

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* HARE, Minors.

UNPUBLISHED  
July 21, 2016

No. 331472  
Saginaw Circuit Court  
Family Division  
LC No. 04-029046-NA

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Before: OWENS, P.J., and BORRELLO and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the circuit court's order terminating his parental rights to six minor children pursuant to MCL 712A.19b(3)(b)(i), (j), and (k)(ii). We affirm.<sup>1</sup>

Respondent's parental rights to his children were ultimately terminated based on allegations that he sexually molested one of his daughters, CH. CH testified that respondent sexually assaulted her on three separate occasions between elementary school and when she was removed from her parents' care.<sup>2</sup> In addition to those three specific assaults, CH testified, respondent would also frequently "take a peek" at her while she showered, touch her buttocks and breasts, make her touch his penis, pull down her shirts to expose her breasts, and "throw [her] down on the bed," "hold [her] down," hump her, and "mak[e] nasty humping noises."<sup>3</sup> CH also recalled an incident when her mother taught one of the other children how to use a condom

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<sup>1</sup> The parental rights of the children's mother are not at issue in this appeal. We would note, however, that their mother voluntarily relinquished her parental rights to one of the children, CH, during the proceedings in this matter despite the fact that there were no allegations against her.

<sup>2</sup> Specifically, CH testified that on one occasion while she was in elementary school, she awoke to find respondent digitally penetrating her vagina. On a second occasion while she was in elementary school, respondent was intoxicated, entered her bedroom, and penetrated her vagina with his penis. On a third occasion when she was "[a]bout 11" years old, respondent entered her bedroom and penetrated her vagina with a dildo. According to CH, she and respondent were alone during each of these sexual assaults.

<sup>3</sup> CH recalled that her mother was present on one of many occasions when defendant was humping her and testified that she laughed it off and told respondent that he was "not supposed to be doing" that to his own daughter.

by placing one on respondent's penis. CH was eventually removed from her parents' care but respondent's other children remained in the mother's care until she allowed respondent to violate the circuit court's no-contact order as explained below. Respondent's three adult daughters testified on his behalf, indicating that they were never sexually assaulted by respondent and that they had never witnessed respondent sexually assault CH during the time that they lived in the home. One of the three adult daughters further testified that CH admitted (in a text message that was never introduced into evidence) that respondent did not sexually assault her. The children's mother testified on respondent's behalf as well, indicating that she had never observed respondent sexually assault CH. While she disputed several aspects of CH's testimony, the mother admitted that respondent may have touched CH's breasts several times but denied that it was in an inappropriate manner. According to the mother, had CH truly been abused, she would have been "the first to call the police."<sup>4</sup> The circuit court found CH's testimony credible, concluded that petitioner had established at least one statutory ground by clear and convincing evidence, and concluded that the termination of respondent's parental rights was in each child's best interests.<sup>5</sup> This appeal followed.

On appeal, respondent first argues that there was insufficient evidence to support the circuit court's statutory-grounds determination. We disagree.

Pursuant to MCL 712A.19b(3), a trial court may terminate a parent's parental rights if it finds that at least one of the statutory grounds has been established by clear and convincing evidence. Petitioner bears the burden of proving at least one statutory ground. MCR 3.977(A)(3); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a trial court's finding that a statutory ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "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 76, 80; 836 NW2d 182 (2013) (citation and internal quotation marks omitted). To be clearly erroneous, a factual finding must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

In this case, the circuit court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i), (j), and (k)(ii), which provide for the termination of a parent's parental rights if the following are found by clear and convincing evidence:

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<sup>4</sup> It is worth noting that, in the beginning of this case, the circuit court entered an order prohibiting respondent from having contact with the children as well as warned him on several occasions that contact with the children was prohibited. The children's mother disregarded his prohibition and allowed respondent to be in the home with all five children, which led to the circuit court authorizing an emergency petition to remove all five children from their mother's care as well.

<sup>5</sup> The lawyer-guardian ad litem's position was consistent with the circuit court's decision.

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

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(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.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following

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(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

In this case, the circuit court correctly concluded that at least one statutory ground was established by clear and convincing evidence. At a minimum, the circuit court's statutory-grounds determination with respect to subsections (b)(i) and (k)(ii) are supported by clear and convincing evidence. Finding CH's testimony to be credible, the circuit court relied on it in concluding that respondent's past sexual assaults against CH were indicative of "a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home" under (b)(i) and that "[c]riminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate" under (k)(ii) occurred. We defer to the factfinder's weight and credibility determinations because the factfinder, not this Court, had the special opportunity to observe the witnesses. *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). Thus, CH's testimony in this regard was sufficient to support the circuit court's determination.<sup>6</sup> See, e.g., *People v Lemmon*, 456 Mich 625, 642-643, n 22; 576 NW2d 129 (1998) (concluding, albeit in the criminal context, that a victim of criminal sexual conduct need not have her testimony corroborated for there to be sufficient evidence to convict a defendant of sexual assault).

Respondent's argument on appeal focuses more on an alleged lack of credibility of CH's testimony rather than its sufficiency. Relying on his three adult daughters' and the mother's

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<sup>6</sup> In light of this conclusion, i.e., that two of the statutory grounds were proved by clear and convincing evidence, we need not specifically address subsection (j). *Trejo*, 462 Mich at 350. We would briefly note, however, that we discern no error in the circuit court's decision in this regard as well. As discussed below, respondent's past sexual assaults against CH are indicative of how he will treat his other children.

testimony, respondent contends that the evidence presented did not support a conclusion that he engaged in any sexually inappropriate behavior. However, as stated above, we defer to the factfinder's weight and credibility determinations on appeal. *BZ*, 264 Mich App at 296-297. Furthermore, CH expressly testified that no one was present when respondent's sexual assaults, including the three specific acts of penetration, took place. Moreover, respondent's argument also ignores his own admissions that he would "jokingly" slap CH's buttocks and touch CH's breasts throughout her childhood. As the circuit court correctly recognized, "[h]ow a parent treats one child is certainly probative of how that parent may treat other children." *In the Matter of LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973); see also *In re Jenks*, 281 Mich App 514, 517-518; 760 NW2d 297 (2008). Thus, we conclude that the circuit court's statutory-grounds determination was supported by clear and convincing evidence.<sup>7</sup>

To the extent that respondent also argues that his sexual assaults against CH are not indicative of how he may treat his other children, we reject that claim. "How a parent treats one child is certainly probative of how that parent may treat other children." *LaFlure*, 48 Mich App at 392. In light of the evidence discussed above, coupled with the circuit court's credibility determinations that we defer to, we are not left with a definite and firm conviction that a mistake was made as it relates to the other children.

On appeal, respondent also argues that there was insufficient evidence to support the circuit court's best-interests determination. We disagree.

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5); MCR 3.977(E)(4). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *Moss*, 301 Mich App at 90. Trial courts should consider all available evidence in making this determination. *Trejo*, 462 Mich at 356. Relevant factors to be considered include the bond between the child and the parent, the parent's ability to parent, the child's need for permanency and stability, the advantages of the foster home over the parent's home, and any other relevant factors. *Olive/Metts*, 297 Mich App at 41-42.

In this case, the circuit court correctly concluded that the termination of respondent's parental rights was in the children's best interests. As discussed above, the circuit court found CH's testimony that respondent sexually abused her several times throughout her childhood, including three times involving penetration, credible, and we defer to that credibility determination. *BZ*, 264 Mich App at 296-297. This, coupled with the fact that respondent admittedly would touch CH's buttocks and breasts during her childhood as well as other

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<sup>7</sup> It is worth noting that there was testimony that was relied on by the circuit court regarding respondent's inappropriate sexual behaviors toward the other children as well. For example, CH testified that she witnessed the mother showing one of the other children how to use a condom by placing it on respondent's penis. While the majority of the testimony presented during the termination hearing and relied on by the circuit court focused on respondent's sexual assaults against CH, this additional testimony supported the circuit court's decision as well.

testimony, was properly considered by the circuit court in weighing a variety of factors before reaching its best-interests determination. Thus, while respondent's argument that he had a bond with each child except for CH may be factually correct, it was also incumbent upon the circuit court to consider other factors, such as the children's safety, in deciding whether termination was in their best interests, and the circuit court did precisely that.

Respondent's argument on appeal relies heavily upon a portion of one caseworker's testimony. According to that caseworker, respondent did not pose a risk to the other children because his first psychological evaluation suggested that he "didn't have traits of a . . . child predator."<sup>8</sup> However, this testimony, alone, is insufficient to render the circuit court's best-interests determination erroneous. In fact, this testimony was directly contradicted by CH's testimony, i.e., that respondent would sexually touch her buttocks and breasts as well as sexually penetrate her throughout her childhood, and the circuit court unequivocally found CH's testimony credible. Thus, we conclude that the circuit court properly determined that the termination of respondent's parental rights was in the best interests of the children.

Affirmed.

/s/ Donald S. Owens  
/s/ Stephen L. Borrello  
/s/ Colleen A. O'Brien

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<sup>8</sup> It should be noted that the caseworker ultimately opined that termination of respondent's parental rights was in the children's best interests despite respondent's bond with the children and his apparent lack of child-predator traits.