

STATE OF MICHIGAN
COURT OF APPEALS

In re S. X. LOOPER, Minor.

UNPUBLISHED
July 19, 2016

No. 330950
Houghton Circuit Court
Family Division
LC No. 12-000017-NA

Before: STEPHENS, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

The circuit court terminated respondent-father's parental rights to his young son, SL, based on respondent's sexual abuse of the child's older half-sister and the termination of his parental rights to that sibling as well as the child's full-blood sister in earlier proceedings. Respondent does not challenge the statutory grounds supporting termination, but contends that termination of his parental rights was not in his son's best interests. The record belies this claim and we affirm.

I. BACKGROUND

In 2006, respondent was convicted for sexual assault perpetrated against his oldest daughter. He was incarcerated for his crime and a court terminated his parental rights. Despite this history, CS became romantically involved with respondent and gave birth to a daughter, KL, in 2011. Child Protective Services (CPS) intervened with the family because of respondent's criminal history and the Department of Health and Human Services (DHHS) secured jurisdiction over KL. During a 2012 risk assessment evaluation, a psychologist deemed that respondent had not benefitted from rehabilitative services in the six years since his conviction and that "there [was] almost certain probability that [respondent would] reoffend." The court terminated respondent's rights to KL in March 2014. At that time, CS was pregnant was SL.

CS ultimately ended her relationship with respondent after he physically assaulted her in front of the children. She then acquiesced in the DHHS's efforts to terminate respondent's rights to SL. The psychologist who performed respondent's 2012 risk assessment testified that respondent posed a danger to SL even though he was a boy. The evaluator described respondent's abuse of his oldest daughter as invasive, severe, and long-running. Respondent shifted the blame for his conduct and was not remorseful for the impact on his child. Moreover, respondent was a chronic alcoholic and suffered from a personality disorder but had not secured treatment for either issue. In the evaluator's 25-year experience analyzing sex offenders, he found it common for pedophiles to switch and abuse a child of his or her nonpreferred gender if a

child of the preferred gender was unavailable. Accordingly, SL was at risk of becoming the victim of respondent's sexual abuse as well as suffering an increased risk of harm due to other conditions.

Respondent obtained a psychological evaluation in 2015 in preparation to defend against the current termination proceedings. The psychologist calculated respondent's recidivism risk at 40%. However, he did not believe that SL was at danger of sexual abuse at respondent's hands. The psychologist's review of respondent's sexual abuse of his oldest child revealed that respondent was "a situational child sexual abuser," i.e. a person who preferred adult sexual relationships but engaged in sexual relations with a child when the situation arose. The psychologist made no assessment of respondent's general ability to parent his child.

The circuit court considered the various reports and other evidence and terminated respondent's parental rights under several statutory grounds. In the court's estimation, termination of respondent's parental rights was in SL's best interests based on respondent's past sexual abuse of his daughter, failure to address other risk factors such as alcohol abuse, history of domestic violence against SL's mother, and respondent's own expert's calculation of his recidivist risk at 40%.

II. BEST INTERESTS

As noted, respondent does not challenge the circuit court's finding that at least one statutory factor under MCL 712A.19b(3) supported termination. Rather, he contends that termination was inappropriate under MCL 712A.19b(5) because such action was not in his child's best interests. Respondent emphasizes that he "has never sexually molested anybody but his [oldest] daughter" and never harmed SL. He argues that SL should not be deprived of the opportunity to have a relationship with his father based on years-old transgressions.

We review for clear error a court's finding that termination is in a child's best interests. *In re White*, 303 Mich App 701; 713; 846 NW2d 61 (2014). "A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re LaFrance Minors*, 306 Mich App 713, 723; 858 NW2d 143 (2014). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The lower court should weigh all the evidence available to it in determining the child's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Relevant factors include "the child's bond to the parent, the parent's parenting ability, [and] the child's need for permanency, stability, and finality" *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). "The trial court may also consider a parent's history of domestic violence" *White*, 303 Mich App at 714.

There is no evidence that respondent has any bond with SL. The court issued a no-contact order early in the proceedings because respondent's parental rights to KL had already been terminated and based on respondent's physical abuse of CS. As a result, respondent never demonstrated any level of parenting ability in relation to SL.

Moreover, despite the passage of nine years since his rights were terminated to his oldest daughter, respondent had not addressed his addiction to alcohol. Respondent's alcohol abuse was identified as an issue in the 2006 proceedings. During the current child protective matter, respondent physically assaulted CS twice in the summer of 2015. He was intoxicated on both occasions. Despite this history and the negative impact intoxication has on respondent's behavior, respondent conceded that he never sought out treatment for his addiction. SL was present during these assaults, placing him in danger emotionally if not physically.

And it was not against SL's best interests to prevent a convicted child sex offender from serving as his male role model. First, the experts disagreed regarding the direct danger respondent posed to SL. The state's expert believed that respondent had a high risk of reoffending and that even a male child could be a victim. Respondent's expert, too, opined that respondent presented a significant risk of recidivism. Second, respondent never acknowledged the full extent and consequences of his sexual abuse against his daughter. This lack of insight counters his claim that SL needs respondent as a father figure "to discuss life with him and the consequences of mistakes." It also supports that respondent will not truly comprehend the effect of his persistent poor choices (domestic violence and untreated alcoholism) on his son. Third, respondent admitted to the caseworker that he never engaged in any services, such as counseling, to face his decision to sexually assault his child and to develop strategies to avoid such behavior in the future.

Ultimately, respondent is a convicted child sex abuser and alcoholic who has taken no action to better himself. As a result, SL would be in physical and emotional danger if respondent were allowed access to him. The circuit court did not err in determining that termination of respondent's parental rights was in SL's best interests.

We affirm.

/s/ Cynthia Diane Stephens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher