

STATE OF MICHIGAN  
COURT OF APPEALS

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FOR PUBLICATION  
October 11, 2011  
9:00 a.m.

In the Matter of HUDSON/SWORD, Minors.

No. 302214  
Oakland Circuit Court  
Family Division  
LC No. 2008-752541-NA

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

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(b)(i), (h), (j), and (k)(ii). Because the trial court did not clearly err in finding that a statutory ground for termination was established by clear and convincing evidence or that termination was in the minor children's best interests, we affirm.

The minor children came to the attention of the Department of Human Services (DHS) due to deplorable housing conditions and allegations of sexual abuse by respondent against her 14-year old biological son, whom she had given up for adoption at birth, but with whom she had recently reconnected. The biological child, Andrew, revealed that he and respondent had engaged in sexual intercourse on numerous occasions after she located him via MySpace. The trial court asserted jurisdiction over the minor children and the matter proceeded to hearing. Respondent ultimately plead guilty to one count of first degree criminal sexual conduct relating to her sexual activity with Andrew and was sentenced to a minimum of nine years' imprisonment. The trial court thereafter terminated respondent's parental rights to her minor children.

A petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests. MCR 3.977(K); *In re Archer*, 277 Mich App 71, 73; 744 NW2d 1 (2007). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re BZ*, 264 Mich App 286, 296–697; 690 NW2d 505 (2004).

On appeal, respondent contends that the trial court erred in finding that any of the four cited statutory bases for termination were established by clear and convincing evidence. We disagree.

First and foremost, respondent plead no contest to an amended petition, which included allegations that she had sexually abused Andrew. Though the trial court declined to terminate respondent's parental rights following the first best interests hearing, child protective proceedings are viewed as one continuous proceeding. *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973). Respondent's plea, therefore, became evidence in the case and she claims no irregularity pertaining to her 2009 plea. She now claims that the evidence was not clear and convincing to support termination. This is contrary to respondent's plea. Respondent may not assign as error on appeal something that she deemed proper in the lower court because allowing her to do so would allow respondent to harbor error as an appellate parachute. *People v Green*, 228 Mich App 684, 691; 580 NW2d 444 (1998). In any event, we find that clear and convincing evidence supported the trial court's termination decision.

Termination is appropriate pursuant to MCL 712A.19b(3)(b)(i) if the child or a sibling of the child has suffered sexual abuse and:

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.

MCL 712A.19b(3)(k)(ii) allows for termination of parental rights if "the parent abused the child or a sibling of the child and the abuse included . . . criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate."

Respondent admits that she plead guilty to criminal sexual conduct charges relating to her biological son, but avers that since she gave the child up for adoption at birth, he was not her legal child. According to respondent, it legally follows, then, that Andrew was not the sibling of her other children, such that termination was not appropriate under MCL 712A.19b(3)(b)(i) or MCL 712A.19b(3)(k)(ii). Aside from the fact that respondent has provided no authority for such position and we may thus deem this issue abandoned (see, e.g., *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999)), we disagree with respondent's position.

"Sibling" is not specifically defined in the Juvenile Code. Nor is there any case law in Michigan on this particular issue. That being the case, we may consult a dictionary for the proper definition of "sibling." See, e.g., *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004)(Where terms are not defined in a statute, such terms are to be given their plain and ordinary meanings and it is appropriate to consult a dictionary for definitions). The *American Heritage Dictionary of the English Language* (4<sup>th</sup> ed), p 1616, defines "sibling" as "One of two or more individuals having one or both parents in common; a brother or sister." Respondent is the biological mother of Andrew and all of the minor children at issue; the children share the same mother and thus some of the same genetic makeup. Andrew and the minor children are thus "siblings" and there is no rational basis for forging a distinction between a legal sibling and biological sibling under the present factual scenario. Clear and convincing evidence thus supported termination pursuant to MCL 712A.19b(3)(k)(ii).

The same holds true for termination under MCL 712A.19b(3)(b)(i). Respondent contends that there was no evidence presented that any of the children would suffer from injury or abuse if placed with her, considering that she will be incarcerated until at least 2019.

However, the reason for respondent's incarceration is her sexual abuse of her 14-year-old biological son. Evidence of how a parent treats one child is evidence of how she may treat her other children. *In re A.H.*, 245 Mich App 77, 84; 627 NW2d 33 (2001). It is thus appropriate for a trial court to evaluate a respondent's potential risk to the other siblings by analyzing how the respondent treated another one of her children, albeit a child she has given up for adoption. Though no legal relationship exists in such a situation, the reality is that respondent is still the biological mother of the child that has been given up for adoption and that child is the biological half-sibling of the respondent's other children. Were respondent's other children at less risk because Andrew was merely their *biological* and not their *legal* sibling? Respondent's behavior with Andrew was so egregious as to defy comprehension. It demonstrated more than a mere lack of insight and poor judgment.

Respondent can argue that she perceived Andrew in a different way than she perceived the rest of her children because she did not raise him. If that is the case, then her now-toddler son would be at the same risk of harm. Assuming respondent serves only the minimum sentence, she will be released when the child is 15 years old — nearly the same age Andrew was when he was reunited with respondent and she sexually abused him.

Clear and convincing evidence also supported termination under MCL 712A.19b(3)(h). Subrule (h) provides for termination if:

The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

Respondent does not dispute that she will be in prison for a minimum of nine years. And, as a result of her imprisonment and the circumstances leading up to it, the minor children have undoubtedly been emotionally damaged. They have been split up and no longer reside together in the same home. And, by the time of respondent's earliest release date, only the youngest child will still be a minor. While one's present inability to care for one's minor children due to incarceration is not, alone, grounds for termination (*In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010)), that is not the singular grounds for termination in this case. By subjecting the children to emotional damage, breaching their trust and confidence in her, placing them in a situation where they no longer reside together as a family unit and depriving them of her daily presence, respondent has not provided proper care and custody of the children. She is currently imprisoned for such a period that they will be deprived of a normal home for a period exceeding two years, and there is no reasonable expectation that respondent will be able to provide the children with proper care and custody within a reasonable time.

Finally, termination was proper pursuant to MCL 712A.19b(j) because, "there is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Here, respondent focuses only on the potential of *physical* harm or abuse and ignores the fact that the children had been, and continued to be, at risk of *emotional* harm. Respondent's behavior had already deprived the children of several years of a normal home with her. Her ongoing denial not only turned the

children against Andrew because they believed he was a liar, but also violated the children's trust in respondent when they came to learn more of the allegations against her. Respondent's behavior will have life-long and profound effects on her children as they come to grips with the fact that she was guilty of first-degree criminal sexual conduct with her own 14-year-old biological child. For the foregoing reasons, the trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights found in MCL 712A.19b(3)(b)(i), (h), (j), and (k)(ii) were established.

The trial court also did not clearly err in determining that termination was in the children's best interests. As indicated by the trial court, all of the children were indirectly made victims of respondent's sexual abuse of Andrew. Respondent's criminal behavior and failure to fully appreciate her conduct set a poor example for the children, who looked to her for guidance. Respondent's teenage daughter was having difficulty processing what respondent had done and for a long time believed that respondent was innocent. Respondent played into her daughter's beliefs. At the first best interests hearing, respondent testified that "I have not, would not ever abuse any of my children. I never did." Later, however, respondent admitted to engaging in sexual intercourse with her teenaged biological son and plead guilty to criminal charges concerning her actions. All of the children were going to have a life-long struggle dealing with what happened to their family as the result of respondent's reprehensible behavior. Termination of respondent's parental rights was a necessary step in allowing the children to have the safety, permanence, and stability to which they are entitled.

Affirmed.

/s/ Deborah A. Servitto  
/s/ Jane E. Markey  
/s/ Kirsten Frank Kelly