

STATE OF MICHIGAN
COURT OF APPEALS

In re KATMANIVONG, Minors.

UNPUBLISHED
December 17, 2015

No. 327284
Washtenaw Circuit Court
Family Division
LC Nos. 13-000135-NA;
13-000136-NA

Before: GADOLA, P.J., and K. F. KELLY and FORT HOOD, JJ.

PER CURIAM.

Respondent father appeals by right the trial court order terminating his parental rights to the minor children, CK and VK, pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

Respondent argues that the trial court clearly erred in terminating respondent’s parental rights to his older son, CK, pursuant to MCL 712A.19b(3)(g) and (j).¹ We disagree. “To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). “We review for clear error a trial court’s finding of whether a statutory ground for termination has been proven by clear and convincing evidence.” *Id.*; see also MCR 3.977(K). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *In re Moss*, 301 Mich App at 80.

The record supports the trial court’s decision to terminate respondent’s parental rights pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (reasonable likelihood child will be harmed if returned to parent). In this case, respondent testified that he grabbed his infant son, VK, shook him, and tossed him. A few hours later, respondent took VK to the hospital because VK was having difficulty breathing, was largely unresponsive, and could only open one eye. VK suffered a severe brain injury. Respondent testified that he had never shook VK “that hard before” and that he “never really toss[ed] him like that.” Respondent also told police that he tossed VK forcefully and, at the time, he was frustrated and angry with VK

¹ Respondent does not challenge the court’s findings regarding the statutory grounds for the termination of his infant son, VK.

because VK crawled into diaper wipes while respondent was changing CK's diaper. In addition, an expert witness testified that VK's injury was consistent with respondent picking him up and throwing him in an aggressive manner, and that the injury was inconsistent with respondent's theories regarding the cause of the injury. The expert also testified that when children are returned to an abusive environment, the recidivism rate for the abusive adult is extremely high, and that there was a greater chance that respondent would abuse VK again because of VK's special needs resulting from his brain injury. Respondent was convicted of second-degree child abuse based on his actions, and was sentenced to 5 to 20 years' imprisonment.

Based on this evidence, we conclude that there was sufficient evidence to establish that respondent failed to provide proper care and custody for both children, and would be unable to do so within a reasonable time given the children's ages. While respondent only caused direct harm to VK, "[h]ow a parent treats one child is certainly probative of how that parent may treat other children." *In re LaFrance Minors*, 306 Mich App 713, 730; 858 NW2d 143 (2014), quoting *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973) (alteration in original). Thus, the evidence regarding respondent's failure to provide proper care and custody for VK is probative of his behavior toward CK and we conclude that the trial court did not err in determining that sufficient evidence supported termination pursuant to MCL 712A.19b(3)(g) in regard to CK. Based on the same evidence, we also conclude that the trial court did not clearly err in determining that there was a reasonable likelihood, based on respondent's conduct, that the minor children would be harmed if returned to respondent's care. MCL 712A.19b(3)(j).

Respondent also argues that the trial court's finding of a statutory ground for termination of his parental rights to CK was erroneous pursuant to *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Relying on *Mason*, respondent argues that CK's placement with his mother (a relative) weighed against termination and a finding that respondent failed to provide proper care and custody could not be based solely on his incarceration. See *id.* at 164-165. We reject respondent's position. First, the current case is distinguishable from *Mason* because, here, the trial court specifically addressed CK's placement with a relative in making its decision, whereas in *Mason*, the court failed to consider this factor. *Id.* at 164. Second, the trial court did not terminate respondent's rights solely based on his incarceration. *Id.* at 165. Indeed, there was substantial evidence, outside of respondent's incarceration, which supported a finding that respondent failed to provide proper care and custody. Accordingly, we are unconvinced by respondent's assertions.

Respondent next argues that the trial court erred in determining that termination was in both children's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child[ren]'s best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012); MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child[ren] must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App at 90. This Court reviews the court's determination regarding the children's best interests for clear error. *In re Olive/Metts*, 297 Mich App at 40. "In deciding whether termination is in the child[ren]'s best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *Id.* at 41-42 (internal citations omitted).

In this case, the trial court found that it was in the minor children's best interests to terminate respondent's parental rights because respondent's violent history demonstrated a lack of parenting ability and because the children's mother's lack of insight into respondent's poor parenting ability put the minor children at risk. These findings were supported by the record, and the trial court properly considered respondent's history and parenting ability, as well as the children's need for stability and finality in their mother's care. *Id.* The trial court's finding that termination of respondent's parental rights was in the minor children's best interests was not clearly erroneous. *Id.* at 40.

Affirmed.

/s/ Michael F. Gadola
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood