

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of L. BEADLE, Minor.

UNPUBLISHED
October 15, 2013

No. 313342
Ingham Circuit Court
Family Division
LC No. 11-001440-NA

Before: SERVITTO, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Respondent-father, R. Beadle, appeals as of right the trial court's order terminating his parental rights to his minor child under MCL 712A.19b(3)(b)(i), (j), (g), (k)(iii) and (k)(v). Because the trial court's findings and conclusions were not clearly erroneous, we affirm.

I. FACTS

A. THE CHILD'S INJURIES

K. Dale, the child's mother, testified that when the child was two months old, she noticed that the child was bruised on her back, just above her buttocks. Dale also testified that she had noticed that the child was bruised on other occasions. Beadle testified that on the night the child was bruised, he was taking care of her and Dale was asleep. He testified that his mother and brother were also with the child that day and sometimes assisted with her care at night.

Dale testified that she took photographs of the child's bruises but did not seek medical attention for them. Dale testified that Beadle did not want her to take the child to the hospital because he was concerned that Child Protective Services would become involved. Beadle testified that he had not wanted to take the child to the doctor because he had traumatic experiences with Child Protective Services as a child. At the termination hearing, Daphne Merryman testified that the records of the Department of Human Services (the Department) indicated that Beadle's parents had used inappropriate discipline with their children.

Dale testified that on July 30, 2011, she took the child to an urgent care clinic after finding blood in her urine. Dale testified that she showed the photographs of the child's bruises to doctors at the urgent care. The doctors told her that the child might have a kidney problem.

Dale testified that she took the child to an emergency room at Sparrow Hospital on October 11, 2011, because she had suffered a seizure-like event. Dr. Stephen Guertin, a

physician member of the child safety program at Sparrow Children's Center, testified that the child had a seizure-like episode and her tests were negative for typical causes, such as metabolic disease or structural brain disease. He attributed the cause to asphyxiation.

Dale testified that she showed the photographs of the child's bruises to medical personnel at Sparrow Hospital, although Beadle did not want her to do so. Dr. Guertin testified that, in his opinion, the photographs indicated that the child had been abused because they were in inappropriate locations for her age and were not in natural patterns. According to Dr. Guertin, "if you connect the bruising without explanation to an apparent life-threatening event with a negative work-up, I think you have a right to speculate that . . . the asphyxial event may have been abuse, abusive, or abuse related."

In May 2012, the child was removed from Dale and Beadle's care. After Dale admitted that she did not seek medical care for the child when she was bruised, the trial court found that the child came within the court's jurisdiction on the grounds of medical neglect.

B. PROCEDURAL HISTORY

At the June 2012 dispositional hearing, Dale and Beadle offered evidence that the child might suffer from Noonan Syndrome, which can cause a clotting disorder and bruising. Both Dale and Beadle testified that they did not know how the child was bruised. The trial court also considered a letter from Dr. Guertin, which stated his opinion that the child was abused.

On the basis of the pictures of the child's bruises and Dr. Guertin's letter, the trial court found by a preponderance of the evidence that the child was abused. It also noted that (1) Beadle had not wanted to seek medical care for the child because he feared that Child Protective Services would get involved, and (2) he presented himself in an overly positive light during his psychological evaluation.

At the July 2012 permanency planning hearing, Daphne Merryman, the child's foster care worker, testified that a limited genetic test of the child was normal but could not rule out Noonan Syndrome. Dale testified that she now believed that Beadle had caused the child's injuries, and that she no longer lived with him. Merryman testified that she could not recommend additional services for Beadle until he participated in therapy and therapeutic parenting time.

At the conclusion of the permanency planning hearing, the trial court ordered the Department to petition to terminate Beadle's parental rights. It found that returning the child to Beadle would put her at a risk of harm and that Beadle was unlikely to benefit from services because of his "closed emotional state" and his refusal to accept responsibility for the child's injuries. The Department filed a supplemental petition, alleging that Beadle had injured the child.

C. THE TERMINATION HEARING

At the termination hearing, Dale testified that she was unsure whether the child had Noonan's Syndrome because she did not have the funds to get a full genetic test done. Beadle testified that he believed that the child had Noonan's Syndrome. Merryman testified that, while

the child was placed in foster care and while the child and Dale were living together, the child did not suffer any additional bruising.

Dr. Guertin testified it was possible that the child had Noonan's Syndrome, but even if she did, her bruises were not consistent with a clotting abnormality. According to Dr. Guertin, none of the child's studies had shown that she had abnormal clotting and Sparrow Hospital's hematology oncology clinic believed that she did not have a clotting disorder. Further, Dr. Guertin testified that the photographs of the child's injuries were not consistent with Noonan's Syndrome because of the nature of the bruises and their locations on the child's body. He testified that a child with Noonan's Syndrome would still bruise in locations appropriate for his or her age and in locations over bony prominences, neither of which was true of the child's bruises. Finally, Dr. Guertin testified that a child with a clotting abnormality would not stop bruising simply because she moved to a new environment. Dr. Guertin testified that, in his opinion, "there's no question that there is inflicted injury . . . [and] no question that it represents abuse." He classified the abuse as "severe."

In November 2011, Dr. Shannon Lowder performed a psychological evaluation of Beadle. Dr. Lowder's report indicated that Beadle's "interest in and motivation for treatment is below average[.]" Dr. Lowder's report also indicated that Beadle did not see any reason to change his behavior and she was concerned that he would be defensive and reluctant to discuss personal problems. Dr. Lowder opined that Beadle "may not be willing to make a commitment to therapy[.]"

Dr. Lowder testified that Beadle exhibited a "fake good" pattern of response and was not willing to admit to normal parenting frustrations and concerns, but young parents frequently were unwilling to do so. She testified that Beadle was cooperative during his psychological evaluation, appeared to genuinely love the child, and his temper was under good control during the evaluation. Dr. Lowder recommended a supervised reunification.

Beadle testified that he had been defensive at his psychological examination. Beadle also admitted that he had former issues with anger management and had lost his temper while playing video games. However, Beadle testified that he had never directed his anger at Dale or the child, he had not abused the child, and he did not know how she was bruised. Beadle testified that he participated in therapy with his pastor.

Merryman testified that Beadle complied with services, attended all his parenting time, and made substantial progress. She said that Beadle was appropriate in his parenting time with the child and that she seemed to recognize him. According to Merryman, the only barrier to reunifying him and the child were the allegations of physical abuse.

D. THE TRIAL COURT'S FINDINGS

The trial court found that clear and convincing evidence supported terminating Beadle's parental rights under MCL 712A.19b(3)(b)(i), (j), (g), and (k)(iii) and (k)(v).

The trial court found that Beadle was not a credible witness, in part because when a detective questioned Beadle about the child's injuries, his responses were incomplete and concerning, and he abruptly ended the interview. It found that Beadle was caring for the child

when she was bruised and subsequently convinced Dale not to take the child to the doctor. It found that the bruises were the result of severe abuse, not medical issues, and that Beadle's anger issues and lack of credibility "clearly pointed to him as being [the child's] abuser." It found that Beadle also put the child to sleep on the couch by holding on to her stomach and chest, which led to "a suffocating event[.]" It found that the circumstantial evidence, including viewing the asphyxiation event in light of the child's bruises, showed that the suffocation event was abusive.

The trial court found that Beadle caused the child's injuries, which were severe or life-threatening. It found that, on the basis of Beadle's anger control problems, the child would likely be harmed if it returned her to Beadle's care. It also found that Beadle failed to provide the child with proper care and custody because she suffered extensive bruising and an asphyxiation event while in his care. It further found there was no reasonable likelihood he would be able to provide proper care and custody within a reasonable time because of his lack of insight and resistance to understanding his faults.

Considering the child's best interests, the trial court found that it could not determine whether she was bonded to Beadle, but, even assuming that she was, terminating Beadle's parental rights was still in her best interests because of the severe nature of Beadle's abuse. It also found that the child needed permanency and that terminating Beadle's parental rights would allow Dale to "reconstitute a family unit for [the child] where she will be safe from harm and protected." It found that terminating Beadle's parental rights was in the child's best interests.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination.¹ The trial court's factual findings are clearly erroneous if the evidence supports them, but we are definitely and firmly convinced that it made a mistake.² Generally, this Court reviews de novo questions of law related to the admissibility of evidence.³

B. MCL 712A.19b(3)(b)(i)

MCL 712A.19b(3)(b)(i) provides that the trial court may terminate a parent's rights if the child suffered a physical injury and

[t]he parent's act caused the physical injury . . . 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.

¹ MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

² *In re Mason*, 486 Mich at 152; *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

³ *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001).

Beadle contends that the trial court clearly erred by finding that he caused the child's injuries because (1) there is no evidence that he was the person who injured the child and (2) the trial court did not rule out possible medical causes for the injuries. We disagree.

Beadle contends that this case is not analogous to cases in which this Court has concluded that the trial court appropriately terminated a parents rights under MCL 712A.19b(3)(b)(i) because persons other than Beadle and Dale had access to the child and could have abused her. In *In re Ellis*, the trial court found that termination under MCL 712A.19b(3)(b)(i) and (ii) was appropriate when "at least one of [the parents] had perpetrated the abuse and at least one of them had failed to prevent it[.]"⁴ This was in part because of the recurrent nature of the abuse.⁵ We conclude that this case is not similar to *In re Ellis* because, here, the trial court found that Beadle abused the child.

We are also not convinced that this finding was clearly erroneous. Beadle was the child's caretaker on both occasions on which she was injured, but he claimed not to know how she was injured. Beadle attributed the child's injuries Noonan's Syndrome. We recognize that the trial court did not conduct full genetic testing on the child and it was never proved that she did not have Noonan's Syndrome. However, Dr. Guertin testified that the child's subsequent medical history was not consistent with Noonan's Syndrome, and even if she had Noonan's Syndrome, her injuries were not consistent with that medical condition. Dr. Guertin testified that the child's bruises were more consistent with an inflicted injury. After the child was removed from Beadle's care, she stopped suffering injuries. Her injuries did not resume when she was returned to Dale's care. We are not definitely and firmly convinced that the trial court made a mistake when it found that Beadle physically injured the child.

Nor are we convinced that the trial court made a mistake when it found that it was reasonably likely that the child would be harmed if returned to Beadle's care. Beadle claimed not to know how the child was injured while in his care. It is clear from Beadle's testimony that he refused to accept responsibility for the child's harm. Further, Dr. Lowder concluded in her psychological evaluation that Beadle would be defensive, reluctant to discuss personal problems and would likely be unwilling to engage in therapy. Beadle's unwillingness to accept responsibility for the child's physical injuries made it reasonably likely that she would suffer further harm while in Beadle's care. We conclude that the trial court did not clearly err when it found that the child was reasonably likely to be harmed if returned to Beadle's home.

Beadle next contends that Dale fabricated her testimony and that it lacked credibility. We decline to address this contention because the trial court indicated that it was not taking Dale's opinion of what happened into account.

Finally, Beadle contends that the trial court improperly relied on hearsay evidence when making its findings under this statutory section. We disagree.

⁴ *In re Ellis*, 294 Mich App 30, 35; 817 NW2d 111 (2011).

⁵ *Id.* at 35-36.

Generally, the Michigan Rules of Evidence do not apply to child protective proceedings.⁶ However, if the trial court terminates parental rights on the basis of new circumstances contained in a supplemental petition, its findings must be based on legally admissible evidence.⁷

Beadle contends that the trial court relied on hearsay evidence when it considered a police report and a letter from Dr. Guertin. At the termination hearing, Beadle stipulated to the admission of Dr. Guertin's letters. Thus, he has waived this issue on appeal.⁸ Further, the trial court's findings concerning the police report did not implicate the new circumstances present in the supplemental petition, but rather were focused on Beadle's credibility as a witness. We conclude that the trial court did not err because it did not base its conclusions regarding the Department's new allegations on inadmissible evidence.

C. MCL 712A.19b(3)(g) AND (j)

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights if

[t]he parent, without regard to intent, 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.

MCL 712A.19b(3)(j) provides that the trial court may also 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.

When an infant is severely injured in a parent's care, it provides evidence that the parent did not provide the infant with proper care and custody.⁹ Evidence that a child suffered serious, unexplained, nonaccidental injuries consistent with abuse while in a sole parent's care supports terminating that parent's rights under MCL 712A.19b(3)(g) and (j).¹⁰

To the extent that Beadle contends that he did not abuse the child, and thus did not fail to provide her with proper care and custody, we reject those contentions for the same reason that we rejected them above.

⁶ MCR 3.901(A)(3).

⁷ MCR 3.977(F)(1)(b); see *In re Gilliam*, 241 Mich App 133, 137; 613 NW2d 748 (2000).

⁸ See *Freed v Salas*, 268 Mich App 300, 313-314; 780 NW2d 844 (2009).

⁹ *In re Ellis*, 294 Mich App at 33.

¹⁰ *In re VanDalen*, 293 Mich App 120, 140-141; 809 NW2d 412 (2011).

Beadle also contends that his participation in services was evidence that he would be able to provide the child with proper care and custody within a reasonable time given the child's age. We recognize that Beadle participated in the vast majority of recommended services in this case, and that service providers recommended reunifying Beadle and the child. However, the trial court found that Beadle failed to recognize that he had a problem and thus would be unable to address that problem.

Additionally, we note that the child suffered two serious injuries while in Beadle's care before she was six months old. One of these injuries was consistent with a severe, forceful beating administered to a two-month-old infant. Dale testified that she had noticed that the child was bruised on occasions even before that incident. The child's injuries stopped after she was removed from Beadle's care and did not resume when she was returned to Dale's care. Beadle consistently denied knowing why or how the child was so seriously injured and persisted in blaming her injuries on a medical condition. However, Dr. Guertin testified that the child's injuries were not consistent with a medical condition. Because of Beadle's refusal to take responsibility for the injuries that occurred while the child was in his care, we are not firmly convinced that the trial court made a mistake when it determined that she was likely to be harmed if returned to his care.

Beadle also contends that the trial court clearly erred when it found that he was defensive and had not addressed his anger management problems. We disagree.

Beadle contends that there was no evidence that he was defensive or had an anger management issue. However, Dr. Lowder's report does not support this contention. It instead indicates that "[Beadle] describes his temper as within the normal range, and as fairly well-controlled without apparent difficulty." Further, Beadle admitted at the termination hearing that he had issues controlling his anger, though he claimed that his anger problems were only related to video games. Similarly, Beadle admitted that he was defensive during his psychological evaluation. Therefore we reject this contention.

D. MCL 712A.19b(3)(k)

MCL 712A.19b(3)(k) 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:

* * *

(iii) Battering, torture, or other severe physical abuse.

* * *

(v) Life-threatening injury.

Beadle contends that the trial court clearly erred by finding that (1) he abused the child and (2) the child's injuries were severe or life-threatening. We reject Beadle's contention that

the trial court clearly erred by finding that he abused the child for the same reasons that we have rejected it above.

We also reject Beadle's contention that the trial court clearly erred by finding that the child's injuries were severe. Dr. Guertin, a physician and member of Sparrow Hospital's Children's Center and the hospital's trauma team, testified that someone caused the infant child's bruises by forcefully striking her with a hand or object, and her bruises were indicative of "severe" abuse. Dr. Guertin's testimony thus supported the trial court's factual findings that the child was severely abused. We are not definitely and firmly convinced that the trial court erred by finding that the Department proved MCL 712A.19b(3)(k)(iii).

Beadle contends that Dr. Guertin indicated that someone would have to "speculate" that the child's life-threatening seizure-like event was caused by abuse. This Court will not interfere with the trial court's determinations of the weight of the evidence and the credibility of the witnesses.¹¹

Here, Dr. Guertin testified that "if you connect the bruising without explanation to an apparent life-threatening event with a negative work-up, I think you have a right to speculate that . . . the asphyxial event may have been abuse, abusive, or abuse related." We do not have the benefit of knowing Dr. Guertin's tone or demeanor when he stated that someone would have the "right to speculate" that the child's asphyxiation was abuse-related, and we refuse to interfere with the trial court's determination that Dr. Guertin was indicating that he actually believed that the events were related. Further, the trial court also based its finding on the circumstantial evidence, which included that (1) Beadle beat the child on a previous occasion, (2) he was her caretaker at the time of the asphyxiation event, and (3) the child suffered two serious injuries in a six-month period. We are not definitely and firmly convinced that the trial court erred when it found that Beadle inflicted the child's life-threatening asphyxiation event.

III. THE CHILD'S BEST INTERESTS

A. STANDARD OF REVIEW

The trial court must order the parent's rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence, and the trial court finds from a preponderance of the evidence on the whole record that termination is in the child's best interests.¹² We review for clear error the trial court's determination regarding the child's best interests.¹³

¹¹ See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

¹² MCL 712A.19b(5); *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012); *In re Moss*, 301 Mich App 76, 83; ___ NW2d ___ (2013).

¹³ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

B. LEGAL STANDARDS

The trial court may consider all the evidence available to determine the children's best interests.¹⁴ 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, [and] the child's need for permanency, stability, and finality"¹⁵ The trial court should consider the effect of a child's placement with relatives when determining whether termination is in the child's best interests.¹⁶

C. APPLYING THE STANDARDS

Beadle contends that the trial court erred by failing to consider (1) that he was bonded to the child, and (2) that he had completed services and engaged in therapy. We disagree.

Here, the trial court recognized that Beadle said that he loved the child. The trial court therefore clearly *did* consider that Beadle was bonded to the child. However, instead of focusing on the parent-child bond, the trial court instead focused on the injuries that Beadle inflicted on the child and the fact that he neglected her medical needs because he did not want Child Protective Services to become involved. The trial court also considered the child's placement with Dale and determined that terminating Beadle's parental rights could allow Dale to "reconstitute a family unit for [the child] where she will be safe from harm and protected."

Given the evidence concerning the severe physical abuse that the child suffered while in Beadle's care, we are not firmly convinced that the trial court erred when it found that terminating Beadle's parental rights was in the child's best interests.

IV. CONCLUSION

We conclude that the trial court's factual findings regarding the statutory grounds and the child's best interests are not clearly erroneous. We are not definitely and firmly convinced that the trial court made a mistake when it found that MCL 712A.19b(3)(b)(i), (g), (j), and (k) supported terminating Beadle's parental rights, nor are we convinced that the trial court clearly erred when it determined that terminating his rights was in the child's best interests.

We affirm.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Donald S. Owens

¹⁴ *In re Trejo Minors*, 462 Mich at 353.

¹⁵ *In re Olive/Metts*, 297 Mich App at 41-42 (internal quotation marks and citations omitted).

¹⁶ *In re Mason*, 486 Mich at 164; *In re Mays*, 490 Mich 993, 994; 807 NW2d 304 (2012).