

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 2, 2010

In the Matter of D. BROOME, Minor.

No. 295292
Wayne Circuit Court
Family Division
LC No. 87-265128

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

PER CURIAM.

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

A trial court's determination that statutory grounds for termination have been established by clear and convincing evidence is reviewed under a "clearly erroneous" standard, as is the court's best interests determination. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Jenks*, 281 Mich App 514, 516-517; 760 NW2d 297 (2008); MCR 3.977(J). 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 JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). In applying the clearly erroneous standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); MCR 2.613(C).

Respondent first argues that the trial court did not have adequate evidence on which to base its findings because he was not afforded an opportunity for counseling. We disagree. Petitioner "is not required to provide reunification services when termination of parental rights is the agency's goal." *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009); see also MCR 3.977(D). Here, petitioner sought termination of parental rights in its amended petition, as authorized by MCL 722.638(3), because respondent was suspected of perpetrating sexual abuse on his minor child.

Respondent next argues that the trial court did not have adequate evidence because it refused to adjourn the termination hearing to allow him to obtain a transcript of the criminal proceeding in which he was acquitted of second-degree criminal sexual conduct against the minor child. This Court reviews a trial court's decision on a motion to adjourn a proceeding for an abuse of discretion. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). A trial court abuses its discretion when its decision results in an outcome falling outside the range of

reasonable and principled outcomes. *In re MKK*, 286 Mich App 546, 564; 781 NW2d 132 (2009).

We reject respondent's claim that the trial court abused its discretion when it denied his motion for an adjournment at the start of the termination hearing. Trial courts may not adjourn hearings in child protective proceedings except for good cause after taking the best interests of the child into consideration. MCR 3.923(G). In order for a trial court to find good cause for an adjournment, the party seeking adjournment must show "a 'legally sufficient' or 'substantial reason.'" *In re Utrera*, 281 Mich App at 10-11, quoting *In re FG*, 264 Mich App 413, 419; 691 NW2d 465 (2004). Respondent failed to establish that the criminal proceeding transcripts would have shed any light on the reason or reasons the jury acquitted respondent. Having failed to identify any evidence in the transcript that would have made a difference in the outcome of this case, see *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008), respondent has not met the good cause requirement of MCR 3.923(G). Moreover, in light of the fact that the delay in obtaining transcripts from the criminal proceeding could have further delayed permanency for this child, respondent also failed to satisfy the best interests requirement of MCR 3.923(G).

Respondent also argues that he did not have a fair opportunity to challenge the allegations that he sexually assaulted the minor child because a medical emergency requiring hospitalization prevented him from appearing and testifying at the termination hearing. Again, we disagree. This issue is unpreserved because there is no evidence that respondent raised this issue before the trial court by filing a motion for rehearing under MCR 3.992, *Phinney v Verbrugge*, 222 Mich App 513, 544; 564 NW2d 532 (1997), and this issue is not properly before this Court because respondent failed to identify it in his statement of questions presented. *Mettler Walloon LLC v Melrose Twp*, 281 Mich App 184, 221; 761 NW2d 293 (2008). In any event, respondent also failed to establish plain error affecting his substantial rights. *In re Utrera*, 281 Mich App at 8.

Furthermore, the trial court did not clearly err when it found that clear and convincing evidence existed to support termination of respondent's parental rights under MCL 712A.19b(3)(b)(i) (parent sexually abused minor child), (g) (failure to provide proper care and custody), and (j) (child will be harmed if returned to parent). The trial court relied on the minor child's testimony, which it found to be credible in light of her consistency through many retellings, and found that respondent had sexually abused the minor child while she was in his custody. Considering that the child reported that respondent abused her every Tuesday and Thursday, when her grandmother who lived with them was out, the trial court did not clearly err in finding that there was a reasonable likelihood that the minor child would suffer the same abuse in the foreseeable future if returned to respondent's home.

Once a statutory ground for termination is established by clear and convincing evidence, a trial court must affirmatively find that termination of parental rights is in the child's best interests before terminating parental rights. MCL 712A.19b(5). Although the trial court affirmatively found that termination was in the child's best interests, respondent argues that the trial court clearly erred because it failed to cite facts or rational to support its finding. Respondent's argument is factually incorrect. The trial court relied on a Department of Human Services investigator's testimony that termination of respondent's parental rights would be in the child's best interests. The investigator based this opinion on respondent's sexual abuse of the child and evidence that the child was doing very well in her current placement with her

stepfather. The record also justifies a finding that termination is in the child's best interest because the child testified that she was afraid of her father. Consequently, we conclude that the trial court did not clearly err.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Henry William Saad