

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of W. LEMMEN, Minor.

UNPUBLISHED
February 18, 2014

Nos. 318412; 318570
Hillsdale Circuit Court
Family Division
LC No. 13-000339-NA

Before: SAWYER, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

Respondents appeal as of right the order terminating their parental rights to the minor child under MCL 712A.19b(3)(b)(i) (child suffered abuse and there is a reasonable likelihood the child will be abused in the future), (b)(ii) (parent had the opportunity to prevent physical injury or abuse and failed to do so), (g) (failure to provide proper care and custody), (j) (reasonable likelihood of harm if child is returned to parent’s home), and (k)(iii) (parent abused child and abuse included battery, torture, or other severe physical abuse). We affirm.

“In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). “We review the trial court’s determination for clear error.” *Id.* “A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The trial court did not clearly err in finding that petitioner established, by clear and convincing evidence, a statutory ground for termination of respondents’ parental rights under MCL 712A.19b(3)(j). Termination is proper under MCL 712A.19b(3)(j) when “[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.” This Court has previously found that termination was proper under MCL 712A.19b(3)(j) where the record established that there was a reasonable likelihood that the parent would cause physical injury to the child, *In re VanDalen*, 293 Mich App at 140-141, or that the parent would fail to prevent abuse from occurring, *In re HRC*, 286 Mich App at 461.

Here, the minor child, who was then three months old, was brought to the hospital on May 20, 2013. It was determined that he had a broken radius and femur. It was later determined that the minor child also had two broken ribs and a broken tibia, all of which were in the process

of healing. The fractures were found to be the result of physical abuse, likely caused by putting pressure on the bones or aggressively pulling and twisting them. The record establishes that the minor child was almost exclusively in the care of respondents during his life. Respondent-father had a history of violence and inconsistently took his psychotropic medication. Although respondent-mother was concerned that respondent-father would harm the minor child, she neglected to remove the minor child from his care and continued to live in the same home as respondent-father. After the minor child was taken into care, respondent-mother blamed respondent-father for the minor child's broken leg, but she did not take responsibility for the fact that her failure to protect the minor child contributed to his injuries. Three months before termination, it was discovered that respondents had psychological problems that caused children to be at risk of abuse and neglect in their care. It was believed that it would take a "long time" for them to improve and their prognosis was classified as "poor." Further, because of respondent-father's history of resorting to violence, medication and therapy could not "guarantee safety" to the people in his life. Respondent-mother was prone to choosing violent partners, and she reunited with respondent-father two months before termination. Expert testimony established that, because of the minor child's age and the severity of his injuries, he would most likely be greatly reinjured or murdered if returned to respondents' care. Accordingly, the trial court's finding that there was a reasonable likelihood of physical harm if the minor child was returned to respondents' home does not leave us with "a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App at 459. Because we have concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision. *Id.* at 461.

Respondents also argue that termination of their parental rights was not in the minor child's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012); MCL 712A.19b(5). We review a trial court's finding that termination is in the child's best interests for clear error. *In re HRC*, 286 Mich App at 459. In *In re VanDalen*, 293 Mich App at 142, this Court held that the trial court's finding that termination was in the children's best interest was not clearly erroneous "[g]iven that the children's safety and well-being could not reasonably be assured in light of the past severe abuse of the children while in respondents' care which remained unresolved." The fact that the "children had been placed in a stable home where they were thriving and progressing and that could provide them continued stability and permanency given the foster parents' desire to adopt them" also supported that termination was in the children's best interests. *Id.* at 141.

Here, the minor child suffered severe physical abuse while in respondents' care. Respondents never took responsibility for the fact that the minor child sustained serious, nonaccidental injuries while in their care, and their psychological problems remained unresolved at the time of termination. Thus, the evidence clearly establishes that the "safety and well-being" of the minor child "could not reasonably be assured in light of the past severe abuse" of the minor child while in respondents' care. *Id.* at 142.

Although respondents argue on appeal that they should have been provided additional time so that they could participate in services and pursue reunification, we focus on the minor child when determining whether termination was in the best interests of the child. This includes

considering his need for stability and permanency. *Id.* at 141. The record establishes that the minor child was flourishing in his placement with his maternal grandparents, who had expressed a desire to adopt him. Over the course of three months, the minor child gained six pounds and his brain began to grow as a result of receiving proper nutrition. At the time of termination, the six-month-old minor child no longer required a high calorie diet to treat his previous diagnosis of failure to thrive. Based on a review of the record, the trial court correctly ruled that terminating respondents' parental rights was in the minor child's best interest and, thus, it did not clearly err. *In re HRC*, 286 Mich App at 459.

Affirmed.

/s/ David H. Sawyer
/s/ Stephen L. Borrello
/s/ Jane M. Beckering