STATE OF MICHIGAN

COURT OF APPEALS

In re D. MANWELL, Minor.

UNPUBLISHED
March 21, 2017

No. 333860
Macomb Circuit Court
Family Division
LC No. 2015-000074-NA

In re MANWELL/BERRY Minors.

No. 333870
Macomb Circuit Court
Family Division
LC No. 2015-000074-NA

Before: MARKEY, P.J., and WILDER and SWARTZLE, JJ.

PER CURIAM.

In Docket No. 333860, respondent-father J. Manwell appeals by right the trial court's order terminating his parental rights to his child, DM, pursuant to MCL 712A.19b(3)(b)(*i*), (g), (j), (k)(*ii*), and (n)(*i*). In Docket No. 333870, respondent-mother C. Manwell appeals by right the same order, which terminated her parental rights to DM and to two other children, CB and AB, pursuant to MCL 712A.19b(3)(b)(*ii*), (g), and (j). We affirm in both appeals.

I. FACTS AND PROCEEDINGS

In March 2015, DM reported that she had been a victim of ongoing sexual abuse by respondent-father. An investigation by Children's Protective Services (CPS) revealed that respondent-father frequently stayed in DM's bedroom for lengthy periods after her bedtime with the door often closed. Respondent-mother was aware of these frequent nighttime visits. Respondent-mother admitted to CPS investigators that she thought the relationship between respondent-father and DM was "weird," and they were "too close," but she did not attempt to stop or investigate the nature of the nighttime visits. After DM disclosed that respondent-father had been sexually abusing her, respondent-mother maintained that the allegations were fabricated. She refused to separate from respondent-father, and she continued to voice her support for him, even after he was criminally convicted of three counts of first-degree criminal sexual conduct, MCL 750.520b, and two counts of second-degree criminal sexual conduct, MCL 750.520c, for charges involving his sexual abuse of DM.

The trial court terminated respondent-father's parental rights to DM and terminated respondent-mother's parental rights to DM, CB, and AB at the initial dispositional hearing. On appeal, both respondents argue that the trial court erred in finding that statutory grounds for termination were established by clear and convincing evidence. They further argue that termination of their parental rights was not in the children's best interests.

II. STANDARD OF REVIEW

"To terminate parental rights, a trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court reviews for clear error the trial court's factual findings, including its ultimate determinations regarding the statutory grounds for termination and a child's best interests. *In re White,* 303 Mich App 701, 709-710; 846 NW2d 61 (2014). A trial court's factual findings are clearly erroneous if, although the evidence supports them, this Court is definitely and firmly convinced that the court made a mistake. *Id*. at 709-710. This Court defers to the special ability of the trial court to judge the credibility of witnesses. *Id*. at 711; MCR 2.613(C).

III. DOCKET NO. 333860 (RESPONDENT-FATHER'S APPEAL)

Petitioner presented evidence that respondent-father sexually abused DM on multiple occasions. The abuse occurred when respondent-father went into DM's bedroom at night. DM was criminally charged for this conduct, and a jury found him guilty of three counts of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct. Respondent-father never expressed remorse for his conduct and instead maintained that DM fabricated the allegations because she was prone to strike out at "everybody that crossed her." Respondent-father also tried to blame other family members and petitioner's caseworkers for conspiring to scapegoat him for abusive acts committed by DM's former stepfather. The frequency and severity of the abuse, which led to criminal convictions for multiple counts of first- and second-degree criminal sexual conduct, combined with respondent-father's refusal to accept responsibility for his actions, were sufficient to establish that he sexually abused DM and would likely continue to abuse her if he had the opportunity. The trial court did not clearly err in finding that the evidence supported the statutory grounds for termination under §§ 19b(3)(b)(*i*), (g), and (j). Furthermore, given the evidence that respondent-father was convicted of three counts of first-degree criminal-sexual conduct for engaging in sexual penetration of DM, along with the substantial evidence as further discussed below that continuation of the parent-child relationship would be harmful to DM, we conclude that the trial court did not clearly err in finding that termination was also warranted under §§ 19b(3)(k)(*ii*) and (n)(*i*).

We reject respondent-father's argument that termination of his parental rights under these grounds was improper because the trial court failed to consider that his criminal convictions

could be reversed on appeal.[1] First, respondent-father fails to cite any legal authority in support of his argument that the possibility of prevailing in his criminal appeal precluded termination of his parental rights. Thus, this argument may be deemed abandoned. *In re ASF*, 311 Mich App 420, 441; 876 NW2d 253 (2015) ("cursory argument, made without citation to relevant authority or application of the law to the facts, is insufficiently briefed, and [results in] it [being] abandoned"). Moreover, it is only necessary to prove one statutory ground for termination, *In re Ellis*, 294 Mich App at 32, and §§ 19b(3)(b)(*i*), (g), and (j) do not require proof that the parent was convicted of a crime. Accordingly, the possibility that respondent-father's criminal cases could be reversed on appeal does not affect the trial court's reliance on those statutory grounds.

Respondent-father also argues that termination was premature because petitioner failed to assess his rehabilitative potential and failed to provide a treatment plan for achieving reunification. "In general, 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 Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005); MCL 712A.19a(2). "The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood,* 483 Mich 73, 89; 763 NW2d 587 (2009). But services are not required in every situation. See MCL 712A.18f(1)(b); *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). "Services need not be provided where reunification is not intended." *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008). Services also are not required where there is "a judicial determination that the parent has subjected the child to aggravated circumstances as provided in . . . MCL 722.638." MCL 712A.19a(2)(a). Those circumstances include a parent who has abused a child, and the abuse involves criminal sexual conduct involving penetration. MCL 722.638(1)(a)(*ii*). In this case, petitioner sought termination of respondent-father's parental rights at the initial disposition, and the trial court found that respondent-father sexually abused DM by engaging in conduct that involved penetration. Accordingly, petitioner was not required to provide services. We further note, however, that although services were not required, both respondents were offered the opportunity to voluntarily participate in services. They rejected that opportunity and declared that they would not participate in services unless the trial court ordered them to do so. Respondent-father cannot now complain about the lack of services where services, though not required, were nonetheless offered, but respondent refused to participate in them.

Respondent-father also argues that the trial court erred in finding that termination of his parental rights was in DM's best interests. We disagree. On this issue, the trial court considered the statutory best-interest factors from the Child Custody Act, MCL 722.23. Although the trial court was not required to consider those factors in this child protection proceeding, it was not inappropriate to consider the concerns underlying those factors in deciding whether to terminate parental rights. *In re McCarthy*, 497 Mich 1035; 864 NW2d 139 (2015); *In re Trejo,* 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court found that the factors in MCL 722.22(a), (b), (d), and (f) were particularly relevant and weighed against DM's reunification with respondent-father. Those factors are:

[1] Respondent-father's appeal of his criminal convictions is pending in Docket No. 333916.

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

* * *

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

* * *

(f) The moral fitness of the parties involved.

We find no clear error in the trial court's consideration of these factors. Respondent-father's sexual abuse of DM breached any emotional bond and negated any potential to provide love, affection, and guidance. Petitioner and the child's counsel provided ample evidence that DM had suffered significant emotional distress from respondent-father's abuse. Since her removal, DM has been living in a stable and satisfactory environment with her aunt and uncle. Respondent-father's sexual abuse of DM demonstrated a complete lack of moral fitness. In sum, the trial court did not clearly err in its assessment of DM's best interests or in finding that a preponderance of the evidence established that termination respondent-father's parental rights was in DM's best interests.

IV. DOCKET NO. 333870 (RESPONDENT-MOTHER'S APPEAL)

Respondent-mother argues that the evidence did not support termination of her parental rights under MCL 712A.19b(3)(b)(*ii*), (g), or (j). We disagree.

MCL 712A.19b(3)(b)(*ii*), (g), and (j) allow a court to terminate parental rights under the following circumstances:

(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:

* * *

(*ii*) The 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.

* * *

(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.

* * *

(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.

Respondent-mother argues that termination was not justified under § 19b(3)(b)(*ii*) because she had no reason to suspect that DM was being sexually abused by respondent-father, so she had no opportunity to protect DM and prevent the abuse. She argues that the lack of evidence that DM was being abused also implicates the trial court's reliance on §§ 19b(3)(g) and (j) as well. We disagree.

Respondent-mother asserts that she previously protected her children from abuse by her former husband. She therefore contends that the trial court should have found that she would have protected DM from sexual abuse by respondent-father if she had been aware of it. Although respondent-mother had accused her former husband of being abusive, the evidence showed that her allegations of abuse were never substantiated. Regardless of what previously occurred with her first husband, it does not mitigate her failure to respond to the instant circumstances involving respondent-father. Respondent-mother acknowledged the existence of a "weird" and abnormal relationship between respondent-father and DM. Her initial reaction to DM's accusations of sexual abuse against respondent-father was to remark that she "knew they were too close." She admitted to being jealous of the attention that respondent-father gave to DM and to being aware that respondent-father frequently visited DM's bedroom at night, often closing the door. Respondent-mother did nothing to prevent or question these visits. Respondent-mother's failure or refusal to recognize any connection between DM's emotional difficulties and respondent-father's abnormal attention to the child demonstrated her willingness to ignore signs that would have prompted inquiry by a reasonably vigilant parent. Accordingly, the trial court did not clearly err in finding that respondent-mother had the opportunity to prevent the sexual abuse but failed to.

In addition, despite respondent-mother's knowledge of the inappropriate attention that respondent-father was giving to DM, his frequent nighttime visits to DM's bedroom, and the emotional difficulties that DM was experiencing at the time, respondent-mother refused to credit DM's reports of sexual abuse. She instead championed respondent-father's innocence and maintained her opinion even after a jury convicted respondent-father of five counts of criminal sexual conduct. In view of this evidence, the trial court did not clearly err in finding that the evidence supported termination under § 19b(3)(b)(*ii*).

The evidence supporting termination under § 19b(3)(b)(*ii*) applies with equal force to §§ 19b(3)(g) and (j). Moreover, in addition to failing to protect DM from sexual abuse, respondent-mother failed to obtain recommended counseling for DM before her removal and delayed in approving recommended medication for DM. Respondent-mother's refusal to believe DM's allegations and her lack of interest in her children's progress in therapy undermines her testimony that she was committed to supporting her children's mental health care. Further, under

the anticipatory neglect doctrine which recognizes that a parent's treatment of one child is probative of how that parent will treat other children, *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001), respondent-mother's failure to prioritize DM's mental health treatment is evidence that she will not likely provide proper care and custody for AB and CB.

Respondent-mother asserts that petitioner was justified in denying visitation and not providing a treatment plan to respondent-father, but she argues that she should have been given an opportunity to work toward reunification. We reject this argument in light of respondent-mother's alliance with respondent-father throughout the proceedings. Respondent-mother testified that she believed in respondent-father's innocence and would continue to support him even if that meant losing her parental rights. Moreover, respondent-mother was offered an opportunity to participate in services, but she too refused to do so unless ordered by the court. Under these circumstances, respondent-mother cannot now complain about not having the opportunity to improve and demonstrate her parenting skills through services and visitation.

Respondent-mother also argues that the trial court erred in finding that termination of her parental rights was in her children's best interests. We disagree. Petitioner presented testimony that DM was emotionally devastated by both respondent-father's sexual abuse and respondent-mother's subsequent refusal to believe her allegations and to instead support respondent-father. The younger children's therapist reported that CB had emphatically expressed that he did not want contact with respondent-mother. AB was too young to regard her life in respondent-mother's custody; she regarded her placement with her father as her normal custodial setting. A neuropsychologist who examined all three children testified that DM was suffering from severe psychological distress brought on by respondent-mother's refusal to believe her, and the two younger children were not emotionally bonded with respondent-mother. Under these facts and circumstances, the trial court did not clearly err in finding that termination of respondent-mother's parental rights was in the children's best interests.

We affirm.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Brock A. Swartzle