STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of AMBER J. BLOCKER, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JACK JAY BLOCKER,

Respondent-Appellant.

UNPUBLISHED
April 30, 2009

No. 286591
Wayne Circuit Court
Family Division
LC No. 06-452810

Before: Markey, P.J., and Fitzgerald and Gleicher, JJ.

PER CURIUM.

This case is before this Court a second time. In a prior appeal, this Court reversed the trial court's decision terminating respondent's parental rights under MCL 712A.19b(3)(b)(*i*), (j), and (k)(*ii*), because the court erroneously relied on inadmissible hearsay evidence at the initial dispositional hearing. *In re Amber Blocker,* unpublished opinion per curiam of the Court of Appeals, issued January 17, 2008 (Docket No. 279581). On remand, the trial court conducted a new dispositional hearing at which it considered only legally admissible evidence; it then again terminated respondent's parental rights under MCL 712A.19b(3)(b)(*i*), (g), (j), and (k)(*ii*). Respondent appeals by right. We affirm.

I. Denial of Request for an Adjournment

Respondent first argues that the trial court erred in denying his request for an adjournment in order to obtain a polygraph examination. We disagree. A trial court's decision whether to grant a continuance is discretionary and, therefore, the court's decision is reviewed for an abuse of discretion. *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993). In child protective proceedings, a court's discretion to grant an adjournment is guided by MCR 3.923(G), which provides:

> **(G) Adjournments**. Adjournments of trials or hearings in child protective proceedings should be granted only
>
> (1) for good cause,
>
> (2) after taking into consideration the best interests of the child, and

(3) for as short a period of time as necessary.

"Good cause" for an adjournment under MCR 3.923(G) requires that "'a legally sufficient or substantial reason' must first be shown." *In re Utrera*, 281 Mich App 1, 11; 761 NW2d 253 (2008), quoting *In re FG*, 264 Mich App 413, 419; 691 NW2d 465 (2004).

In this case, respondent failed to establish a legally sufficient or substantial reason for an adjournment. Respondent requested an adjournment in order to obtain a polygraph examination. The trial court had originally granted respondent's request for a polygraph examination in March 2007, approximately three months before the original dispositional hearing. But an examination was never scheduled, and the court proceeded with the dispositional hearing without one. Respondent then had another opportunity to obtain a polygraph examination after this Court reversed the trial court's original dispositional decision and remanded the case for further proceedings. Again, respondent did not do so. Instead, respondent waited until the second dispositional hearing in June 2008 to renew his request for a polygraph examination. Thus, respondent had more than a year between March 2007 and June 2008 to obtain a polygraph examination.

Furthermore, the trial court appropriately recognized that granting an adjournment to enable respondent to submit to a polygraph examination was not a legally sufficient reason because polygraph results are not admissible evidence. *People v Phillips*, 469 Mich 390, 397; 666 NW2d 657 (2003); *People v Barbara*, 400 Mich 352, 364; 255 NW2d 171 (1977). Respondent misplaces reliance on *People v McKinney*, 137 Mich App 110; 357 NW2d 825 (1984), to argue that test results properly could have been considered by the trial court. In that case, this Court, applying the rationale from *Barbara*, *supra* (allowing polygraph test results to be considered in the context of deciding a motion for a new trial), recognized that polygraph test results could be considered in conjunction with a pretrial motion to suppress evidence because the ultimate question of the defendant's guilt or innocence was not at issue. *McKinney*, *supra* at 114-116. Here, however, respondent sought to obtain and use a polygraph examination for the dispositional hearing, where the court would decide the ultimate issue of whether his parental rights should be terminated. In this situation, the rationale from *Barbara* and *McKinney* does not apply.

To the extent that respondent suggests that a favorable polygraph examination could have helped him avoid a termination in the first instance, we find no support for this claim. First, there is no indication that petitioner would have dismissed the termination petition if respondent had passed a polygraph examination, especially where petitioner opposed both respondent's requests for a polygraph examination and an adjournment. Second, even if that were respondent's intent, as explained previously, respondent never obtained an examination.

Under these circumstances, the trial court did not abuse its discretion in denying respondent's request for an adjournment.

II. Statutory Grounds for Termination

Respondent argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree.

The petitioner has the burden of proving a statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J). A finding of fact is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Deference is accorded to the trial court's assessment of the credibility of the witnesses who appeared before it. *Id.*; MCR 2.613(C). An order terminating parental rights need only be supported by a single statutory ground. *In re Trejo*, *supra*; MCL 712A.19b(3).

Although petitioner is willing to concede that the trial court improperly relied on § 19b(3)(k)(*ii*) as a statutory basis for termination, we conclude that the trial court did not clearly err in finding that termination was warranted under that subsection. A court may terminate parental rights under § 19b(3)(k)(*ii*) where the parent abused a child or a sibling and the abuse included "[c]riminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate." Contrary to what petitioner asserts, there is no requirement in § 19b(3)(k) that a respondent actually be criminally convicted of an enumerated offense for that subsection to apply. In this case, evidence was presented that respondent repeatedly sexually penetrated the minor child's older siblings, who were under 13 years of age. This evidence, which the trial court found credible, established criminal sexual conduct involving penetration, MCL 750.520b(1)(a). Thus, the trial court did not clearly err in finding that termination was warranted under § 19b(3)(k)(*ii*).

The evidence of respondent's sexual abuse of the minor child's siblings also supports the trial court's decision to terminate respondent's parental rights under § 19b(3)(b)(*i*), which applies where the child or a sibling of a child has been sexually abused and "[t]he parent's act caused the . . . sexual abuse 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." Although the sexual abuse victims were not respondent's own children, the evidence showed that they lived in the same household as respondent and that respondent was their father-figure, yet he and others repeatedly sexually abused them. The trial court did not clearly err in finding that it was reasonably likely that respondent's own child would be abused in the foreseeable future if placed in respondent's home.

The same evidence also supports the trial court's decision to terminate respondent's parental rights under §§ 19b(3)(g) and (j). Respondent's sexual and physical abuse of the minor child's siblings supported a determination that he lacked the capacity to understand and respect a child's basic right to be raised in an environment free of abuse. The record evidence further demonstrated that respondent was unlikely to provide a safe environment for his daughter, given his unwillingness to admit to the abuse committed on the other children, his lack of stable housing, and his long standing drug abuse history.

We reject respondent's argument that the trial court improperly relied on the evidence of his sexual abuse because it consisted of inadmissible hearsay and was not credible. First, to the extent that respondent refers to inadmissible hearsay that was admitted at the original dispositional hearing, he is incorrect because, after this Court reversed the trial court's ruling following the original dispositional hearing, the trial court conducted a new hearing at which it considered only legally admissible evidence. Second, although the trial court relied in part on hearsay statements at the dispositional hearing on remand, those statements were admitted under

MCR 3.972(C)(2), after the court first conducted a "tender years hearing" to determine whether the statements were trustworthy. Respondent does not challenge the trial court's determination that the statements were admissible under that rule. Third, in addition to the out-of-court statements describing respondent's sexual abuse, the minor child's older sibling testified at the hearing and was examined regarding respondent's sexual abuse. The credibility of the child's testimony was for the trial court to decide, and we defer to the court's determination of credibility. *In re Miller*, *supra* at 337; MCR 2.613(C).

For these reasons, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

III. Best Interests

Respondent also argues that termination of his parental rights was not in the minor child's best interests. We disagree.

After finding that a statutory ground for termination was established by clear and convincing evidence, the trial court was required to terminate respondent's parental rights unless it found that "termination of parental rights to the child is clearly not in the child's best interests." MCL 712A.19b(5). The trial court's best interests decision is also reviewed for clear err. *In re Trejo*, *supra* at 356-357.

Initially, we note that much of respondent's argument is flawed because it is based on evidence that was presented at the first dispositional hearing, not the hearing that is the subject of this appeal. Respondent also asserts that termination of his parental rights was contrary to the child's best interests because there was a bond between him and the child. But, the evidence indicated that respondent last visited the child in April 2007, which was approximately 14 months before the court terminated his parental rights. At that time, the child was almost four years old, the same age the younger sibling was when that child was first subjected to respondent's sexual abuse. The evidence did not clearly show that termination of respondent's parental rights was not in the minor child's best interests. Thus, the trial court did not err in terminating respondent's parental rights to the child.

We affirm.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Elizabeth L. Gleicher