
Opinion

Chief Appellate Judge:
Karl Weber

Appellate Judges:
Richard A. Mastaw
Janine Gable
Donelda Harper
Cheryl Nolan

Filed on March 3, 2006

UNITED STATES OF AMERICA

SAULT STE. MARIE CHIPPEWA TRIBAL COURT

APPELLATE DIVISION

In the matter of,

A.B., a Minor,

Appellate Court Case No. APP-05-01
Tribal Court Case No. CW-05-02

_____/

PER CURIAM. This Appeal involves a Termination of Parental Rights of the Respondent Mother, T.B. Respondent Appeals.

I

FACTS AND PROCEEDINGS

Respondent, TB resided on Reservation Land with her two minor children, OF, age 7, (now deceased), and AB age 4. D was a severely handicapped child and was born with Hydrocephalus, Ventricular Septal Defect, Scoliosis, and other abnormalities. On January 7, 2005, Family Independence Agency, Children's Protective Services of Chippewa County, State of Michigan, issued a Notification of Suspected Child Abuse

and/or Neglect referral to the Sault Tribe that contained a statement of allegations that **OF** had head injuries, bruising on his body, blood in his eyes, and other injuries due to suspected inflicted trauma.

The child was examined at War Memorial Hospital on January 6, 2006, and air-lifted to Devos Children's Hospital in Grand Rapids, Michigan, where he died on January 7, 2006. The cause of death was determined to be non-accidental, which is supported by medical deposition testimony of four physicians. The Medical Examiner ruled his death a homicide.

On January 7, 2005, the Tribal Court entered an Order that **AB** be placed in temporary custody of the Tribal Family Independence Agency since conditions surrounding the child were such as to endanger her health, safety, and welfare. At the preliminary hearing on January 10, 2005, the Court found probable cause that one or more allegations in the petition filed by the Tribal Prosecutor were true and placed **AB** outside Respondent's home.

A Petition To Terminate Parental Rights dated May 3, 2005, was filed by **David Wnyte**, Esq., Guardian Ad Litem for **AB**. The petition alleged that the Respondent knowingly, intentionally, or negligently subjected her children to abuse or placed the children in a situation that endangered the life or health of one or more of her children, and that there exists no reasonable likelihood that the conditions would change.

The Petition To Terminate proceeded to trial on June 14, 2005, June 16, 2005, and concluded on July 1, 2005. The Court found that the statutory basis for terminating Respondent's parental rights by clear and convincing evidence was established and

terminated Respondent's parental rights. An Order terminating parental right was entered on July 7, 2005. We Affirm.

II

The Petition To Terminate Parental Rights filed by the Guardian Ad Litem did not request termination of parental rights at the dispositional hearing required by MCR 3.977 (E)(1). However, there is no provision in the Tribal Code that requires that the petition contain this request. Michigan Court Rule 3.977 (E)(1) states:

(E) Termination of Parental Rights at the Initial Disposition. The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 3.973, and shall order that additional efforts for reunification of the child with the respondent shall not be made, if

(1) the original, or amended, petition contains a request for termination;

.....

Section 30.505 of the Tribal Code states:

"If a petition to terminate parental rights to a child is filed, the Tribal Court may enter an order terminating rights at the dispositional hearing."

To resolve any apparent conflict between MCR 3.977 (E)(1) and Tribal Code Section 30.505, we address this issue, *SS*. The intent of MCR 3.977 (E)(1), is to give actual notice that the petitioner is seeking termination at the initial disposition while the intent of Tribal Code Section 30.505 is to give statutory notice that termination may be made at the dispositional hearing. We find that Section 30.505 gives proper and adequate notice that parental rights may be terminated at the dispositional hearing. A request in the petition to terminate parental rights at the initial disposition is procedurally not required under the Tribal Code.

Chapter 81.105 of the Tribal Code requires the Court to apply Michigan Law in the absence of Tribal or Federal Law. The Sault Ste. Marie Tribe of Chippewa Indians, Board of Directors, has enacted legislation in the Child Welfare Code that completely governs this case. The Michigan Court rules may apply to procedural matters, however, they do not supersede Tribal substantive or procedural law.

III

Respondent argues that there was an insufficient factual basis to terminate her parental rights. We disagree.

The Sault Ste. Marie Tribal Child Welfare Code, Tribal Code Chapter 30, provides, in material part:

30.504 Grounds for Involuntary Termination of Parental Rights

The Tribal Court may terminate the parental rights of a parent to a child adjudicated a child-in-need-of-care if the Tribal Court finds, by clear and convincing evidence, one or more of the following:

- (1)
- (2) Physical Injury or Sexual Abuse: The child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:
 - (a)
 - (b) A parent who had the opportunity to prevent the physical injury or physical or sexual abuse, failed to do so and the Tribal 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;

The record indicates that on January 6, 2005, Respondent was with D the entire time, except for the time he was at school, and when Respondent went to the store. Respondent testified she went to the store about 8:30 PM, and left her children, D and A with SP Respondent's boyfriend. She was gone a short time when she received a telephone call from MR. P who stated there was something wrong with D. Upon her return, D was lying on the living room floor, apparently unconscious. Respondent testified she tried to, "get him to come to", and took D directly to War Memorial Hospital, in Sault Ste. Marie. There was no other person at the home between the time Respondent left for the store and returned other than MR. P, A and D. These facts, among others, established strong circumstantial evidence that D's fatal injuries, reported by War Memorial Hospital and Devos Children Hospital, were inflicted during the time Respondent left for the store and returned.

The record also shows specific instances of physical abuse towards D.F. and AB by SP. Respondent testified that she had observed SP proceed into D bedroom, grab his head and squeeze hard with his hands. When MR. P saw the Respondent standing in the doorway he pretended that he was tickling the child. MR. P had also spanked her four year old daughter, AB, hard enough to leave marks on her buttocks and body, locked her in a dark garage twice, and shook her by her shoulders. Respondent stated that she believed that MR. P had meant to injure D and that he posed a risk of harm to her children.

IV

Respondent further argues that since she was in the process of completing a case service plan as requested by Anishnabek Community and Family Services (A.C.F.C.) the Court should not have terminated her parental rights. However, the Court did not order a

case service plan. The Respondent voluntarily entered into a plan with A.C.F.C. The voluntary agreement with A.C.F.C. does not affect the Court's authority to terminate parental rights under Section 30.503 (a) and (b).

Chapter 30.503 of the Child Welfare Codes states:

30.503 Involuntary Termination of Parental Rights

The Tribal Court may decree a permanent termination of parental rights as provided herein concerning a child over whom the jurisdiction of the Tribal Court has been invoked under this Subchapter. The rights of one parent may be terminated without affecting the right of the other.

- (a) Fact-finding Step: Legally admissible evidence must be used to establish the factual basis of parental unfitness sufficient to warrant termination of parental rights. The proofs must be clear and convincing.
- (b) Best Interest Step: Once it is established that one or more grounds exists to terminate parental rights of respondent over the child, the Tribal Court shall order termination of respondents parental rights and order that additional efforts for reunification of the child with the respondent shall not be made, unless the Tribal Court finds that termination is clearly not in the best interest of the child.

The Court received evidence from RH, a Case Worker for A.C.F.S., who was the foster care worker in this case, and MLV, Child Placement Services Supervisor, with the Sault Tribe, Binogii Placement Agency. They both testified that no services could be offered to reunite the family.

V

At the conclusion of the trial, the Court found, that Respondent's boyfriend, SP hit, bruised, shook, and locked A in the garage twice, squeezed D's head

which was meant to injure D. Knowing that Mr. P was abusive towards her children, Respondent continued to leave her children home with him, which resulted in D's death. She engaged in prostitution and allowed drug use in the house while the two children were there. Respondent did not accompany D to Devos Hospital in Grand Rapids but waited until the next day. She continued to have a romantic relationship with a person that she believed to be responsible for the death of her child. Respondent's neglect, demonstrated a reasonable likelihood that A would suffer injury or abuse in the foreseeable future if placed in Respondent's home. Respondent demonstrated inability to protect A. Further, based on the testimony of RH and MYL, as well as the facts of the case, there were no services that could be put in place which would allow the Respondent to protect her. The Court found the statutory ground had been met, A was physically abused and the parent had a chance to stop it; that the mother failed to provide proper care and custody, and that there's no reasonable expectation that the mother would be able to provide these requirements within a reasonable time period.

We hold, based on the whole record, the Tribal Court did not err in finding that, Section 30.504 (2)(b) was established by clear and convincing evidence. We further hold, that Respondent failed to show that the termination of her parental rights was clearly not in the best interest of the minor child, Section 30.503 (a) and (b). The Judgment of the Tribal Court is Affirmed.