STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
February 21, 2012

In the Matter of KRANZ, Minors.

No. 304791
Allegan Circuit Court
Family Division
LC No. 09-045963 -NA

Before: SAWYER, P.J., and O'CONNELL and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent father appeals as of right from the trial court order terminating his parental rights to the two minor children under MCL 712A.19b(3)(b)(*ii*), (c)(*i*), (g), (h), (j), (k)(*ii*), and (n)(*i*). The children's mother released her parental rights to the children and is not a party to this appeal. We affirm.

A petition for termination of respondent's parental rights was filed late in 2009 after one of the children, his then 11-year-old daughter, disclosed during a forensic interview that respondent had forced her to engage in an enormous number of sex acts with him daily for the preceding two years. Respondent had previously been found to be the perpetrator of sexual abuse against another now-adult daughter and a now-adult stepdaughter.[1] Respondent initially denied all of his daughter's allegations to the police, but he eventually pleaded no contest to the allegations she disclosed at the forensic interview and that the abuse took place at their home, in the shower, in respondent's car, in a clinic with which the parents were involved, and in a haunted house respondent ran.

Child protection proceedings were continued during the pendency of respondent's criminal proceedings. In the meantime, the children engaged in therapy, and respondent's son,

[1] Apparently, no criminal conviction ensued. The child protection matter was previously before this Court in *In re Kranz/Lust Minors*, unpublished opinion per curiam of the Court of Appeals, decided January 13, 2005 (Docket Nos. 254029, 254030, and 254425). The children at issue in the instant appeal were also at issue in that prior appeal, wherein we affirmed the trial court's dispositional order taking jurisdiction over all of the children then at issue. We have no information explaining how that matter was resolved or otherwise proceeded thereafter.

who was a year older than the daughter, had supervised visits with respondent. Respondent had not sexually abused the son, but the son indicated that he may have suffered some physical abuse. It was initially believed that these visits were beneficial for the son. However, the son eventually confronted respondent about the sexual abuse allegations. The son struggled with guilt over failing to protect his sister and worry over what might have happened to him if he did protect her; he also struggled with anger, depression, and frustration. According to respondent, the son also indicated that he felt trapped: the case was discussed repeatedly, his family would never speak to him again if he believed his sister, and he would be regarded as "sick in the head" if he sided with respondent. The son's last visit with respondent was shortly before respondent's criminal trial, and he apparently eventually decided that he believed his sister.

Respondent was convicted by a jury of six counts of first-degree criminal sexual conduct (CSC-1), one count of second-degree criminal sexual conduct (CSC-2), and one count of aggravated indecent exposure.[2] Shortly thereafter, the son attempted to commit suicide and asserted that his parents were dead to him. The termination hearing was held shortly after the attempted suicide and, at the hearing, respondent father denied the sexual abuse and testified that his daughter was lying. The court found that clear and convincing evidence established the seven statutory grounds for termination and that termination of respondent's parental rights was in both children's best interests.

In termination proceedings, this Court must defer to the trial court's factual findings if those findings do not constitute clear error. MCR 3.977(K). Both the trial court's decision that a ground for termination has been proven by clear and convincing evidence and its best-interest determination are reviewed for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court did not clearly err in finding that the statutory bases for termination were established by clear and convincing evidence. At the adjudication in the child protection proceedings, respondent pleaded no contest to the allegations of numerous instances of extensive sexual abuse of his daughter over a period of two years. At the termination hearing, he acknowledged that he had been convicted of six counts of first-degree criminal sexual conduct regarding this sexual abuse but denied the abuse occurred. Given his denial, the fact that respondent had no treatment for the abuse during the pendency of these proceedings, and the length of time during which respondent sexually abused his child, there was certainly a reasonable likelihood that she would suffer injury or abuse if returned to his home.

Although it was not established that respondent physically abused his son, based on the emotional problems the child had during the pendency of the case, including a suicide attempt,

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[2] Respondent has a separate appeal in that criminal matter pending before this Court in Docket No. 304853. Nothing in this opinion should be understood as any expression of opinion regarding the merits, procedural or substantive, of, or in any way binding on, that appeal.

there was a reasonable likelihood that he would suffer emotional injury if returned to his father's home. Further, at the time of the termination hearing, respondent was incarcerated and facing a mandatory minimum 25-year sentence. He did not suggest any proper provisions for his children while he was incarcerated. Instead, his entire strategy for their care appears to be to overturn his criminal convictions on appeal.[3] This matter has been ongoing since late 2009, and both children need permanence, stability, and a caring environment. Moreover, at the time the trial court entered its order, both children would be adults within four years, and there was no reasonable likelihood respondent would be available to provide care or custody to them for the remainder of their childhoods.

The trial court also did not err in finding that termination of respondent's parental rights was in the best interests of both children. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). As discussed above, the trial court did not clearly err in finding statutory grounds for termination. Based upon the sexual abuse of respondent's daughter and the emotional turmoil that her brother endured, continuing the parent-child relationship would be harmful to these children. The trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Amy Ronayne Krause

[3] Which is, of course, possible, and we do not mean to suggest respondent's criminal appeal is in any way futile. Again, we express no views whatsoever as to the merits of respondent's criminal proceeding. However, we find respondent's lack of *any* "backup plan" highly dubious.