

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 14, 2013

In the Matter of BROCKITT, Minors.

No. 310814; 311097
Sanilac Circuit Court
Family Division
LC No. 11-035529-NA

Before: GLEICHER, P.J., and SAWYER and FORT HOOD, JJ.

GLEICHER, J., (*concurring*).

I concur with the majority’s decision to affirm the termination of both respondents’ parental rights to their two shared biological children arising from the severe abuse of respondent-father’s son, respondent-mother’s stepson. I write separately to respond more specifically to respondent-mother’s argument that the prosecutor failed to prove a statutory ground for termination of her rights to her own two children.

The amended petition sought termination of respondent-mother’s parental rights based on MCL 712A.19b(3)(b)(ii), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j). MCL 712A.19b(3)(b)(ii) provides that a court may terminate a parent’s parental rights if “[t]he child or a sibling of the child has suffered physical injury or physical . . . abuse” and:

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.

Respondent-mother contends that because she does not qualify as the “parent” of the minor child as that term is defined in MCR 3.903(18), she is not subject to termination of parental rights based on MCL 712A.19b(3)(b)(ii). This Court expressly rejected respondent-mother’s argument in *In re Jenks*, 281 Mich App 514, 517 n 2; 760 NW2d 297 (2008). *Jenks* involved the interpretation of MCL 712A.19b(3)(b)(i), which provides for termination when “[t]he child or a sibling of the child has suffered physical injury or physical . . . abuse” and

The parent’s act caused the physical injury or physical . . . 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.

This Court observed in *Jenks* that “the prior version of this section did not apply if the injured or abused child was not also the child of the parent whose parental rights the petitioner sought to terminate.” *Id.*, *In re Powers*, 208 Mich App 582, 591; 528 NW2d 799 (1995). *Jenks* further explained that the amended version of MCL 712A.19b(3)(b)(i) “clarif[ies] that grounds for termination are established when the parent against whom termination is sought is responsible for the physical injury or physical . . . abuse of a sibling of the minor child, regardless of whether that parent is also a parent of the injured or abused sibling.” *Jenks*, 281 Mich App at 517 n 2.

Similar interpretive logic compels the conclusion that MCL 712A.19b(3)(b)(ii) establishes a ground for termination when the parent against whom termination is sought had an opportunity to prevent physical injury or abuse of his or her child’s sibling, but failed to do so. While general and amorphous “anticipatory neglect” arguments cannot serve as evidentiary bases for termination of parental rights, the Legislature has identified two specific pathways to termination—subsections 19b(3)(b)(i) and 19b(3)(b)(ii)—predicated on the notion that in certain behavioral realms, past misconduct does indeed predict future parental unfitness. Because the evidence clearly and convincingly demonstrated that respondent-mother failed to protect the sibling of one own children from severe physical abuse, the petitioner fulfilled its obligation to prove a specific statutory ground for termination.

/s/ Elizabeth L. Gleicher