

STATE OF MICHIGAN
COURT OF APPEALS

In re MCCRAY/MUMPFIELD, Minors.

UNPUBLISHED
November 17, 2016

No. 332631
Wayne Circuit Court
Family Division
LC No. 14-515390-NA

Before: M. J. KELLY, P.J., and MURRAY and BORRELLO, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court's order terminating his parental rights to his minor son, MKM, pursuant to MCL 712A.19b(3)(b)(i) (injury or sexual abuse to child or sibling) and (ii) (failure to prevent injury or sexual abuse). We affirm.

In December, 2015, law enforcement officials discovered 13 video recordings of respondent father performing sexual acts on his minor stepdaughter, DAMM. Respondent father was arrested and later pleaded guilty to two federal criminal charges arising from the production of the videos, with a minimum sentence of 35 years in federal prison. At the time his parental rights were terminated, he was also facing unspecified state charges for criminal sexual conduct. Upon learning of respondent father's sexual abuse of DAMM, petitioner, Department of Health and Human Services (DHHS), initiated proceedings to terminate all parental rights with respect to MKM and DAMM. At a combined adjudication and best interest hearing, DAMM offered un rebutted testimony about respondent father's sexual abuse. As the unsettling details of DAMM's experience are not pertinent to this appeal, it will suffice to say that respondent father engaged in varying degrees of sexual assault with DAMM over an eight- or nine-year period. There was no evidence suggesting that MKM had been physically or sexually abused, neglected, or otherwise physically harmed by respondent in any manner.

On appeal, respondent father concedes that the court properly found statutory grounds for terminating his parental rights with respect to MKM, arguing only that the trial court erred when it determined that termination of his parental rights was in MKM's best interests.

This Court reviews for clear error a trial court's decision that termination of parental rights is in the child's best interest. MCR 3.977(K); *In re LaFrance Minors*, 306 Mich App 713, 723; 858 NW2d 143 (2014). "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 at 723.

Once a statutory ground for termination of a respondent's parental rights has been proven by clear and convincing evidence, "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). The trial court's best interest determination must be supported by a preponderance of the evidence. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). In making this determination, a 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." *Id.* (internal quotation marks and citation omitted). If a child is in the care of relatives at the time the case proceeds to termination, the trial court must consider that fact in determining whether termination of parental rights is in the child's best interests. *In re Olive/Metts Minors*, 297 Mich App at 43.

According to respondent father, the trial court clearly erred because there was *no* evidence supporting the conclusion that termination of his parental rights would be in MKM's best interests. Respondent father asserts that the trial court completely disregarded the testimony of his three relatives, which supported continuation of his parental rights, and, instead, focused solely on the evidence concerning DAMM because the court was—to use respondent father's words—"justifiably repulsed by [his] conduct concerning his stepdaughter"

Admittedly, the trial court did place significant emphasis on an anticipatory neglect theory, which recognizes that "[h]ow a parent treats one child is certainly probative of how that parent may treat other children." *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001) (alteration in original). For example, the court indicated that it looked at respondent father's treatment of DAMM to determine how he may treat MKM and stated that it was "not willing to wait for abuse to occur before protecting a child from someone who has a history of either abusing and/or failing to protect a child from abuse." The trial court also acknowledged that there was no evidence suggesting that MKM had been abused, but opined that "any person who is willing to repeatedly harm a child and record the events as though he is proud of his behavior, does not deserve the opportunity to parent any other children."

Although there was no evidence that MKM was physically or sexually abused by respondent, it does not follow that MKM was unharmed by respondent father's abuse of DAMM. In a similar case, this Court affirmed a trial court's termination of a mother's parental rights to her minor children after she pleaded guilty to first-degree criminal sexual conduct (CSC-I), MCL 750.520b. *In re Hudson*, 294 Mich App 261, 263; 817 NW2d 115 (2011). The mother's CSC-I conviction arose from her sexual activity with another biological son, which occurred when they reconnected 14 years after she gave him up for adoption at birth. *Id.* The mother was sentenced to a minimum of nine years' imprisonment, and the trial court found statutory grounds for termination of her rights as to her other children based in MCL 712A.19b(3)(b)(i), (h), (j), and (k). *In re Hudson*, 294 Mich App at 263, 268. This Court agreed with the trial court's conclusion that termination of the mother's parental rights with respect to all of her children was in the children's best interest:

As indicated by the trial court, all the children were indirectly made victims of respondent's sexual abuse of A. Respondent's criminal behavior and failure to fully appreciate her conduct set a poor example for the children, who looked to

her for guidance. Respondent's teenage daughter had difficulty processing what respondent had done and for a long time believed that respondent was innocent. Respondent played into her daughter's beliefs. At the first best-interest hearing, respondent testified that 'I have not, would not ever abuse any of my children. I never did.' Later, however, respondent admitted engaging in sexual intercourse with her teenage biological son and pleaded guilty to criminal charges concerning her actions. All the children will have a lifelong struggle dealing with what happened to their family as the result of respondent's reprehensible behavior. Termination of respondent's parental rights was in their best interest and was a necessary step in allowing the children to have the safety, permanence, and stability to which they are entitled. [*Id.* at 268-269.]

The trial court in the instant case did not articulate its reasoning as fully as this Court did in *In re Hudson*, but the underlying message remains the same: in the wake of the turmoil that respondent father's conduct caused this family, allowing his parental rights to remain intact will be more harmful than beneficial to MKM.

Several of respondent father's relatives testified that MKM had a strong bond with respondent father, but the trial court indicated that it gave little weight to the testimony. According to respondent father's brother, MKM viewed respondent father as his hero and was always watching and learning from respondent father's activities, whether those activities involved working on cars, cutting the grass, or simply talking with his family. While this testimony certainly paints a loving picture, the lessons MKM may have learned from his role model's *misconduct*—which, apart from the obvious ongoing abuse of his stepdaughter, also included completely disregarding a no-contact order entered in an earlier child protective proceeding—are far less desirable.

Moreover, the testimony concerning the bond between respondent father and MKM was based primarily on observations of their relationship before respondent father's incarceration. Even if respondent father was a large part of MKM's everyday life before December, 2015, there can be no question that the quantity and quality of respondent father's participation in MKM's future would be drastically reduced by his incarceration for the next 35 years. In fact, in the five months between respondent father's arrest and the combined adjudication and best interest hearing, their communications were limited to four supervised phone calls and a few letters. Moreover, two paternal relatives testified that MKM did not yet fully understand the charges against respondent father or the fact that respondent father will be in prison for decades. When MKM eventually comes to appreciate the nature of the abuse that was occurring in his home, it will undoubtedly have a serious impact on his bond with respondent.

The fact that MKM was placed with his paternal grandfather weighs against termination and must be considered in determining MKM's best interests. *In re Olive/Metts Minors*, 297 Mich App at 43. The trial court recognized this fact, but still found that termination of respondent father's parental rights was in MKM's best interests. MKM's grandfather testified that the dissolution of MKM's family has affected him and observed that MKM is, at times, depressed, withdrawn, or jittery, though MKM "lit up" the last time he spoke with respondent father. Given the inevitable length of respondent father's absence while he is in prison, and his resulting inability to play a significant role in the majority of MKM's future, termination of

respondent father's parental rights is consistent with MKM's need for permanency and stability. Thus, while MKM will undoubtedly experience a difficult period while adjusting to the loss of his family, we are not left with the definite and firm conviction that the trial court erred when it determined that termination of respondent father's parental rights was in MKM's best interests.

Affirmed.

/s/ Michael J. Kelly

/s/ Christopher M. Murray

/s/ Stephen L. Borrello