

STATE OF MICHIGAN
COURT OF APPEALS

In re A. L. R. JACKSON, Minor.

UNPUBLISHED
May 10, 2016

No. 329959
Wayne Circuit Court
Family Division
LC No. 15-520165-NA

Before: MURPHY, P.J., and CAVANAGH and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent mother appeals as of right an order terminating her parental rights to her minor child, AJ, pursuant to MCL 712A.19b(3)(b)(iii), (g), and (j). We affirm.

Respondent argues that the trial court clearly erred when it found clear and convincing evidence to support termination of her parental rights under MCL 712A.19b(3)(b)(iii), (g), and (j). We disagree.

This Court reviews for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). “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.” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). The trial court’s determination that termination is in the child’s best interests is also reviewed for clear error. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

A trial court may terminate a respondent’s parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence, and (2) termination is in the child’s best interests. MCR 3.977(F); *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). In this case, the trial court terminated respondent’s parental rights under MCL 712A.19b(3)(b)(iii), (g), and (j). Respondent contends that the trial court clearly erred on all three grounds.

MCL 712A.19b(3)(b)(iii) states that the court may terminate a parent’s parental rights if the court finds by clear and convincing evidence that a “nonparent adult’s act caused . . . sexual abuse of the child . . . and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent’s home.” A review of the record demonstrates that the trial court did not clearly err when it found that termination under MCL 712A.19b(3)(b)(iii) was supported by clear and convincing

evidence. AJ testified that when she lived with respondent and respondent's boyfriend, Christopher Allen Marshall, Marshall would masturbate and watch pornography in front of her on a daily basis. On one occasion, Marshall went as far as touching AJ's vaginal area while she was sleeping. AJ testified that when she told respondent about the abuse on a trip to the Dollar Tree store, respondent confronted Marshall.

Instead of contacting the authorities, respondent chose to accept Marshall's denial. While respondent did cease communication with Marshall from July 2013 to March 2015, she allowed Marshall back into the home after he allegedly passed a polygraph examination regarding AJ's allegations. As the trial court noted, respondent has consistently put the needs of Marshall over AJ. The testimony of Stephanie Moore, AJ's foster care worker, regarding how respondent left the courthouse on August 12, 2015 with Marshall indicates that respondent continues to prioritize Marshall over the welfare of AJ. This also indicates a reasonable likelihood that AJ will be subject to further abuse by Marshall in the foreseeable future if placed in respondent's home. Therefore, the trial court did not commit clear error when it found clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(b)(iii).

"Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights . . ." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Because clear and convincing evidence exists to support termination under MCL 712A.19b(3)(a)(iii), this Court need not consider the remaining two statutory grounds on appeal. However, the trial court's decision to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(g) and (j) was also supported by clear and convincing evidence.

MCL 712A.19b(3)(g) provides that termination is proper if the 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." The same evidence that supported termination pursuant to MCL 712A.19b(3)(b)(iii) supports termination under MCL 712A.19b(3)(g). Despite her awareness of Marshall's repeated sexual abuse of AJ, respondent allowed him back into her home. In *In re Archer*, 277 Mich App 71, 75-76; 744 NW2d 1 (2007), this Court held that termination was proper pursuant to MCL 712A.19b(3)(g) where the mother failed to prevent known sex offenders from interacting with her children. In this case, Marshall was not just any sex offender. He had previously sexually assaulted AJ, yet respondent still allowed him to live in her home. This demonstrates that respondent failed to provide proper care for AJ and there is no reasonable expectation that she will be able to provide care within a reasonable time.

Termination was also proper pursuant to MCL 712A.19b(3)(j). The statute provides that a parent's parental rights may be terminated 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 parents." MCL 712A.19b(3)(j). The Court in *In re Archer* also found termination to be proper under MCL 712A.19b(3)(j) where the mother allowed her children to interact with known sex offenders. *In re Archer*, 277 Mich App at 75-76. As stated above, Marshall sexually abused AJ on multiple occasions. Despite this, respondent has continued her relationship with Marshall and even allowed him back into her home. Therefore, the trial court did not commit clear error when it found clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(j).

Once a statutory ground has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights. MCL 712A.19b(5); MCR 3.977. Whether termination of parental rights is in the child's best interests must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In order to determine whether termination is in a child's best interests, the court should consider various factors. These factors 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 White*, 303 Mich App at 713 (quotation marks and citations omitted). The court may also consider the parent's previous history, compliance with a case service plan, visitation history, the child's well-being while in care, and the possibility of adoption. *Id.* at 714. Placement of the child with a relative weighs against termination and must be considered as part of the best-interest determination. *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012).

The trial court did not clearly err when it found by a preponderance of the evidence that termination was in AJ's best interests. While AJ's previous placement with her great aunt and great uncle weighs against termination, other factors weigh strongly in favor of termination being in AJ's best interests. The lack of stability in respondent's home and AJ's well-being while in respondent's care demonstrates that termination was in her best interests. AJ testified that Marshall would come and go from respondent's life and that she always feared him returning to the home. When Marshall was living at the home, he subjected her to constant sexual abuse. Despite being made aware of this abuse on multiple occasions, respondent chose to allow Marshall back into her home. Although there may have still been a bond between respondent and AJ, respondent has clearly placed Marshall's interests above the interests of AJ. Therefore, the trial court did not clearly err when it found termination was in AJ's best interests.

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Amy Ronayne Krause