STATE OF MICHIGAN

COURT OF APPEALS

In re L ALEXANDER, Minor.

UNPUBLISHED
March 8, 2016

No. 328125
Wayne Circuit Court
Family Division
LC No. 13-512852-NA

Before: RONAYNE KRAUSE, P.J., and SAWYER and STEPHENS, JJ.

PER CURIAM.

Respondent father appeals as of right an order terminating his parental rights to the minor child under three statutory grounds for termination: (1) MCL 712A.19b(3)(c)(*i*) ("The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age."), (2) MCL 712A.19b(3)(g) ("The parent, without regard to intent, fails to provide proper care or custody for the child 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."), and (3) MCL 712A.19b(3)(j) ("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."). We affirm.

Father first argues that the trial court impermissibly relied on hearsay statements as evidence supporting the statutory grounds for termination. We disagree.

The statements in question were given during the testimony of the Department of Health and Human Services (DHHS) foster care manager, Jennifer Ulmer, during the termination hearing. The condition that led to adjudication was an ongoing, violent domestic relationship in front of LA. This made their home unsuitable for LA. At the termination hearing, Ulmer testified that one of father's sisters had, in an out-of-court communication, informed Ulmer that father and mother "were recently in a physical altercation in April of 2015 that [the] sister witnessed." Ulmer further testified that two different people had informed Ulmer, in out-of-court statements, that mother was living with father at the time of termination. Father argues that such statements were inadmissible hearsay, further arguing that the trial court erred by considering such statements.

Because father did not object to Ulmer's testimony during the termination hearing, this issue is unpreserved, and our review is for plain error affecting father's substantial rights. See MRE 103(a)(1); see also *Lenawee Co v Wagley*, 301 Mich App 134, 164-65; 836 NW2d 193 (2013). "Plain error occurs at the trial court level if (1) an error occurred (2) that was clear or

obvious and (3) prejudiced the party, meaning it affected the outcome of the lower court proceedings." *Duray Dev, LLC v Perrin*, 288 Mich App 143, 150; 792 NW2d 749 (2010).

Father's hearsay argument is entirely misplaced. His rights were terminated following a hearing on a supplemental termination petition. Pursuant to MCR 3.977(H)(2), at a hearing on such a petition, unless termination is sought on the basis of "new or different circumstances" under MCR 3.977(F), "[t]he Michigan Rules of Evidence do not apply, other than those with respect to privileges," and the trial court can consider "all relevant and material evidence . . . to the extent of its probative value." See *In re Mays*, 490 Mich 993, 993-94;807 NW2d 307, 307-08 (2012) ("MCR 3.977(F)(1)(b) requires 'legally admissible evidence' that the grounds for termination are established when the petitioner seeks to terminate parental rights 'on the basis of one or more circumstances new or different from the offense that led the court to take jurisdiction[.]' "). Father offers no argument supporting his implicit contention that the hearsay rules were applicable at the termination hearing, and he fails to argue that the grounds for termination constituted "new or different circumstances" under MCR 3.977(F). Accordingly, he has abandoned any such argument, and the instant claim of error necessarily fails. See *In re TK*, 306 Mich App 698, 712; 859 NW2d 208 (2014).

Furthermore, even if the statements *were* inadmissible hearsay, father has failed to demonstrate that the error was plain, i.e., clear or obvious. The general rule is that the rules of evidence do not apply at termination hearings, see MCR 3.977(H), and, in the trial court, father failed to object to the allegedly improper nature of the evidence he now seeks to challenge on appeal. The germane interaction between the court rules and rules of evidence is decidedly complex. Hence, if error occurred, it was not plain. Father has not demonstrated that the alleged error was so obvious that the trial court should have recognized it sua sponte and corrected it.

Finally, even if the purported error occurred, and was plain error, father has failed to explain how or why such error prejudiced him. Father does not argue that it is *untrue* that he was still in a violent domestic relationship with mother at the time of termination. Instead, he argues that the truth of that assertion was supported *only* by hearsay statements. He is incorrect. Ulmer testified that she personally visited father's apartment just six days before the termination hearing. At that time, her suspicions that mother was living with father were essentially confirmed when Ulmer saw that the names of both father and mother appeared on the apartment mailbox. Moreover, the Infant Mental Health (IMH) therapist, Shannon Mapp, testified that—during an IMH therapy session—she personally witnessed a domestic violence incident between father and mother. As such, a great deal of circumstantial evidence supported the assertion that father and mother were still living together, involved in a relationship, and that their relationship remained a violent one. Given such circumstantial evidence, father has failed to demonstrate that he was prejudiced by the admission of the alleged hearsay statements.

Father next argues that the trial court clearly erred when it found three statutory grounds for termination were supported by clear and convincing evidence. We disagree.

"We review for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010) (citations omitted). "A finding is clearly erroneous if the reviewing court is left with a definite and firm

conviction that a mistake has been made." *In re LaFrance Minors*, 306 Mich App 713, 723; 858 NW2d 143 (2014). This Court defers "to the special ability of the trial court to judge the credibility of witnesses." *Id.* Any related statutory interpretation poses a question of law reviewed de novo. *Id.*

The trial court cited three statutory grounds for termination: (1) MCL 712A.19b(3)(c)(*i*), (2) MCL 712A.19b(3)(g), and (3) MCL 712A.19b(3)(j) and they are cited above.

Evidence is "clear and convincing" if it produces in the fact-finder "a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the trier of fact] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (quotation marks and citation omitted). Although all uncontroverted evidence is not necessarily "clear and convincing," evidence that *is* controverted can nevertheless be sufficiently "clear, direct[,] and weighty" to be "clear and convincing." *Id.* Only one statutory ground need be proven to terminate parental rights. MCL 712A.19b(3); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

Father argues that the first statutory ground cited by the trial court, subsection (3)(c)(*i*), was not proven by clear and convincing evidence. As father and mother admitted at the adjudication hearing, the condition that led to adjudication was a home environment that was unsuitable due to ongoing domestic violence in the presence of LA. Father makes much of the fact that he denied he was living with mother at the time of termination, arguing that his denial is uncontroverted by admissible evidence to the contrary. However, because it is evidence of the very same condition that led to adjudication, hearsay statements were admissible to prove whether father and mother were living together. See MCR 3.977(F) and (H)(2). At the time of termination, father's individual therapist and the grandmother informed Ulmer that father and mother were living together. Ulmer testified as such at the termination hearing. Further, she testified that her suspicions that father was residing with mother were confirmed when she personally visited his apartment and noted that the mailbox listed both the father and mother's names. It was established, albeit via a hearsay statement made by father's sister, that father and mother were involved in yet another "physical altercation in April of 2015," which was one month before the termination hearing occurred.

Thus, the trial court did not clearly err by finding subsection (3)(c)(*i*) was established as a statutory ground supporting termination. The evidence presented was sufficiently clear, direct, weighty, and convincing to permit the trial court to form a firm belief or conviction that the domestic violence conditions had not been remedied, and to further decide there was no reasonable chance the conditions would be rectified within a reasonable time considering LA's age. "Having concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision." See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). Nevertheless, we have reviewed the other two grounds cited by the trial court and conclude that each was also supported by clear and convincing evidence. The trial court did not clearly err by finding, under subsection (3)(g), the lack of a reasonable chance that father would provide LA with proper care and custody within a reasonable time given the child's age. Likewise, the trial court correctly concluded that a reasonable likelihood of emotional harm would exist if LA were returned to father's custody.

Father next argues that the trial court clearly erred by finding that adoption was a preferable permanency option for LA compared to granting the grandmother a guardianship. We disagree.

The grandmother qualifies as a "relative" as that term is defined by MCL 712A.13a. "[B]ecause 'a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a),' the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012), quoting *Mason*, 486 Mich at 164. Nevertheless, a trial court "may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests." *Olive/Metts*, 297 Mich App at 43. "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *Id.*

The trial court considered LA's placement with his grandmother at considerable length, citing that placement, and the potential for a permanent adoptive placement with the grandmother, as factors militating in favor of termination. We find this Court's recent opinion in *In re Gonzalez/*Martinez, 310 Mich App 426; 871 NW2d 868 (2015), very persuasive. The children involved in *Gonzalez/Martinez* "were placed with relatives" at the time of termination. *Id*. at 435. "[A] guardianship had been considered and rejected because the [relatives] did not feel safe around [the] respondent [mother] and did not want to have contact with her." *Id.* The evidence established that the respondent mother "had violently attacked an elderly woman, had not successfully addressed her substance abuse and mental health issues, and was not motivated to make the necessary changes to address those issues." *Id*. She "also continued to have contact with the children's abuser, even going so far as to indicate her desire to start a family with him." *Id*. Thus, notwithstanding the placement with relatives generally weighs against termination, this Court affirmed the trial court's decision to terminate the respondent mother's parental rights." *Id*.

Gonzales/Martinez is factually distinguishable from the instant case because, unlike the aunt and uncle in *Gonzales/Martinez*, here the grandmother was just as willing to become LA's guardian as she was to adopt him. She was unable to state a preference for adoption or guardianship, instead asking the trial court to decide which arrangement was best. Ultimately, consistent with the recommendation of LA's lawyer-guardian ad litem, the trial judge decided that adoption was the preferable option because, given father's conduct, including punching a wall out in his mother's home with LA present, a guardianship would not provide the permanency, safety, and stability that LA needs and deserves. The trial judge further determined that guardianship would severely disadvantage the grandmother, leaving her "torn constantly" between her love for father and for LA, which was a situation father would constantly exploit.

We are left with neither a definite nor firm conviction that the trial court made a mistake. The mere fact that LA was placed with a relative at the time of termination does not, as father argues, mean that guardianship was necessarily preferable to adoption. On the contrary, the decision was the kind of no-win situation that is regrettably common in termination proceedings, and trial courts are often forced to make such difficult decisions when deciding which of several options would *best* serve a child's interests. On the one hand, the trial court wanted to grant the

guardianship in hopes that father would reform, however on the other hand, the trial court had no reason to think father would actually do so. Meanwhile, the trial court aptly noted that adoption would give LA a safe, permanent placement with his grandmother, with whom he was already placed and solidly bonded, and in which placement he was doing "[v]ery well." Hence, despite LA's placement with his grandmother, and her stated willingness to act as a guardian, the trial court did not clearly err by finding that adoption was a preferable permanency option compared to granting the grandmother a guardianship.

Finally, father argues that the trial court clearly erred by finding that termination of respondent's parental rights was in LA's best interests. We disagree.

MCL 712A.19b(5) provides, "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." Although a reviewing court must remain cognizant "that the 'fundamental liberty interest of natural parents in the care, custody, and management of their child[ren] does not evaporate simply because they have not been model parents or have lost temporary custody of their child[ren] to the State,' " *In re Trejo Minors*, 462 Mich 341, 373-374; 612 NW2d 407 (2002) (alterations in original), quoting *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982), "at the best-interest stage, the child's interest in a normal family home is superior to any interest the parent has," *In re Moss*, 301 Mich App 76, 89; 836 NW2d 182 (2013), citing *Santosky*, 455 US at 760. Thus, once a statutory ground for termination has been established by clear and convincing evidence, a preponderance of the evidence can establish that termination is in the best interests of the child. *Moss*, 301 Mich App at 86-90 ("[T]he interests of the child and the parent diverge once the petitioner proves parental unfitness . . . Although the parent still has an interest in maintaining a relationship with the child, this interest is lessened by the trial court's determination that the parent is unfit to raise the child.").

> To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include "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."[10] The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption.[11]
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> [10] *Olive/Metts*, 297 Mich App at 41-42 (citations omitted).
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> [11] See *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009). [*In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014).]

Furthermore, "the court may utilize the factors provided in MCL 722.23." *In re McCarthy*, 497 Mich 1035 (2015).

Father first argues that the trial court failed to state its finding that termination was in LA's best interests. He is incorrect. It is well-settled that "a court speaks through its written orders and judgments," *In re KMN*, 309 Mich App 274, 287; 870 NW2d 75 (2015), quoting *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009), and the order appealed explicitly states that termination was in LA's best interests.

In any event, the trial court did not clearly err by finding, by a preponderance of the evidence, that termination of respondent's parental rights was in LA's best interests. On the contrary, it seems that the trial court's best interest determination was supported by at least a preponderance of the evidence. Despite the obvious negative impact on LA, father chose to continue his violent domestic relationship with mother throughout the pendency of the child protective proceedings. Further, father's violent tendencies and inability to control his temper were demonstrated in more than one incident where he punched holes in the walls of the grandmother's residence, thereby damaging the property of the very person who was caring for LA. Despite the fact that he was employed, father also failed to provide adequate support for LA. And despite his allegedly close bond with LA, he often missed visits with the child, sometimes choosing to go weeks or months without seeing the child at all. Such conduct belies father's claim that he was extremely motivated to reunite with LA.

Father is correct that both Ulmer and Mapp opined that LA was highly bonded to father. But a strong parent-child bond is not a shield behind which neglectful parents can hide with impunity, heedless of the harm their neglect causes. Twice during the pendency of the proceedings below, father disappeared from LA's life entirely for more than a month. Most recently, and without any explanation, father failed to visit LA at all for nearly six weeks leading up to the termination hearing. Father's neglect turned the parent-child bond into a weapon against LA. The neglect also caused LA to seek out other adults—dependable, trustworthy adults—with whom he could bond. By the time of termination, LA's strongest bond was with his grandmother, with whom he had been placed since he was a toddler. After termination, LA would remain in that stable placement with his grandmother, who had agreed to give the boy permanency through an adoption. Hence, the trial court's best interest determination was not clearly erroneous. A preponderance of the evidence supported its finding that termination of father's parental rights was in LA's best interests.

Affirmed.

/s/ Amy Ronayne Krause
/s/ David H. Sawyer
/s/ Cynthia Diane Stephens