

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

July 28, 2011

In the Matter of R. A. JACKSON, Minor.

No. 301929

Monroe Circuit Court

Family Division

LC No. 10-021572- NA

Before: M. J. KELLY, P.J., and O'CONNELL and SERVITTO, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(g) and (j). Because the trial court did not clearly err in terminating respondent's parental rights, we affirm.

The minor child came to the attention of Children's Protective Services after respondent and the child's father took their one-month-old daughter to the hospital. The baby was diagnosed with brain and liver injuries, extensive injuries to both retinas, and injury to one of her lungs. Expert witnesses testified that the injuries were caused by a severe violent incident and would have been immediately noticeable to a normal caretaker. There was no medical explanation for this combination of injuries. A severe fall or car accident could be responsible, but no fall or accident had been reported by the parents and neither parent had provided a reasonable explanation for the baby's injuries. Moreover, the baby also had injuries to her ribs that were in at least two stages of healing and therefore were older than her other injuries. The only explanation consistent with the injuries and the child's history was child abuse.

The baby died eight days later, and the death was ruled a homicide. Respondent and the father were the only people who cared for the baby on the day she suffered the serious head injuries. The father was alone with the baby while respondent was at a medical appointment from approximately 12:00 to 4:30 p.m. that day. Notably, the father had other children, and the mother of two these other children testified that he was inappropriate with their daughter as an infant because of her crying. The father also had a history of domestic violence.

At the time of the termination hearing, more than six months after their baby daughter died, respondent and the father were still together and had made plans to get married. While

there was no evidence that their son R. A. Jackson, then six years old, had ever been physically abused, the trial court found that petitioner established that the father injured the baby and terminated his parental rights to his son.¹ The trial court also terminated respondent's parental rights, finding that respondent must have known that the father harmed their baby but was still with him and planning to marry him, or that she was the one who harmed the baby. The trial court stated that respondent showed questionable parenting skills and lack of judgment and that she did not demonstrate an understanding of what it took to protect her son.

This Court reviews both the trial court's finding that a ground for termination has been proven by clear and convincing evidence and its best interests determination for clear error. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court did not clearly err in finding that petitioner established the statutory grounds to terminate respondent's parental rights to her son. Again, the undisputed evidence established that the infant was seriously and intentionally injured during a time period when only in the care of the parents together or when left with the father. The only possibilities, then, are that one of the parents caused the death of the child and the more likely possibility suggested by the evidence was that it was the father. Despite evidence that her children's father killed their one-month-old baby and had abused the infant on other occasions, respondent continued her relationship with the father and planned to marry him. We would reach the same decision whether respondent could not see that her live-in partner was capable of such violence to a baby, or if she chose to ignore the evidence against him. Respondent could not be trusted to keep her son safe from his father and protect him from the threat of very serious physical abuse and possibly death. That the father may not have yet seriously injured the child does not mean that he would not, and the fact that the evidence implicates the father in the killing of their other child presents much too serious a risk to take with respondent's son.

The trial court also did not clearly err in its best interests determination. "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). Although respondent and her son appeared to have a close bond and there was no evidence that the child had been abused in the past, the threat of serious physical abuse outweighed this bond. Respondent argues that the doctrine of anticipatory neglect should not be applied here because of the differences between the children. However, although R. A. Jackson was a well behaved six-year-old at the time of the termination hearing, his future behavior was unknown. The threat of violence to him was not overzealous spanking but potentially deadly physical abuse. Further, the minor child adjusted well to foster care, no longer asked about his

¹ The father is not participating in this appeal.

parents between visits, and would likely adjust well to the termination of parental rights. Therefore, the trial court did not clearly err in its best interests determination.

Affirmed.

/s/ Michael J. Kelly
/s/ Peter D. O'Connell
/s/ Deborah A. Servitto