

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
September 18, 2012

In the Matter of BARTON, Minors.

No. 309816  
St. Clair Circuit Court  
Family Division  
LC No. 11-000437-NA

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Before: CAVANAGH, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to two minor children under MCL 712A.19b(3)(b)(i), (g), and (j). We affirm.

Petitioner moved to terminate respondent's parental rights on the grounds of sexual abuse of his stepdaughter, CH, failure to provide proper care and custody, and the likelihood of harm to the children. Following trial, the referee recommended that respondent's parental rights be terminated. The referee concluded there was clear and convincing evidence that respondent had sexually abused CH, a sibling of respondent's children, and that the children were at risk if placed in his care. The referee also found clear and convincing evidence that respondent was unable to provide proper care and custody and that if the children were placed with respondent they would likely be harmed. The trial court agreed with the referee, adopted the referee's findings, and ordered that respondent's parental rights be terminated. This appeal followed.

Respondent first argues that the trial court erred in concluding that clear and convincing evidence supported any of the three statutory grounds for termination. We disagree.

We review a trial court's finding that the grounds for termination have been proven by clear and convincing evidence for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "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." *Id.* (internal quotation marks and citations omitted). To terminate parental rights, there must be clear and convincing evidence to establish at least one statutory ground for termination. *In re Powers Minors*, 244 Mich App 111, 117; 624 NW2d 472 (2000). Thus, if the trial court improperly terminated on one statutory ground, the error is harmless as long as another statutory ground for termination was established. *Id.* at 119. "Once a ground for termination is established, the court must order termination of parental rights unless there is clear evidence, on the whole record, that termination is not in the child's best interest." *In re Jenks*, 281 Mich App 514, 516; 760 NW2d 297 (2008).

Termination of parental rights under MCL 712A.19b(3)(b)(i) is proper when the child or a sibling of the child has been sexually abused by the parent and there is a reasonable likelihood of injury or abuse in the foreseeable future if the child is placed with the parent. See *In re Jenks*, 281 Mich App at 517. Termination under MCL 712A.19b(3)(g) is proper when the parent fails to provide proper care or custody for the child. See *In re VanDalen*, 293 Mich App 120, 138-139; 809 NW2d 412 (2011). And termination under MCL 712A.19b(3)(j) is appropriate when there is a reasonable likelihood that the child will be harmed if returned to the parent. *In re VanDalen*, 293 Mich App at 139.

Respondent first argues that clear and convincing evidence did not support termination under MCL 712A.19b(3)(i) because CH's trial testimony was inconsistent with her statements to a forensic examiner. We disagree.

This inconsistency was noted by the referee who made the following conclusions:

[CH]'s testimony did not appear embellished or exaggerated in any way. Respondent noted that in her previous statement concerning the incident, she indicated that she did have oral sex with [respondent]. Although it isn't consistent with her testimony in Court that she did not have oral sex, it is also favorable to [respondent] since it makes his conduct somewhat less reprehensible. The likeliest explanation based on her demeanor and all of the circumstances is that CH did not want to acknowledge the sexual touching in front of a courtroom full of people. In any event, even with that inconsistency, CH's testimony was in all other respects completely credible.

A trial court's credibility determinations are afforded considerable deference because of its unique position to observe and question witnesses. *Fletcher v Fletcher*, 447 Mich 871, 890; 526 NW2d 889 (1994); *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). Accordingly, we defer to the conclusion that CH was credible. Further, the finding of sexual abuse was supported by clear and convincing evidence; thus, clear error has not been established. See *In re Mason*, 486 Mich at 152.

Because we conclude that termination of respondent's parental rights was proper under MCL 712A.19b(3)(b)(i) we need not consider respondent's claims that clear and convincing evidence did not support termination under MCL 712A.19b(3)(g) and (j). See *In re Powers*, 244 Mich App at 117. However, we have reviewed the record evidence and conclude that respondent's challenge is without merit. The trial court's conclusions that these grounds for termination were proven by clear and convincing evidence were not clearly erroneous. See *In re Mason*, 486 Mich at 152.

Respondent next argues that termination was not in the best interests of the children. After review of the trial court's determination for clear error, we disagree. See *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

"Once a ground for termination is established, the court must order termination of parental rights unless there is clear evidence, on the whole record, that termination is not in the child's best interests." *In re Jenks*, 281 Mich App at 516. As discussed above, the evidence

supported the determination that respondent sexually abused his stepdaughter. There was also significant evidence of respondent's anger management issues, previous sexual assault allegations, and repeated incidents of domestic violence committed against his wife. In fact, during the last incident of domestic violence—in front of respondent's daughter—respondent tore off his wife's clothes, choked her, and broke her jaw. In light of the evidence, the trial court's conclusion that termination was in the best interests of the children was not clearly erroneous. See *In re Jones*, 286 Mich App at 129.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Henry William Saad  
/s/ Pat M. Donofrio