STATE OF MICHIGAN

COURT OF APPEALS

In re LEONARD/STOVER, Minors.	UNPUBLISHED June 15, 2017 No. 336171 Oakland Circuit Court Family Division LC No. 2015-835809-NA
In re G. G. STOVER, Minor.	No. 336172 Oakland Circuit Court Family Division LC No. 2015-835809-NA
In re STOVER, Minors.	No. 336390 Oakland Circuit Court Family Division LC No. 2015-837291-NA

Before: MARKEY, P.J., and METER and SHAPIRO, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother S. Leonard (Leonard) and respondent-father E. Stover (Stover) appeal as of right from the trial court's orders terminating their parental rights to their minor children. We affirm in all three appeals.

Respondents were in a dating relationship and living together at the time petitioner filed the initial petition in this matter. Leonard has two children, AL1 and AL2, who were both born before she began a relationship with Stover.[1] Similarly, Stover has two children, AS and JS, who

[1] The father of AL1 was never identified, and the father of AL2 died before this proceeding began.

were both born before he began his relationship with Leonard. Respondents have one child in common, GS. When respondents began their relationship, Stover was still married to the mother of AS and JS, but the couple was separated.[2] In October 2015, petitioner filed a petition seeking jurisdiction over the children and termination of respondents' parental rights at the initial dispositional hearing. Petitioner alleged that Stover sexually abused AL1 and physically abused AL2 and that Leonard was aware of the abuse and failed to protect her children. It further alleged that Stover regularly participated in acts of domestic violence in the presence of all of the children, had a history of domestic violence against AS's and JS's mother, and had forced AL1, AS, and JS to consume pills and alcohol. Following a hearing, the trial court determined that several statutory grounds for termination had been established by clear and convincing evidence. Following another hearing, the court determined that termination of respondents' parental rights was in the children's best interests. The court entered three separate orders terminating respondents' parental rights to the children.

In Docket No. 336171, Leonard appeals the termination of her parental rights to AL1, AL2, and GS pursuant to MCL 712A.19b(3)(b)(*ii*), (3)(b)(*iii*), (3)(g), (3)(j), (3)(k)(*ii*), and (3)(k)(*ix*). In Docket No. 336172, Stover appeals the termination of his parental rights to GS pursuant to MCL 712A.19b(3)(b)(*ii*), (3)(b)(*iii*), (3)(g), (3)(j), (3)(k)(*ii*), and (3)(k)(*ix*). In Docket No. 336930, Stover appeals the termination his parental rights to AS and JS pursuant to MCL 712A.19b(3)(g) and (3)(j).

I. DOCKET NO. 336171 (RESPONDENT LEONARD)

Leonard first argues that the trial court erred in finding a statutory basis for exercising jurisdiction over her three children.[3] "To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists." *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "Jurisdiction must be established by a preponderance of the evidence." *Id*. The trial court found grounds for jurisdiction under MCL 712A.2(b)(1) and (2), which provide:

> (b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:
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> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his

[2] The mother of AS and JS was not named as a respondent in this proceeding.

[3] We "review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact . . . ." *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004) (citation omitted). "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009) (quotation marks and brackets omitted).

> or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:
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> * * *
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> (B) "Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.
>
> (2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

Leonard argues that § 2(b)(1) does not apply to AL1 because she was not without proper custody or guardianship but was instead in a suitable placement with the family of her friend. Section 2(b)(1)(B) does exclude from the descriptor "without proper custody or guardianship" a child whose parent "has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile . . . ." However, AL1's friend's family was not legally responsible for AL1's care and maintenance. Additionally, the evidence showed that Leonard did not "place" AL1 with the friend's family. Rather, AL1 initiated the placement herself by removing herself from Leonard's home to escape the abusive and chaotic environment. These circumstances did not preclude the trial court from finding a statutory basis for jurisdiction with respect to AL1 under MCL 712A.2(b)(1).

We also find no merit to Leonard's argument that AL2 and GS had proper custody or guardianship because they were placed with a family friend in accordance with a safety plan approved by Children's Protective Services (CPS). Respondents subsequently rejected this safety plan. This subjected AL2 and GS to a substantial risk of harm, rendering them without proper custody. The children were later placed with Leonard's aunt, but this decision was made by petitioner, not Leonard. Moreover, the record does not support Leonard's argument that the trial court relied solely on Stover's criminal status to assert jurisdiction over Leonard's children. Respondents' chaotic relationship and lifestyle contributed to a volatile home environment in which the children were exposed to frequent incidents of domestic violence between respondents, and Leonard failed to protect AL2 from Stover's abusive "discipline." With Leonard's complicity, Stover exerted control over every individual in the household, subjecting them to neglect and cruelty and preventing them from seeking outside help. There was also testimony that the children were not adequately fed and that they were required to accompany respondents on their outings to sell drugs. Accordingly, the trial court did not err in asserting jurisdiction over the children pursuant to MCL 712A.2(b)(1) and (2).

Leonard next challenges the trial court's findings regarding the existence of statutory grounds to terminate her parental rights. Petitioner was required to prove by clear and

convincing evidence the existence of at least one statutory ground for termination in MCL 712A.19b(3). *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013).[4] The trial court terminated respondent Leonard's parental rights pursuant to MCL 712A.19b(3)(b)(*ii*), (3)(b)(*iii*), (3)(g), (3)(j), (3)(k)(*ii*), and (3)(k)(*ix*), which permit termination 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:
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> * * *
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> (*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.
>
> (*iii*) A nonparent adult'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 by the nonparent adult in the foreseeable future if placed in the parent's home.
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> * * *
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> (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.
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> * * *
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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.
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> (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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> * * *

[4] The trial court's decision is reviewed for clear error. *In re Moss*, 301 Mich App at 80. "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Rood*, 483 Mich at 91 (quotation marks and brackets omitted). We "accord[] deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

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

* * *

(*ix*) Sexual abuse as that term is defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622.

Initially, because §§ 19b(3)(k)(*ii*) and (3)(k)(*ix*) apply only when a "parent abused the child or a sibling," and there was no evidence that Leonard sexually abused any of her children, termination of her parental rights under § 19b(3)(k) was not justified. But because only one statutory ground is necessary to support termination of parental rights, *In re Laster*, 303 Mich App 485, 495; 845 NW2d 540 (2013), and petitioner presented sufficient evidence to support each of the remaining statutory grounds, the error was harmless.

Petitioner introduced AL1's testimony and AL2's statements that Stover punished AL2 by requiring him to hold his hands over his head for lengthy periods of time such that it caused him to endure pain and caused his knees to buckle. Stover also hit AL2. AL1 testified that Stover sexually abused her by touching her genitals and buttocks and that he digitally penetrated her vagina. This testimony was sufficient to establish that Leonard's child, AL2, was physically abused, that her child, AL1, was sexually abused, and that the abuse to both children was caused by Stover, a non-parent adult to both AL2 and AL1. Although Leonard questions the weight and credibility of the children's statements, those were matters for the trial court to resolve, and we defer to its findings on these issues. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

The evidence also indicated that Leonard was present during at least some of the incidents in which Stover delivered harsh physical punishment to AL2, and Leonard either did nothing or made an ineffective request for Stover to stop. Leonard did not remove AL2 from the abusive environment, and the abuse continued. AL1 testified that she reported the sexual abuse to Leonard, who did not act to stop the abuse or otherwise protect her. Accordingly, the trial court did not clearly err in finding that Leonard had the opportunity to prevent the physical and sexual abuse but failed to do so. Leonard argues that the trial court erred in finding that she intended to continue her relationship with Stover and, therefore, erred in finding that the abuse was likely to continue if the children were placed back in her home. She argues that the evidence did not support these findings because she did not testify concerning her intentions. She further argues that if petitioner had offered counseling, she could have had the opportunity to overcome Stover's influence and to make decisions in her children's best interests. However, Leonard's own statement of intent was not in evidence because she chose not to testify. Thus, whether or how she would have responded to counseling is entirely speculative, and the trial court did not clearly err in finding from the evidence presented that Leonard intended to remain with Stover and had been unable or unwilling to resist his influences or intervene to protect her children from his abuse. There was sufficient evidence to support the trial court's findings that grounds for termination were established under §§ 19b(3)(b)(*ii*) and (3)(b)(*iii*).

The evidence supporting termination under § 19b(3)(b) also supports termination of Leonard's parental rights under §§ 19b(3)(g) and (3)(j). Leonard's failure to protect her children

from Stover's sexual and physical abuse served as proof that she failed to provide proper care and custody and that the children were reasonably likely to be harmed if returned to her home. Additionally, the testimony that Leonard failed to provide her children with adequate food and that she left AL2 and GS alone in the car while she sold drugs further supports the trial court's decision to terminate her parental rights under §§ 19b(3)(g) and (3)(j).

Leonard lastly argues that termination of her parental rights was not in her children's best interests. 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. *In re Moss*, 301 Mich App at 90.[5] In considering whether termination of parental rights is in the best interests of a child, a court may consider a variety of factors. *In re White,* 303 Mich App 701, 713-714; 846 NW2d 61 (2014). These factors include the existence of a bond between the child and the parent, the parent's ability to parent the child, the child's need for permanency and stability, the advantages of a foster home over the parent's home, the parent's compliance with his or her service plan, the parent's visitation history with the child, the child's well-being, and the possibility of adoption. *Id.* A child's placement with relatives is an additional factor for the trial court to consider. In *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010), our Supreme Court stated that "a child's placement with relatives weighs against termination."

In this case, the trial court did explicitly consider AL2 and GS's placement with an aunt, but it concluded that termination of Leonard's parental rights was still in those children's best interests because there was "quite a bit of contention between Respondent-Mother and Respondent-Father and Respondent-Mother's aunt and uncle." Because Leonard's and Stover's menacing attitude toward the aunt negated any benefits of familial continuity, the trial court did not err in concluding that the relative placement did not weigh against termination of Leonard's parental rights. The trial court also considered AL2's extreme fear of Stover, and his desire to maintain a relationship with Leonard only if she ended her involvement with Stover, which she was not willing to do. The trial court did not clearly err in finding that termination of Leonard's parental rights was in AL2's and GS's best interests.

Leonard argues that termination of her parental rights was not in AL1's best interests because AL1 was 17 years old and unlikely to be adopted. The caseworker testified that AL1's situation had improved after she left Leonard's home. She was thinking about jobs and college, and thus transitioning into adult life. The evidence clearly established that AL1 had lost all confidence in Leonard's parenting and believed Leonard was ruining her own life and the lives of AL1's siblings by attaching herself to an abusive partner. The trial court did not clearly err in finding that termination of Leonard's parental rights was also in AL1's best interests.

For the foregoing reasons, we affirm the trial court's order terminating Leonard's parental rights to her children AL1, AL2, and GS.

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[5] The trial court's best-interest decision is also reviewed for clear error. *In re Brown/Kindle/Muhammad*, 305 Mich App 623, 637; 853 NW2d 459 (2014).

II. DOCKET NOS. 336172 AND 336390 (RESPONDENT STOVER)

Preliminarily, Stover correctly observes that "[p]arents have a significant interest in the companionship, care, custody, and management of their children," and that this interest "is an element of liberty protected by due process." *In re Sanders*, 495 Mich 394, 409; 852 NW2d 524 (2014) (citations and quotation omitted). However, it is equally well established that "[a] parent's right to control the custody and care of [his] children is not absolute, as the state has a legitimate interest in protecting 'the moral, emotional, mental, and physical welfare of the minor' and in some circumstances 'neglectful parents may be separated from their children.' " *In re Sanders*, 495 Mich at 409-410, quoting *Stanley v Illinois*, 405 US 645, 652; 92 S Ct 1208; 31 L Ed 2d 551 (1972). Thus, once the state has established that a parent is unfit, the parent's rights yield to the state's interests in protecting the child. See *In re Sanders*, 495 Mich at 409-410. In this case, the trial court's decision terminating Stover's parental rights was expressly predicated on its findings that the state had established statutory grounds for termination by clear and convincing evidence. Stover does not challenge the trial court's findings regarding the existence of statutory grounds for termination, or best interests. Therefore, he has failed to establish any due process violation.

We also reject Stover's argument that the trial court erred in terminating his parental rights where petitioner did not provide reunification services.[6] After a child has been removed from a parent's custody, petitioner is generally required to make reasonable efforts to reunify the child and the family. 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). However, services are not required in every situation. *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 has been "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 the instant case, the trial court found that Stover sexually abused AL1 and that the abuse included digital penetration of her vagina. Accordingly, there was a judicial determination of an aggravating circumstance enumerated in MCL 722.638(1)(a)(*ii*). Because GS was AL1's sibling, this statutory exception relieved petitioner of the obligation to provide reunification services to Stover in GS's case. Although AL1 was not the sibling of AS and JS, and thus this exception did not apply to Stover's case involving those two children, "the petitioner is not required to provide reunification services when termination of parental rights is the agency's

[6] Because Stover did not raise this issue in the trial court, it is unpreserved and our review "is therefore limited to plain error affecting substantial rights." *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

goal." *In re Moss*, 301 Mich App at 91 (citation and quotations omitted). Consequently, petitioner had no obligation to offer services in either case.[7]

Affirmed.

/s/ Jane E. Markey
/s/ Patrick M. Meter
/s/ Douglas B. Shapiro

[7] We note that CPS offered voluntary services to respondents before the trial court asserted jurisdiction, but respondents refused them. Thus, it is disingenuous for Stover to now argue that the trial court erred in terminating his parental rights without first allowing him the opportunity to participate in services.