

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 22, 2011

In the Matter of S. L. C. KELLY, Minor.

No. 302550
Washtenaw Circuit Court
Family Division
LC No. 10-000052-NA

Before: MURPHY, C.J., and FITZGERALD and TALBOT, 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)(b)(i), (j), and (k)(iii). We affirm.

Before terminating a respondent's parental rights, the trial court must first make a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court must order termination of parental rights if it also finds that termination is in the child's best interests. MCL 712A.19b(5). On appeal from an order terminating parental rights, this Court reviews the trial court's findings for clear error. *In re Rood*, 483 Mich 73, 90-91, 126 n 1 ; 763 NW2d 587 (2009); MCR 3.977(K). Clear error exists "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." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

Respondent and the minor child originally came to the attention of Children's Protective Services (CPS) because of complaints of an unfit home environment. Respondent received services to help her learn how to maintain a healthy home environment and appropriate parenting skills and discipline techniques. Later, it was reported that respondent hit the then 21-month-old child with a belt 15 to 20 times, causing significant bruising on the child's arms and legs. During an interview with law enforcement, respondent admitted "whooping" the child with a studded belt and admitted hitting the child with a belt on at least two earlier occasions. Respondent was charged with criminal child abuse, pleaded no contest to third-degree child abuse, and was sentenced to three years' probation.

In the child protective proceedings, the court terminated respondent's parental rights at the initial dispositional hearing pursuant to MCL 712A.19b(3)(b)(i), (j), and (k)(iii). The court did not clearly err in concluding that the three statutory grounds for termination were proven by

clear and convincing evidence. *Mason*, 486 Mich at 152; *Rood*, 483 Mich at 90-91, 126 n 1; MCR 3.977(K).

It was undisputed that respondent caused physical injury to the child, who was hospitalized with bruises on her legs and arms. Very trivial conduct, purely consistent with the child's age and stage of development, triggered respondent's brutal actions. This incident occurred after respondent had received active in-home services to improve her parenting skills following an earlier CPS complaint. Respondent admitted that she had hit the young child with a belt on prior occasions. Further, it was undisputed that respondent, without provocation, battered a law enforcement officer outside a courtroom with such force that the officer was hospitalized. Respondent was unable to account for the extent of the injuries she caused to both the child and the officer. Clearly, there was ample evidence that respondent utterly lost control when she became angry. Respondent stated that she would continue to use implements (albeit different ones that would not leave marks) to discipline the child in the future. Respondent characterized the court proceedings as an overreaction to her conduct and noted that she herself benefited from being beaten as a child. Respondent claimed to have attended parenting and three anger management classes but did not provide requested documentation. Even accepting respondent's claim, her new anger management strategy of holding her hand over her face and breathing deeply was overly simplistic in light of her brutally aggressive behavior history. The trial court aptly described respondent's approach to keeping from physically abusing her child as bordering on the ridiculous. This evidence was not mere speculation as claimed by respondent. There was sufficient evidence to support the trial court's finding of a reasonable likelihood that respondent would injure the child in the foreseeable future if the child were allowed in respondent's household.

The evidence similarly supports the trial court's finding of a reasonable likelihood, based on respondent's conduct and capacity, that the child would be harmed if she were returned to respondent's custody. Respondent had been treated over a number of years for several mental health disorders, including anxiety, bipolar disorder, depression, trichotilomania (picking at skin and eating skin and hair), and multiple personality disorder. Respondent's claims that she could control her anger and that she was consistently taking her new medication did not convince the trial court that her capacity for parenting had improved. Respondent's reliance on *In re Boursaw*, 239 Mich App 161; 607 NW2d 408 (1999), overruled in part on other grounds *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), is misplaced. The evidence in the present case, unlike that in *Boursaw*, documented respondent's unchanged attitudes regarding corporal punishment, along with her lackluster efforts to reunite with the child.

The trial court also correctly concluded that respondent's physical abuse of the child constituted a "battery." Battery is defined as "the willful and harmful or offensive touching of another person which results from an act intended to cause such contact." *Smith v Stolberg*, 231 Mich App 256, 260; 586 NW2d 103 (1998). Respondent does not dispute that she struck the child 15 to 20 times with a belt, and the child was hospitalized for extensive bruising. However, she argues that her actions did not rise to the level of "severe physical abuse," and, therefore, the

trial court erred in finding that MCL 712A.19b(3)(k)(iii) was established.¹ Because there was a supportable finding that respondent's actions in beating the child constituted battering, it is unnecessary to inquire whether the physical injuries constituted "severe physical abuse." The trial court properly applied MCL 712A.19b(3)(k)(iii) when terminating respondent's parental rights.

Respondent also tangentially argues that reasonable efforts to reunify the family were not made, noting that the amended petition sought termination of respondent's parental rights at the initial dispositional hearing. Generally, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000); MCL 712A.18f. However, certain aggravated circumstances require petitioner to seek termination of parental rights at the initial dispositional hearing, and reunification services are not then required. MCL 722.638(1), (2). Aggravated circumstances involve child abuse that encompasses, among other things, battering, torture, or other severe physical abuse. MCL 722.638(1)(a)(iii). In this case, the trial court properly found that respondent committed a battery on the child, which constitutes an aggravated circumstance. Therefore, termination of parental rights was appropriate at the initial dispositional hearing, and no reunification services were required. Moreover, before the filing of the petition, petitioner attempted to provide services to respondent for four to five months. Respondent was unwilling to participate. She failed to maintain contact with her case workers, refused to provide a release of mental health information, and did not provide requested documentation of her attending parenting and anger management classes.

The trial court also did not clearly err in determining that it was in the child's best interests to terminate respondent's parental rights. "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). This Court reviews the trial court's determination regarding the child's best interests for clear error. *In re Trejo*, 462 Mich at 356-357; MCR 3.977(K).

The then 21-month-old child became a temporary court ward because respondent struck her repeatedly with a belt, resulting in the child's hospitalization. Respondent admitted striking the child with a belt on prior occasions and testified regarding her own violent personality. Respondent also testified that she benefited from being beaten as a child. Respondent admitted that she did not take her psychiatric medicine consistently, particularly during the times when she became physically violent. Two case workers opined that it was in the child's best interests to terminate respondent's parental rights based upon the severity of the physical abuse and respondent's nonparticipation in services. Finally, respondent did not have a strong bond with her child. The CPS investigator noted the lack of a parent-child bond during an in-home

¹ MCL 712A.19b(3)(k)(iii) requires a finding that "[t]he parent abused the child or a sibling of the child and the abuse included . . . [b]attering, torture, or other severe physical abuse."

investigation of a complaint just months before the incident that led to the child's removal. Sadly, the child did not recognize respondent during a chance encounter in the relative foster parent's home after a short time of being out of respondent's care. This tenuous familial bond, considered with respondent's capacity for physical abuse and an apparent unwillingness to change her attitudes and behavior, substantiated a finding that respondent was incapable of providing the child with a safe and stable home free from abuse.

Respondent contends the trial court's best-interest decision was in error, pointing to the testimony of the second case worker who highlighted respondent's personal strengths, including a lack of sexual abuse history, a support network, intellectual capacity, and a nonconfrontational demeanor with case workers. However, this testimony did not overcome the compelling evidence that respondent was incapable of providing the child with a safe and stable home. The case worker also testified that respondent's barriers to being an appropriate parent included emotional instability, inappropriate parenting skills, poor communication skills, several mental health issues, and inadequate anger management skills. Respondent did not cooperate with petitioner, despite various attempts by the case workers to contact her. The trial court, weighing the evidence of the whole record and considering the credibility of the witnesses, did not clearly err in finding that it was in the child's best interests to terminate respondent's parental rights.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot