

STATE OF MICHIGAN
COURT OF APPEALS

In re PRINCE/WISNIEWSKI, Minors.

UNPUBLISHED
November 17, 2016

No. 331138
Wayne Circuit Court
Family Division
LC No. 15-519086-NA

Before: JANSEN, P.J., and MURPHY and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(ii) (parent had the opportunity to prevent physical injury to children) and (j) (reasonable likelihood that children will be harmed if returned to parent). We affirm.

On appeal, respondent first argues that the trial court clearly erred in terminating her parental rights because petitioner failed to make reasonable efforts to reunite her with her children. We disagree. “Generally, when a child is removed from the parents’ custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child’s removal by adopting a service plan.” *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). However, reunification services are not required when termination of parental rights is the agency’s goal. *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013). In this case, petitioner sought termination in the initial petition. Because termination of parental rights was petitioner’s goal, reunification efforts were not required. See *In re HRC*, 286 Mich App at 463.

Respondent also vaguely suggests that the trial court erred in finding statutory grounds to terminate her parental rights. Because this issue is not encompassed in respondent’s statement of questions presented, respondent has not properly presented this issue for appellate review. MCR 7.212(C)(5); *Brausch v Brausch*, 283 Mich App 339, 351; 770 NW2d 77 (2009). However, because the parties address this issue, we elect to do so too.

In order to terminate parental rights, the trial court must find that at least one statutory ground for termination has been established by clear and convincing evidence. *Moss*, 301 Mich App at 80. This Court reviews that finding under the clearly erroneous standard. *Id.* “ ‘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.’ ” *Id.* (citation omitted).

The trial court did not clearly err in finding clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i) and (j). A court may terminate parental rights under MCL 712A.19b(3)(b)(i) if the court finds, by clear and convincing evidence, that "[t]he parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home." With regard to MCL 712A.19b(3)(j), the court may terminate the respondent's parental rights if the court finds, by clear and convincing evidence, that "[t]here 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."

At the time of the termination hearing, there was evidence to substantiate a finding that, at the very least, respondent's daughter KP was subject to physical injury or physical and sexual abuse perpetrated by Anthony Prince. There was overwhelming evidence that Prince was a sexual predator who, for years, had sexually abused and groomed very young girls. His own daughter and niece were at least two of his victims. Three young girls were frequently brought to the house from Ohio and left by their mother in Prince's care. It was within this home that respondent chose to reside with two young girls. During this time, Prince routinely pulled down the children's pants, frequently spoke inappropriately about matters of a sexual nature, and played pornography. KP, EW, and several other girls frequently slept in Prince's bed with him. At one time, KP was in Prince's bed with him and she was heard to tell Prince to "stop." KP was also frequently seen cuddling next to Prince on the bed. Prince routinely punched the children, including respondent's children, so hard in the arm that it would cause bruising. Although KP denied that Prince touched her inappropriately, the trial court found that her testimony was not credible.

The evidence clearly showed that respondent knew of the abuse and failed to prevent the physical and sexual assaults. Respondent acknowledged that she observed nearly every red-flag event that the other witnesses recounted. In response, respondent simply admonished Prince to stop the conduct because it was inappropriate. Respondent did not move out of the home or report Prince to any authority. Indeed, respondent frequently left her children alone with Prince when she went to work. Respondent's inadequate response to the dangers posed by Prince was not the first time she demonstrated her failure to properly protect her children. Respondent allowed a child who had engaged in inappropriate sexual behavior, indeed a known assault on KP, to move into the family home, and respondent failed to even contemplate a safety plan. She instead was hoping that the other child's parents, who also moved into the home, would adequately supervise their son.

Finally, there was overwhelming evidence that respondent's children would be harmed if returned to her care. Although respondent testified at trial that she questioned some of Prince's relationships with the other young girls, respondent intentionally turned a blind eye to the risk Prince posed to her children. Indeed, even on the last day of the termination hearing, respondent continued to deny that Prince could have sexually abused her children. Further, the evidence left very little doubt that respondent continues to be involved with Prince. Even when she was given a directive from petitioner, she could not manage to preclude Prince from having contact with her children. Although respondent claimed during the termination hearing that she currently has no contact with Prince, the evidence showed that she still lives in the home owned by Prince's

family. These circumstances support the inference that respondent continues to have contact with Prince, a sexual predator. Respondent's inability to protect her children from a known and obvious danger supports the trial court's finding that the children were reasonably likely to be harmed if returned to respondent's care. Thus, the trial court did not clearly err in concluding that clear and convincing evidence supported termination of respondent's parental rights pursuant to MCL 712A.19b(3)(b)(ii) and (j).

Next, respondent challenges the trial court's finding that termination of her parental rights was in the children's best interests. "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." MCL 712A.19b(5). Whether termination of parental rights is in a child's best interests must be proven by a preponderance of the evidence. *Moss*, 301 Mich App at 90. We review for clear error a trial court's finding that termination of parental rights is in a child's best interests. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

The court may consider several factors when deciding if termination of parental rights is in a child's best interests, including "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." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). "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." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

Weighing these factors compels us to conclude that the trial court did not clearly err when it found that termination of respondent's parental rights was in the children's best interests. The children had been in care for nearly a year. While in foster care, the youngest child, who had demonstrated symptoms of post-traumatic stress disorder, made some progress and was thriving in his foster home. There also was a high probability that he would be adopted by his current caregivers. The therapist was concerned that if the child returned to respondent's care, he would suffer behavioral regression. The foregoing factors are compelling with regard to the youngest child, but the most important factor in this case is respondent's inability to protect her children. It is not in the children's best interests to live with respondent when respondent, despite all the red flags and directives from petitioner, could not or would not protect the children from a sexual predator. Even during the termination hearing, respondent denied that Prince sexually abused young children. Thus, the children's need for safety outweighs any other factor in this case.

Respondent briefly argues that the trial court should have considered the potential placement option with the children's maternal grandmother. However, the grandmother informed petitioner at the beginning of the case that she could not care for the children. Because the children were not placed with a relative, the trial court was not required to consider this fact in determining whether termination was in the children's best interests. See *Olive/Metts*, 297 Mich App at 43. Accordingly, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ William B. Murphy
/s/ Michael J. Riordan