

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JESSICA JACKSON and DEVIN
JACKSON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DENNIS RAY JACKSON,

Respondent-Appellant.

UNPUBLISHED
February 24, 2009

No. 284849
Allegan Circuit Court
Family Division
LC No. 04-036378-NA

Before: Whitbeck, P.J., and O'Connell and Owens, JJ.

PER CURIAM.

Respondent Dennis Jackson appeals as of right from the March 10, 2008 circuit court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i) (physical or sexual abuse by the parent), (j) (reasonable likelihood of harm if child is returned to parent), (k)(ii) (parent abused sibling and abuse included penetration), and (n)(i) (parent was convicted of a specified offense and termination is in the child's best interests). We affirm.

I. Basic Facts And Procedural History

Jackson and Ruby Leffler are the parents of Jessica (born April 7, 1995) and Devin (born August 6, 1996). Jackson and Leffler were divorced in 1997, following which, Leffler moved out of state. The judgment of divorce granted Jackson physical custody of the children during the school year.

The DHS filed a petition for temporary custody in April 2007. It alleged that Jessica disclosed that she and Devin slept in the same bed as Jackson and that Jackson "touches her with his 'private part in her private part' and neither of them wears clothes when this happens. Jessica stated that this has happened many times." Following a preliminary hearing, the trial court authorized the petition and placed the children in foster care.

Jackson subsequently entered a plea of admission to the petition as amended. He admitted that he had been charged with first-degree criminal sexual conduct (CSC) against Jessica and that after she testified at the preliminary examination, he was bound over for trial.

The trial court assumed jurisdiction over the children. And following a dispositional hearing, the children were placed with their mother under court supervision. Because petitioner had not requested termination of Jackson's parental rights, the trial court ordered that he participate in services, including parenting classes, and individual and sex offender counseling. The trial court added that a subsequent request for termination may modify the Court's order. Due to the circumstances, visitation was suspended.

Petitioner later filed a supplemental petition for termination. Petitioner alleged that (1) Jackson had sexually molested Jessica since she was eight years old, (2) that he had admitted to sharing a bed with Jessica "and he has awakened on top of Jessica," and (3) that he had been convicted of three counts of CSC and had been sentenced to concurrent prison terms of 17 to 40 years for two counts of first-degree CSC convictions¹ and 5 to 15 years for one count of second-degree CSC conviction.^{2, 3} Termination was requested under §§ 19b(3)(b)(i), (b)(ii), and (j).

At the termination hearing, foster care worker Brian Fuller recommended termination of Jackson's parental rights "[d]ue to the allegations[,] due to the convictions It would be in the child's best interest not to have the father in their lives based on the convictions and due to the severity of the CSC's." But Fuller admitted that the children were bonded with Jackson, who had been their primary caretaker for a number of years.

Jackson's employers, Glen Faucett and Mary Bouck-Faucett testified on Jackson's behalf. Bouck-Faucett testified that she never noticed anything that would cause her concern over Jackson's parenting skills. And Faucett testified that he had never seen anything to make him suspect that Jackson has anything other than a normal relationship with Jessica. Neither Faucett nor Bouck-Faucett believed that Jackson was guilty of the crimes for which he had been convicted.

The trial court found that Jessica had repeatedly provided detailed statements of sexual abuse by Jackson, for which he was convicted. And the trial court found it significant that Jackson nevertheless denied that the abuse occurred. Accordingly, the trial court found that termination was warranted under § 19b(3)(b)(i), explaining that there was no "hope of any potential rehabilitation in the Courts [sic] eyes." The trial court also found that termination was warranted under § 19b(3)(j) for essentially the same reasons. The trial court also found that termination was warranted under two grounds not cited in the petition, §§ 19b(3)(k)(ii) and (n)(i). Regarding the children's best interests, the trial court stated:

I'm unable to think of any reason why it would not be in the children's best [sic] to terminate Mr. Jackson's parental rights. We had the two witness's [sic], here today, testify to positive interaction between Mr. Jackson and his children. That they were never alerted to any of these behaviors by Mr. Jackson.

¹ MCL 750.520b(1)(a).

² MCL 750.520c(1)(a).

³ A claim of appeal is pending in Docket No. 283092.

Did not believe Mr. Jackson could perpetrate these behaviors. But in looking at Jessica's statements in the exhibits she indicates these behaviors would take place at night, at home. Sometimes when Devin was present. Sometime when no one was home. That these behaviors were not taking place out in the public, in public eye, in front of other parties, at other residences; they were primarily at home at night when no one else was around. So, the testimony of the two witness's [sic] today, the Faucett's [sic], is not surprising that they would not observe that behavior from Mr. Jackson. . . . But I said it's clear from the consistency of Jessica's statements, the conviction[,] that I can think of no reason why it would be in the best interest of the children not to terminate the parental rights of Mr. Jackson. . . . I think it would be in there [sic] best interest to terminate Mr. Jackson's parental rights at this point so theirs [sic] no further risk of physical or emotional abuse that could be perpetrated upon the children at this point and time. I know there is no information concerning any sexual abuse of the child Devin, but . . . the Court can look at treatment of one child and subject that possible abuse perpetrated on another child. We don't have to have abuse, perpetrated, on each and every child.

Accordingly, the trial court entered an order terminating Jackson's parental rights under MCL 712A.19b(3)(b)(i), (j), (k)(ii), and (n)(i).

II. Statutory Grounds For Termination

A. Standard Of Review

We review for clear error a trial court's decision terminating parental rights.⁴ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁵ Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁶

B. Analysis

Although Jackson argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence, he only challenges the trial court's decision to terminate his parental rights under §§ 19b(3)(b)(i) and (j). He does not address the other statutory grounds cited by the trial court. Where a respondent does not challenge the trial court's determination of one or more of several statutory grounds, this Court may assume that the trial court did not clearly err in finding that the unchallenged grounds were

⁴ MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999)

⁵ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁶ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

proven by clear and convincing evidence.⁷ And to terminate parental rights, the trial court need only find that the petitioner proved one of the statutory grounds for termination by clear and convincing evidence.⁸ Further, Jackson's failure to address an issue that must necessarily be reached to reverse the trial court precludes appellate relief.⁹

Regardless, the evidence disclosed that Jackson repeatedly sexually abused his child and that Jackson was convicted by a jury of two counts of first-degree CSC and one count of second-degree CSC, for which he was serving a minimum prison sentence of 17 years. Therefore, we conclude that the trial court did not clearly err in finding that each of the statutory grounds for termination were established by clear and convincing evidence.

III. Best Interests Determination

A. Standard Of Review

Under the pre-amendment version of MCL 712A.19b(5), once a petitioner established a statutory ground for termination by clear and convincing evidence, the trial court was required to order termination of parental rights, unless the trial court found from evidence on the whole record that termination was clearly not in the child's best interests.¹⁰ There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.¹¹ We review the trial court's decision regarding the child's best interests for clear error.¹²

B. Analysis

Jackson contends that the trial court erred in its best interests analysis because testimony showed that he was bonded to the children. We disagree. Although the Faucetts believed that Jackson was a good man who would never harm his children, a jury was satisfied beyond a reasonable doubt that Jackson had sexually molested Jessica. Both children were in counseling to deal with issues resulting from the molestation or removal from Jackson's home. The children are residing with their mother in Arkansas, and Jackson is serving a minimum prison sentence of 17 years, thus effectively removing him from the children's lives for the whole of their minority.

⁷ See *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998), overruled in part on other grounds by *Trejo*, *supra* at 353.

⁸ MCL 712A.19b(3); *Sours*, *supra* at 632.

⁹ *Riverview v Sibley Limestone*, 270 Mich App 627, 638; 716 NW2d 615 (2006).

¹⁰ MCL 712A.19b(5); *Trejo*, *supra* at 350. MCL 712A.19b(5) was recently amended such that the trial court must now find that termination of parental rights is in the child's best interests. 2008 PA 199, effective July 11, 2008. However, here we use the prior standard under which the trial court made its original disposition.

¹¹ *Trejo*, *supra* at 354.

¹² *Id.* at 356-357.

Accordingly, the evidence did not show that the children's best interests precluded termination of Jackson's parental rights.

Affirmed.

/s/ William C. Whitbeck

/s/ Peter D. O'Connell

/s/ Donald S. Owens