STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
July 26, 2012

In the Matter of S. D. COTTON, Minor.

No. 307405
Oakland Circuit Court
Family Division
LC No. 08-751502-NA

Before: METER, P.J., and FITZGERALD and WILDER, JJ.

PER CURIAM.

Respondent father appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(b)(*i*) and (j). We affirm.

An initial petition for termination of parental rights was filed after respondent father was charged with four counts of criminal sexual conduct against the child's half-sisters. The petition alleged that respondent sexually abused both of the child's half-sisters and that the child was home at the time of the sexual abuse, which occurred over a two-month period when the half-sisters were babysitting the child at respondent's home. The termination hearing was postponed pending the outcome of the criminal case. Respondent was subsequently convicted of both first- and fourth-degree CSC involving one of the child's half-sisters and was sentenced to a prison term of 35 to 60 years.

At the termination hearing petitioner presented several documents, including an affidavit of parentage for the child showing that respondent was her legal father, a certified copy of a verdict form showing that respondent was found guilty on June 22, 2011, of criminal sexual conduct in the first and fourth degrees, a September 1, 2011, judgment of sentence showing that respondent was sentenced to 35 to 60 years in prison for criminal sexual conduct in the first degree, and a judgment of sentence showing that in 1994 respondent was convicted of two counts of criminal sexual conduct in the first degree. The prosecution rested without presenting any additional evidence with regard to respondent.

Defense counsel argued that petitioner failed to present any proofs to support a finding that respondent "sexually abused his daughter's . . . two half sisters. Again, there was no proof in any of the documents that I see that show that they were half sisters." The trial court disagreed, finding that:

> Mr. Cotton has been convicted of sexually assaulting [A and B], half sisters of [the minor]. And additionally, (j) that there's a reasonable likelihood

based on the conduct or capacity of the child's parent that the child would be harmed if he or she is returned to the home of the parent.

> Clearly father has been convicted on three – of three separate sexual assault charges. And the Court believes that [the minor] – there – there's been clear and convincing evidence that [the minor] would be harmed if she was returned to the home of her father who has been convicted of sexually assaulting three different minors.

The trial court found that petitioner established the statutory grounds for termination and continued the matter for a best interests hearing. Following that hearing, the trial court, after noting that the child had been out of the home for one year, and that respondent would be incarcerated for a minimum of 35 years, found that it was in the best interests of the child to terminate respondent's parental rights.

STANDARD OF REVIEW

The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. See MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once the petitioner has proven a statutory ground for termination by clear and convincing evidence, the circuit court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). This Court reviews for clear error a circuit court's decision to terminate parental rights. *In re Trejo*, 462 Mich at 356; see also MCR 3.977(K). The clear error standard controls our review of "both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich at 356–357. A decision qualifies as clearly erroneous when, "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 JK*, 468 Mich 202, 209–210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes the Court "as more than just maybe or probably wrong." *In re Trejo*, 462 Mich at 356.

I

Respondent father argues that reversal is necessary because his incarceration deprived him of the opportunity to participate in a July 5, 2011, review hearing and an August 1, 2011, permanency hearing in violation of MCR 2.004. In support of his argument, respondent relies on *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010). In that case, the Court held that, to comply with MCR 2.004, the moving party and the court must provide the parent with an opportunity to participate in each proceeding of a child protection action.

Although respondent states that he was not present at the August 1, 2011, permanency planning hearing, petitioner argues that he was present and has attached a "Disposition Sheet" with a checkmark next to respondent's name indicating his presence. However, the disposition sheet was not provided to this Court as part of the lower court record and, therefore, cannot be considered by this Court. The transcript of the hearing reveals that respondent's attorney was present at the hearing, but does not indicate whether respondent was present. With regard to the

July 5, 2011, hearing, the transcript again reveals that respondent's attorney was present but does indicate whether respondent was present. This hearing was an emergency hearing regarding one of the child's half-sisters and had nothing to do with the child.

The present case is distinguishable from *In re Mason*. In *Mason*, the respondent was incarcerated and was denied the opportunity to participate in many hearings over a long period of time and, as the Court expressed, the respondent's absence "affected both his ability to participate and the information available for the court's consideration." *In re Mason*, 486 Mich at 155. Here, respondent has not established that he was not present for these hearings. Additionally, assuming that respondent was not present, he has not established that his presence and an opportunity to participate would have rendered a different outcome, or that the information available for the court's consideration would be different.

Respondent attended several hearings before his incarceration and attended the others, either in person or telephonically, with the possible exception of these two hearings. Even if respondent was not present for the permanency planning hearing, there is no indication that he lacked any information discussed at this hearing or was denied the opportunity to inform the court of any relevant information. Therefore, respondent was not denied the opportunity to participate in proceedings regarding the child.

II

Respondent argues that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. Under MCL 712A.19b(3)(b)(*i*),

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
>
> * * *
>
> (b) The child or a sibling[1] 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.

Specifically, respondent first asserts that no evidence was presented to establish that the victim whom respondent was convicted of sexually abusing was the child's sibling. However, the record reveals that the sibling relationship of the child and the victim was not a fact in dispute. The petition filed in this case alleged that respondent "sexually abused . . . both half-sisters of the

[1] The word "sibling" includes a half-sibling for purposes of MCL 712A.19b.

[child]." The petition also alleged that the abuse occurred at respondent's home while the child's half-sisters were babysitting the child, and that respondent was being charged with four counts of criminal sexual conduct as a result of the sexual abuse. At a pretrial conference on August 11, 2010, petitioner iterated that the child "is actually not the victim in the criminal matters. It's the siblings." At a hearing on September 23, 2010, petitioner noted that the petition "relates to father sexually offending the siblings of the child."[2] Under these circumstances, the trial court did not clearly err in finding under§ 19b(3)(*i*) that a sibling of the minor suffered sexual abuse. Additionally, given the nature of respondent's criminal sexual conduct with the child's sibling, as well as respondent's prior CSC convictions involving children, the trial court did not clearly err in determining that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in respondent's home. Because it is only necessary for petitioner to establish by clear and convincing evidence the existence of one statutory ground to support the order for termination of parental rights, *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000), we need not address respondent's additional argument that the trial court erred by terminating his parental rights pursuant to MCL 712A.19b(3)(j).

III

Respondent argues that the trial court erred by determining that termination of his parental rights was in the best interests of the child. He asserts that the trial court terminated his parental rights based solely on his inability to parent the child due to the length of his incarceration without considering the child's placement with his relatives in Florida However, it is undisputed that petitioner's goal in this case was reunification of the child with her mother. While respondent loves his child, the length of time she would be required to wait for him to be able to provide proper care and custody is unreasonably long. Given the child's young age and her need for a stable home environment, it was in her best interests to terminate respondent's parental rights. MCL 712A.19b(5).

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder

[2] Although the best interests hearing occurred on a date separate from the termination hearing, respondent testified at that hearing that the victim of his convictions for first- and fourth-degree CSC was "the sister of my daughter."