

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 18, 2013

In the Matter of O. DUNWOODY, Minor.

No. 311849
Wayne Circuit Court
Family Division
LC No. 11-504430-NA

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals by right the termination of her parental rights to the minor child under MCL 712A.19b(3)(k)(iii) and (v). We affirm.

The then 19-month-old minor child was admitted to Children's Hospital of Michigan with second and third-degree scald burns covering 29 percent of her body. The child's burns were so severe that she had to undergo a blood transfusion and a skin graft. While in the hospital, she also suffered respiratory arrest, causing her transfer to the intensive care unit and placement on a respirator. At the time of her injuries, the child was in the care of respondent, her biological mother. The child's treating physicians at Children's Hospital of Michigan found her injuries to be suspicious and referred the matter to their protection team. A police investigation of the house where the injuries occurred revealed that water came out of the tap at 134 degrees Fahrenheit, and flesh was discovered in the bathtub and a front room.

Petitioner sought termination of respondent's parental rights at the initial disposition. Dr. Mary Lu Angelili, a pediatrician and a member of the protection team since 1988, testified as an expert witness on behalf of petitioner. Dr. Angelili testified that the child's hands, wrists, arms, legs, thighs, genitals, and buttocks were symmetrically burned with the area behind the child's knees left unburned because her legs were bent while she was in the water. Dr. Angelili noted that because of the symmetry of the burns in a stocking-glove pattern and the lack of splash marks on the child, she concluded with a high degree of medical certainty that the burns were inflicted, not accidental. Dr. Angelili testified that it was her expert medical opinion that the child was held in the water because there were very few splash marks and the burn lines were very well defined. Further, the child was developmentally normal, and a developmentally normal 19-month-old child would not have kneeled still in scalding water. Under the circumstances, the doctor rejected respondent's position that the infant merely remained kneeled in hot water, waiting to be picked up. Dr. Angelili also testified that the child's injuries were life-threatening, and, in her opinion, this case evidenced near certainty of abuse.

Following the doctor's testimony, respondent waived argument and asked for a hearing to determine the child's best interests. The trial court found that it had jurisdiction and that clear and convincing evidence to terminate parental rights was established pursuant to MCL 712A.19b(3)(k)(iii) and (k)(v). The court ordered that respondent participate in a Clinic for Child Study evaluation, allowed visitation to continue if supervised, and scheduled a hearing to determine the child's best interests.

At the best interests hearing, respondent maintained that the burns were the result of an accident. Respondent alleged that she decided to give the child a bath after she defecated in her diaper. According to respondent, while she was running the bath water, the child urinated on the bathroom floor. Respondent turned the water off, tested the water temperature, put the child in the bathtub, and left the bathroom to get a towel. Respondent testified that she heard a noise while she was out of the room, so she asked her roommate to check on the child. The roommate reported that the child was fine. Respondent maintained that she was gone from the bathroom for no longer than 45 seconds. Respondent testified that when she returned to the bathroom, the child was on her hands and knees in the tub, making a panicked breathing noise, and the water was running. Respondent testified that when the child lifted her left hand out of the water it was very red and skin was coming off. Respondent jumped in the tub and pulled her out. At that point, respondent's roommate called 911. In her testimony, respondent also acknowledged that two older daughters were not in her custody. One girl was with her father, and respondent had voluntarily released her parental rights to the other child to allow the girl's paternal grandparents to adopt her. The trial court determined that termination of respondent's parental rights was in this child's best interests.

Respondent first argues that the trial court committed an error when it failed to cite statutory authority to support terminating her parental rights. We disagree. Because this is an unpreserved issue, we review it on the basis of plain error affecting substantial rights. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). MCR 3.977(I)(3) states that, before entering an order terminating parental rights, the court must make findings of fact, state conclusions of law, and include a statutory basis for the order. The trial court explicitly relied on Dr. Angelili's testimony that the child sustained life-threatening injuries due to intentional abuse at the hands of respondent. On the basis of those findings, the court concluded that it was appropriate for the court to take jurisdiction over the child and to terminate respondent's parental rights. In its oral ruling and written order, the trial court explicitly identified MCL 712A.19b(3)(k)(iii) and (v)¹ as the statutory bases for terminating respondent's parental rights. Respondent's argument that the court failed to cite statutory authority for its decision is not supported by the record.

Respondent next argues that the trial court erred when it relied on Dr. Angelili's testimony to terminate respondent's parental rights and that termination of her rights was not in the child's best interests. We review a trial court's findings in termination of parental rights

¹ The oral ruling did not identify the statutory cite in full, but merely referenced the applicable subsections.

proceedings, including its best-interest determination, under the clearly erroneous standard. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). To be clearly erroneous, a finding must leave the reviewing court with a definite and firm conviction that a mistake has been made. *Mason*, 486 Mich at 152. When applying the clearly erroneous standard “regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” MCR 2.613(C); MCR 3.902(A); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Along with respondent’s admission that she was the child’s caretaker at the time the incident occurred, Dr. Angelili’s testimony was sufficient to establish that respondent abused the child and the abuse included severe physical abuse and life-threatening injury. MCL 712A.19b(3)(k)(iii) and (k)(v). Dr. Angelili testified that due to the symmetry of the burns and the lack of splash marks on the child she concluded with a high degree of medical certainty that her burn was inflicted, not accidental. Dr. Angelili also noted that the child was a developmentally normal 19-month-old, who would not have kneeled still in scalding water. Respondent’s parental rights are not absolute and are balanced against the state’s interest in protecting the child. *Trejo Minors*, 462 Mich at 356. Respondent did not object to the foundation underlying Dr. Angelili’s testimony, and the doctor expressly stated her involvement was limited to an opinion regarding abuse, not to address respondent’s parenting skills and bond with her other children. Respondent failed to demonstrate plain error that affected her substantial rights. *VanDalen*, 293 Mich App at 138. The court’s reliance on unchallenged testimony by the doctor was not clearly erroneous and properly established the basis for termination of parental rights. *Mason*, 486 Mich at 152.

Finally, the evidence established that termination of respondent’s parental rights was in the child’s best interests. If the court finds statutory grounds for termination of parental rights and that termination is in the child’s best interest, the court shall order termination. MCL 712A.19b(5). The trial court held that it was in the child’s best interests to terminate respondent’s parental rights in light of its finding that the burns were intentionally inflicted, and a treatment plan would not ensure the child’s future safety and recovery from the traumatic injuries and scars. The trial court, acting as the fact finder, questioned Dr. Angelili about exactly why respondent’s account of how the child was burned did not comport with the physical evidence. In sworn testimony, Dr. Angelili confirmed that the child’s burns would look differently if she were in the bathtub alone because she would have tried to reposition herself. On appeal, respondent argues that there was evidence that she was a caring mother who was bonded with the child. However, given the expert testimony that the young child suffered a life-threatening injury at respondent’s hands, we are not left with a definite and firm conviction that the trial court made a mistake in concluding that termination of respondent’s parental rights was in the child’s best interests.

Affirmed.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood