance of the evidence that termination serves the best interests of the children before it may terminate parental rights. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We also review for clear error the trial court's determination that termination of respondent's parental rights served the children's best interests. MCR 3.977(K); *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). We give deference to the "trial court's factual findings at termination proceedings if those findings do not constitute clear error." *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009).

The trial court should weigh all the evidence available to determine the child's best interests. *In re White*, 303 Mich App at 713. To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). The trial court may also consider "a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714. The trial court may consider the advantages of a foster home placement when determining a child's best interests. *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009). A trial court may also consider the history of child abuse. *In re Powers*, 244 Mich App 111, 120; 624 NW2d 472 (2000). Further, a child's safety and well-being, including the risk of harm a child might face if returned to the parent's care, constitute factors relevant to a best-interest determination. *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011).

Respondent-mother again argues that she had entitlement to receive services to enable reunification with the child. Respondent-mother, however, was not entitled to services because petitioner sought termination of her parental rights and not reunification because of the severity of the abuse of the child. Evidence established the abuse and that respondent-mother knew or should have known that respondent-father abused the child and respondent-mother failed to protect her.

Respondent-mother also argues that termination of her parental rights did not serve the child's best interests because she should have been placed with family. Although a child's placement with relatives weighs against termination, *Mason*, 486 Mich at 164, in this case, the child was placed in foster care after her release from the hospital and remained in foster care for the pendency of the proceedings. Therefore, we reject respondent-mother's argument.[2]

Respondent-mother argues further that termination of her parental rights generally did not serve the child's best interests. We disagree.

A preponderance of the evidence in this case supports the trial court's decision. The record reflects that the trial court considered all of the evidence in the record and the applicable factors for its best-interest decision. Review of the entire record establishes that a preponderance of the evidence weighed in favor of finding that termination of respondent-mother's parental rights served the child's best interests.

In this case, the record reflects that the trial court considered all of the evidence and the applicable factors for its determination of the child's best interests. Witness testimony established that the child had no bond with respondent-mother. The record also established that respondent-mother lacked parenting ability. The record also established that the child needed permanency, stability, and finality. The record also indicates that respondent-mother had a history of domestic violence. The trial court found that the child spent 78 days with her parents and during that time suffered on average a broken bone every four days. The trial court also found that the child had no bond with respondent-mother, the child had been placed in the hospital in Ann Arbor where respondent-mother had been permitted supervised parenting time but that had been suspended upon the request of the hospital because it detrimentally affected the child's recovery. The trial court found that respondent-mother had not seen the child in seven months. The record reflects that the child had been placed in foster care upon her release from the hospital where she has been provided care that has enabled her to develop and thrive. The trial court found that, because the child was placed in nonrelative care, the court need not consider whether relative placement weighs against termination as a best-interest factor for consideration. The record also reflects that the child's foster family indicated its desire to provide permanency for the child through adoption.

We conclude that a preponderance of the evidence established that the child's best interests would be served by the termination of respondent-mother's parental rights. Accordingly, the trial

[2] We note that, during the case, the child's maternal great-grandmother was asked whether she had been approved for placement following a home study. DHHS objected on the ground that the question was not relevant and the trial court sustained the objection. Respondent-mother has not challenged this evidentiary ruling on appeal. Because the great-grandmother's response was the product of a sustained objection, we decline to consider it. See *People v Hancock*, 326 Mich 471, 499-500; 40 NW2d 689 (1950) (approving of an instruction that excluded or stricken evidence should not be considered). Regardless, the child was not placed with the great-grandmother at the time of the hearing.

court did not err because a preponderance of the evidence in the record supported that determination.

Affirmed.

/s/ James Robert Redford
/s/ Michael J. Riordan
/s/ Jonathan Tukel