STATE OF MICHIGAN

COURT OF APPEALS

In re A. M. Fillmore, Minor.

UNPUBLISHED
March 10, 2016

No. 329432
Branch Circuit Court
Family Division
LC No. 15-005257-NA

Before: METER, P.J., and BOONSTRA and RIORDAN, JJ..

PER CURIAM.

Respondent mother appeals as of right from a September 1, 2015, order terminating her parental rights to a minor child, AF, under MCL 712A.19b(3)(b) (relating to sexual abuse), (g) (relating to proper care or custody), and (j) (relating to risk of harm).[1] We affirm.

On February 19, 2015, the Department of Human Services (DHS) filed an original petition seeking termination of respondent's parental rights to her daughter (then 17 years old), who is cognitively impaired and nonverbal and has a seizure disorder. DHS alleged in the petition that respondent "admitted to masturbating her daughter . . . ." The agency further alleged that respondent had been communicating with a man, Shane Scott, who was incarcerated for criminal sexual conduct with a child. Allegedly, respondent indicated to Scott that he could have sexual intercourse with AF upon his release from prison. DHS indicated that respondent communicated through Facebook with another man and expressed a desire for this man, respondent, and AF to have sex together. DHS also stated that respondent had prior involvement with Children's Protective Services (CPS) over medical neglect and hygiene issues regarding AF.

The termination hearing took place on September 1, 2015.[2] Michigan State Police Detective Sergeant Jacklyn Stasaik testified that she "initiated an investigation into [Scott] at the

[1] The court also terminated the father's parental rights but he is not a party to this appeal.

[2] It appears from the record that respondent, at an earlier date, entered a plea to certain allegations in the petition, resulting in an earlier order of adjudication, but a transcript of the plea proceedings has not been provided. At any rate, the parties focus their appellate briefs on the termination hearing.

Bellamy Creek Correctional Facility" because respondent had written to Scott about the subject of sex with AF upon his release from prison. Stasaik referred to sexually explicit letters sent by Scott and to a September 9, 2014, letter by respondent in which she stated that she was afraid that if CPS found out that she and Scott were having sex with AF, AF would be taken away. Stasaik testified that she interviewed respondent on December 15, 2014, and respondent admitted "that she had agreed to these things with Mr. Scott but only to get him to stop asking; that he was continuously asking her for sexual encounter [sic] with [AF] and that she had agreed to those things for him to stop that communication."[3] Stasaik testified that respondent referred to Scott as her boyfriend and wanted him to live with her.

Stasaik noted that Scott was charged in the federal system for "enticement of a child for immoral purposes" and that respondent was interviewed again in February 2015. Stasaik testified:

> And during that interview, she admitted that she had washed her child with a loofah sponge and that that washing of her child had caused a sexual discharge. She said that that's what she was referencing when she talked to Shane Scott or wrote Shane Scott a letter about [AF] getting wet.
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> * * *
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> She said that she came to a conclusion where she recanted her offers to him to have sex with [AF], and that was in September or October of 2014.

Stasaik testified that respondent had communicated with a man on Facebook about having a threesome with AF. According to Stasaik, when confronted with the Facebook communications, respondent's "final response was that maybe she had some perverted addiction to sex, and that she was using her child to engage these people with her." Stasaik further testified:

> [S]he ultimately said she masturbated her child and that she did that because she wanted her daughter to know what sexual stimulation was and sexual pleasure and that she did not do that for either of the men that she had corresponded with, but that she did that for her own teaching of her child of sexual gratification and stimulation.

Respondent's adult son (AF's brother) testified that AF is severely handicapped and that respondent often yelled at AF, called her names such a "b---h" and "c--t," and "smack[ed her] a couple times . . . ." The son also testified that respondent had a lot of male visitors, that respondent did not bathe AF as often as she should have, and that AF sometimes "smell[ed]." He indicated that respondent loved AF and that AF loved respondent but that he wanted someone else to care for AF.

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[3] The extremely graphic letters written by Scott were introduced into evidence.

Jodi Ann Shortridge, a DHS caseworker, testified that, in the past, there had been a substantiated investigation regarding medical neglect of AF by respondent. She also indicated that AF was not given consistent hygiene. Shortridge testified that respondent told her she had been tricked into making admissions to the police regarding AF.

Misty Rohloff, another DHS caseworker, testified that respondent admitted to telling Scott that he could have sex with AF but claimed that she did not intend to follow through with it. Rohloff stated that when she observed AF she found that A was not malnourished but that her hygiene was poor.

Jane Nastally, a teacher at AF's school, testified that AF's hygiene was consistently very poor while she had been residing with respondent but that since removal, AF was clean and had shown a lot of progress in terms of her social interaction and happiness level. Nastally testified that there was "no doubt" in her mind that AF was "better off where she is now than she was before." She stated that the foster parents engaged with the school staff more than respondent had.

Michelle Lock, another DHS employee, testified that termination would convey certain advantages over a guardianship because, in part, if termination did not occur, respondent could "come back and have contact with [AF] or disrupt any kind of placement or any kind of social security benefits that would -- that would be issued to a guardian."[4] Lock testified that after removal from respondent's home, AF was taken to a dentist and ended up needing 12 fillings and two crowns.

Jessica Demarest, a friend of respondent's, testified that respondent was a loving and caring mother and that AF had not been neglected.

The trial court found that DHS had established a basis for termination under MCL 712A.19b(3)(b), specifically citing respondent's admission that she had "masturbate[d]" AF. The court further found that DHS had established a basis for termination under MCL 712A.19b(3)(g), citing dental neglect and noting that the parents "apparently . . . don't see anything wrong with this scenario here . . . ." The court also found that DHS had established a basis for termination under MCL 712A.19b(3)(j), stating that "[m]other [has] a home with other adult males that seem to funnel in and out of there." The court found termination to be in AF's best interests, indicating that respondent loved AF but had not cared for her and had put her at risk of sexual abuse. The court also noted that AF was doing far better in foster care than she had in respondent's care.

Respondent first argues that the trial court clearly erred by finding statutory grounds to terminate her parental rights. To support termination, the trial court must find that at least one of the statutory grounds in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review the trial court's decision for clear error. *Id.* A finding is clearly erroneous if it leaves us with a definite

[4] AF was to turn 18 soon but would continue to need care because of her disabilities.

and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

Under MCL 712A.19b(3)(b)(*i*), a trial court may terminate parental rights when "[t]he child . . . has suffered . . . sexual abuse" 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." Under MCL 712A.19b(3)(g), a trial court may terminate parental rights when "[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." Under MCL 712A.19b(3)(j), a court may 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."

We find no clear error with regard to the trial court's conclusion that DHS adequately established statutory grounds for termination. Respondent's admissions to Stasaik about having "masturbated" AF because she wanted to teach AF about "sexual gratification and stimulation," combined with respondent's communications with Scott and with the man from Facebook, adequately supported a basis for termination under MCL 712A.19b(3)(b)(*i*). Indeed, respondent sexually abused AF and placed her at risk of future harm. This same evidence, as well as the evidence of AF's poor hygiene and dental neglect, despite her having lived with respondent for over 17 years, also showed that respondent failed to provide proper care or custody for AF, that there was no reasonable expectation that she would ever do so, and that AF would likely be harmed if returned to respondent's care. MCL 712A.19b(3)(g) and (j).

Respondent also argues that termination was not in the best interests of the child. To properly terminate parental rights, the trial court must find by a preponderance of the evidence that termination is in the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review the trial court's decision for clear error. *In re HRC*, 286 Mich App at 459; *In re VanDalen*, 293 Mich App at 142. Factors to be considered include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

Given respondent's sexual abuse of AF, the risk of future sexual abuse, the dental neglect and hygiene issues, and the impressive strides AF had made in foster care, the trial court did not clearly err in finding termination to be in AF's best interests.[5]

[5] We note that respondent makes no argument on appeal about guardianship.

Affirmed.

/s/ Patrick M. Meter
/s/ Mark T. Boonstra
/s/ Michael J. Riordan