

STATE OF MICHIGAN
COURT OF APPEALS

In re E. L. SARDY, Minor.

UNPUBLISHED
October 20, 2015

No. 325235
Oakland Circuit Court
Family Division
LC No. 12-795657-NA

Before: GLEICHER, P.J., and SAWYER and MURPHY, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i) (parent sexually abused child), (g) (failure to provide proper care or custody for child), (h) (parent imprisoned for period that would deprive child of a normal home for more than 2 years and parent has not provided proper care and custody), (j) (reasonable likelihood of harm to child if returned to parent), (k)(ii) (parent abused child and abuse included criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate), and (n)(i) (parent convicted of criminal sexual conduct in any degree and continuing parent-child relationship would be harmful to child). On appeal, respondent does not challenge the trial court's findings with respect to the statutory grounds for termination. He solely challenges the trial court's conclusion that termination of respondent's parental rights was in the child's best interests. We affirm.

In a related criminal case, respondent was convicted by a jury of child sexually abusive activity (CSAA), MCL 750.145c, using a computer to commit a crime, MCL 752.796, and two counts of second-degree criminal sexual conduct (CSC II), MCL 750.520c. Respondent was sentenced to concurrent prison terms of 71 months to 20 years for the CSAA and computer-crime convictions and 71 months to 15 years for the CSC II convictions. The victim of respondent's crimes was his young daughter, and she is the child at issue in this termination case and appeal.

After conducting an extensive best-interests hearing, the trial court issued a written opinion and concluded as follows:

[The child] has suffered sexual assault and sexual exploitation at the hand of someone she trusted – her own father. Father was also convicted of child sexual abusive activity and use of a computer to commit a crime. The photos of her naked going to the bathroom, sitting on the toilet with what appears to be a

pop bottle between her legs and the close-ups of her buttocks all look posed and are shockingly exploitive of the minor child. One of the videos that the court viewed is the strongest evidence the court has ever seen of his ongoing detrimental and exploitive treatment of his child. He has not accepted responsibility for his actions or the pain that he caused to his daughter.

...

She had numerous yeast infections during the years that he had custody and they began to cease only when her contact with him stopped.

[The child] struggled in school both academically and socially during the time she had contact with her father but at the present time, her grades have improved dramatically and she has made new friendships.

The child stated numerous times that she was afraid of him and worried about him doing something bad to her. However, now that he has been out of her life, she finally feels that she is starting to get her life back and feels safe at last “because he’s in prison” and he was “not going to get her.”

The court is satisfied that [it] is in the minor child’s best interests to terminate the parental rights of Respondent Father based on the length of his incarceration, the nature of the charges on which he has been convicted, the ongoing abuse to the child and her fears for her safety and the domestic violence to which he pled. There is no question that there would be a substantial risk of harm to the minor child if his rights were not terminated.

As noted above, respondent argues on appeal that the trial court clearly erred in determining that termination of respondent’s parental rights was in the child’s best interests. If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). “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.” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). “A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). In applying the clear error standard in parental termination cases, “regard is to be given

to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).¹

Considering the horrific sexual abuse and exploitation of the child, the child’s fear of respondent, and her vast improvement on numerous fronts after respondent was removed from her life, we hold that the trial court did not clearly err in finding that termination of respondent’s parental rights was in the best interests of the child.

We shall briefly address some of respondent’s particular arguments. Respondent argues that he and his daughter had a very close bond and relationship, that he was extremely involved in her activities and schooling, that “he was generous toward his child[,] and that he financially took care of her from birth.” To the extent that there is or can be any truth to these claims under the circumstances, they do not nor cannot overcome, for purposes of a best-interests analysis, the sexual abuse and sexual exploitation suffered by the child at the hands of respondent. Indeed, the alleged closeness of the relationship makes even more egregious the sexual abuse, given that it reflects that respondent exploited the relationship and the child’s inherent vulnerabilities for respondent’s own sexual gratification. Further, respondent’s generosity, financial or otherwise, is of no consequence in the face of his abusive and exploitive conduct.

Respondent next argues that the trial court impermissibly considered the fact that respondent’s stance or defense in the criminal and termination proceedings forced the child to testify, which was, according to the court, emotionally and mentally painful for the child. While the trial court mentioned respondent’s perceived disregard for the child’s well-being in making her testify, the court did not ultimately rely on the issue in reaching its best-interests conclusion. Further, assuming for the sake of argument that the trial court overstepped its bounds in this regard, it is clear from the court’s opinion, and the numerous reasons given by the court in support of its ruling, that termination would still have been ordered absent consideration of respondent’s decisions that required the child to testify.

Respondent also contends that the trial court gave too much weight to the testimony of a psychologist who performed respondent’s psychological evaluation. Although the trial court did mention the psychologist and the psychological evaluation in two relatively short paragraphs of its roughly seven-page summary of the evidentiary record, the court did not cite either the psychologist’s testimony or the evaluation as factors supporting its best-interests determination. Accordingly, this argument lacks merit. Moreover, it was the sexual abuse and exploitation that formed the foundation of the court’s ruling,

Finally, respondent argues that the child’s placement with her mother weighed against termination. However, in the trial court’s order that supplemented its written opinion, it

¹ Although respondent does not challenge the trial court’s findings regarding the statutory grounds for termination, we note that there was abundant evidence establishing that the court did not clearly err in concluding that the statutory grounds for termination were proven by clear and convincing evidence.

reiterated that termination was in the best interests of the child and that “[j]urisdiction is terminated as child is safe and well cared for by mother.” It is thus evident, assuming that placement with the child’s *parent* is even required to be considered, see MCL 712A.19a(6)(a) (referencing placement with “relatives”); MCL 712A.13a(1)(j) (defining “relatives”), that the trial court considered the child’s placement with her mother in determining whether termination was in the child’s best interests. See *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012). Reversal is unwarranted.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ David H. Sawyer
/s/ William B. Murphy