

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 14, 2012

In the Matter of BEALS, Minors.

No. 306420
St. Clair Circuit Court
Family Division
LC No. 11-000213-NA

Before: *SERVITTO, P.J.*, and *TALBOT and K.F. KELLY, JJ.*

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i) and (k)(ii). We affirm.

I. BASIC FACTS

Respondent and his ex-wife had three daughters together before their divorce in 2007: T.M. (age 16), T.L. (age 11), and F.J. (age 7). T.M., age 16, testified that respondent sexually abused her when she was younger. The incidents began when T.M. was approximately nine years old and occurred over a two year period. In April 2011 T.M. told the leader of her church youth group, who took her to the police. She then told her mother.

The CPS worker testified that she received a referral regarding the children and interviewed T.M. using forensic interview techniques. The worker also interviewed respondent. Respondent disclosed that he was diagnosed with bi-polar disorder and had past psychiatric hospitalizations. He had a history of alcohol abuse and had recently overdosed on Xanax. Respondent believed T.M. made the allegations because she did not get along with his other ex-wife, who made disparaging remarks about T.M.'s mother. The worker recommended termination of respondent's parental rights "[d]ue to the sexual abuse allegations" and because the children would be at a risk of harm if they had any contact with respondent.

Respondent's sister testified that in January 2011, respondent began talking about wanting to obtain custody of the children and "getting them out of that house and that situation." In February 2011, he "was talking about it a lot more." Respondent told T.L. about his desire to obtain custody and T.L. may have shared the information with T.M.

The referee issued a written opinion recommending termination of respondent's parental rights:

The Court found [T.M.] to be extremely credible in the testimony she provided at trial. Her testimony was consistent with previous statements provided to the police and Children's Protective Services. Although there were additional witnesses provided by both petitioner and respondent, there was nothing presented that altered or changed the Court's finding that the standard of proof has been met. Further, due to the age of the children and risk of further abuse by the respondent father, it is in the best interest of the minor children that parental rights of [respondent] be terminated.

Based on the referee's recommendation, the trial court later entered an order terminating respondent's parental rights. Respondent now appeals as of right.

II. STANDARD OF REVIEW

The trial court's finding that a statutory ground for termination has been proven by clear and convincing evidence and the trial court's decision regarding the children's best interests are both reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

III. ANALYSIS

A trial court may terminate parental rights at the initial dispositional hearing if a preponderance of the evidence adduced at trial establishes grounds for the assumption of jurisdiction under MCL 712A.2(b) and the court finds on the basis of clear and convincing legally admissible evidence introduced at the trial or dispositional hearing that one or more facts alleged in the petition are true and establish grounds for termination under MCL 712A.19b(3). *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008); MCR 3.977(E). As applicable to this case, a trial court may terminate the rights of a parent to a child if the court finds, by clear and convincing evidence, that:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or 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.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

The trial court did not clearly err in finding that § 19b(3)(b)(i) was proven by clear and convincing evidence. T.M. testified that respondent had repeatedly sexually abused her. Although the trial court did not specifically find “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,” it did recognize that was an element of § 19b(3)(b)(i) and found that there was a “risk of further abuse by the respondent father.” Given that respondent had previously abused T.M., and that T.M.’s siblings were reasonably close to the age T.M. was when respondent abused her, the trial court did not clearly err in finding that the children were likely to be abused if placed in respondent’s home.

The case hinged on the credibility of T.M. Respondent argued that T.M.’s testimony was fabricated as a defense to respondent’s intent to seek a change of custody. Respondent points to the fact that T.M. waited years before disclosing the alleged abuse. Part of the trial court’s determination regarding T.M.’s credibility was its finding that her testimony was consistent with her prior statements to the police and CPS. Respondent points out that no legally admissible evidence was produced at the hearing regarding the content of T.M.’s prior statements, such that the court could conclude that they were consistent with her testimony.¹

Specifically, the trial court found that T.M. disclosed the abuse to someone at church and later “told her mother about the abuse and went to the Clay Township Police Department and made a statement to the investigating officer.” Although T.M. indicated that she spoke to her pastor about having been sexually abused by respondent, she never specifically stated what she said to police and the report was not admitted into evidence. The trial court also found that the DHS worker “conducted a forensic interview of [T.M.] . . . and she disclosed incidents of sexual abuse by her father.” Although the worker indicated that the “allegations” concerned sexual abuse, she never disclosed what T.M. said to her. In short, while the evidence supported a finding that T.M. had reported to the police and to DHS that she had been sexually abused by respondent, it did not support a finding that the specific incidents of abuse to which T.M. testified had been reported. Given the trial court’s limited finding that T.M. had reported sexual abuse to the authorities, it appears that in concluding that T.M.’s “testimony was consistent with previous statements provided to the police and Children’s Protective Services,” the court meant only that T.M.’s testimony that she had been sexually abused by respondent was corroborated in

¹ While it is true that “evidence admitted at any one hearing is to be considered evidence in all subsequent hearings,” *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973), that case involved a termination decision rendered more than a year after the child was adjudicated a temporary court ward. *Id.* at 379-380. In such cases, all relevant and material evidence is admissible at the termination hearing and the rules of evidence generally do not apply. MCR 3.977(H)(2). In this case, by contrast, termination was sought at the initial dispositional hearing and thus only legally admissible evidence could be considered in determining whether a statutory basis for termination had been proven by clear and convincing evidence. MCR 3.977(E)(3).

that she had reported sexual abuse to the authorities, not that the specific incidents of abuse described by T.M. in her testimony had been disclosed to the authorities. Therefore, giving due regard to the trial court's superior opportunity and ability to judge the credibility of witnesses, *Sparling Plastic Industries, Inc v Sparling*, 229 Mich App 704, 716; 583 NW2d 232 (1998), we conclude that the trial court did not clearly err in finding that § 19b(3)(b)(i) had been proven by clear and convincing evidence.²

As for the children's best interests, the record contains little evidence regarding the children's relationship with respondent. There was evidence that respondent and the girls' mother had worked out a mutually satisfactory visitation schedule. The mother testified that the children visited respondent on weekends, but T.M. had to be bribed to attend and then stopped visiting two years previously. T.M. testified that only her sisters visited respondent on weekends. Respondent's sister-in-law testified that T.M. visited respondent "[a]s often as possible" until respondent started trying to obtain custody. Nevertheless, given the trial court's finding that respondent sexually abused T.M. and that her sisters were reasonably close to the age T.M. was when respondent abused her, the trial court could properly conclude that termination was in the children's best interests.

Affirmed.

/s/ Deborah A. Servitto
/s/ Michael J. Talbot
/s/ Kirsten Frank Kelly

² Because the record that clear and convincing evidence existed to support termination of respondent's parental rights pursuant to § 19b(3)(b)(i), we decline to address whether sufficient grounds existed to support termination pursuant to § 19b(3)(k)(ii). Only one statutory ground for termination need be proven. *In re CR*, 250 Mich App 185, 207; 646 NW2d 506 (2002).