STATE OF MICHIGAN

COURT OF APPEALS

In re CROOKS/PURDIE, Minors.

UNPUBLISHED
October 24, 2017

No. 337486; 337487
Wayne Circuit Court
Family Division
LC No. 16-523338-NA

Before: SHAPIRO, P.J., and HOEKSTRA and M. J. KELLY, JJ.

PER CURIAM.

In Docket No. 337486, respondent father appeals as of right the order terminating his parental rights to TDC and TLP pursuant to MCL 712A.19b(3)(j) (reasonable likelihood that the child will be harmed if returned to the parent). In Docket No. 337487, respondent mother appeals as of right the order terminating her parental rights to TDC, TLP, and TDP pursuant to MCL 712A.19b(3)(a)(*ii*) (desertion), MCL 712A.19b(3)(j),and MCL 712A.19b(3)(k)(*i*) (abandonment). This court ordered the appeals to be consolidated.[1] We affirm.

In Docket No. 337486, respondent father argues that the trial court clearly erred in finding that a statutory ground exists under MCL 712A.19b(3)(j) to terminate his parental rights. We disagree.[2]

[1] *In re Crooks/Purdie Minors*, unpublished order of the Court of Appeals, entered March 29, 2017 (Docket Nos. 337486, 337487).

[2] This Court reviews for clear error a trial court's decision that a ground for termination has been proven by clear and convincing evidence. MCR 3.977(K); *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "A trial court's decision 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 Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012) (quotation marks and citation omitted). "Clear error signifies a decision that strikes [this Court] as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). "Due regard is given to the trial court's special opportunity to judge the credibility of witnesses." *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008); MCR 2.613(C). The trial court "has the advantage of being able to consider the demeanor of the

"Termination of parental rights is appropriate when the [Department of Health and Human Services (DHHS)] proves one or more grounds for termination by clear and convincing evidence." *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012). "If a statutory ground for termination is established and the trial court finds '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.' " *In re Ellis*, 294 Mich App 30, 32-33; 817 NW2d 111 (2011) (citation omitted).

MCL 712A.19b(3)(j) requires a court to find 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." Harm includes both physical harm and emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). "Evidence of how a parent treats one child is evidence of how he or she may treat the other children." *Id*. at 266.

The evidence in this case supports termination of respondent father's parental rights because he sexually abused TLP and his step-daughter, which occurred in the home TDC and TLP resided. TLP testified that respondent father touched her genital area and butt on more than 10 occasions when she was eight or nine years old. She stated that on one occasion when respondent father was touching her in a bad way, she looked back and saw his penis. According to TLP, respondent father tried to touch her with his penis, but he did not put it inside any of her private parts. Respondent father's treatment of TLP is evidence of how he may treat TDC. *In re Hudson*, 294 Mich App at 266. Additionally, testimony presented at trial established that respondent father also touched his minor step-daughter's chest, private area and butt, put his hands down her pants, and inserted a finger into her vagina. Given respondent father's repeated pattern of sexual abuse, there is a reasonable likelihood that TDC would suffer sexual abuse in the foreseeable future if placed in respondent father's home. Therefore, the trial court did not clearly err when it found clear and convincing evidence to support termination of respondent father's parental rights under MCL 712A.19b(3)(j).

Respondent father's arguments are essentially directed at challenging the trial court's credibility determinations. The trial court found TLP to be a credible witness, and believed that the abuse occurred as she claimed. The trial court did not find credible the testimony of respondent father's mother, who called TLP and the step-daughter "little liars" because she allegedly overheard them "plotting" to be removed from the home. Given the trial court's special opportunity to judge the credibility of witnesses, *In re LE*, 278 Mich App at 18, we discern no basis to conclude that the trial court's findings were clearly erroneous.

Respondent father also argues that petitioner did not make reasonable efforts to reunify him with the children. We disagree. "Generally, reasonable efforts must be made to reunite the parent and children unless certain aggravating circumstances exist." *In re Moss*, 301 Mich App at 90-91; MCL 712A.19a(2). "However, the petitioner 'is not required to provide reunification

witnesses in determining how much weight and credibility to accord their testimony." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

services when termination of parental rights is the agency's goal.' " *Id.* (citation omitted). Further MCR 3.977(E) provides that termination is required at the initial disposition hearing and additional reunification efforts shall not be ordered if

> (1) the original, or amended, petition contains a request for termination;
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> (2) at the trial or plea proceedings, the trier of facts finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2b have been established;
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> (3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:
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> (a) are true, and
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> (b) establish grounds for termination or parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (*l*), (m), or (n);
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> (4) termination of parental rights is in the child's best interests.

In the present case, the initial petition sought termination of respondent father's parental rights based on his sexual abuse of TLP and the step-daughter. The trial court found, by a preponderance of the evidence, that there were grounds to assume jurisdiction. At the initial dispositional hearing, the court found that one or more facts alleged in the petition were true, and at trial, the court found by clear and convincing evidence that at least one of the grounds for termination had been established. Further, the trial court found that termination of respondent father's parental rights were in the children's best interests. Because all the requirements of MCR 3.977(E) were met, reunification efforts were not required.

In Docket No. 337487, respondent mother argues that because the trial court did not follow the proper procedure for ordering service of notice by publication, it lacked personal jurisdictional over her. According to respondent mother, this jurisdictional flaw violated her right to due process of law. We disagree.[3]

"A parent of a child who is the subject of a child protective proceeding is entitled to personal service of a summons and notice of proceedings." *In re SZ*, 262 Mich App 560, 564;

[3] "We review de novo whether child protective proceedings complied with a respondent's constitutional rights. Similarly, we review de novo whether a court has properly obtained personal jurisdiction over a party." *In re Dearmon*, 303 Mich App 684, 693; 847 NW2d 514 (2014) (citation omitted).

686 NW2d 520 (2004); MCL 712A.12; MCR 3.920(B)(4)(a).[4] "In the absence of personal service or a waiver of personal service, jurisdiction is not established and the court's orders are void." *In re Dearmon*, 303 Mich App 684, 694; 847 NW2d 514 (2014). MCL 712A.13 provides for alternative service and states in pertinent part:

> Service of summons may be made anywhere in the state personally by the delivery of true copies thereof to the persons summoned: Provided, That if the judge is satisfied that it is impracticable to serve personally such summons . . ., he may order service by registered mail addressed to their last known addresses, or by publication thereof, or both, as he may direct. . . .

"While the MCL 712A.13 allows for alternative methods of service of process, it still requires that the trial court first determine that personal service is impracticable." *In re Adair*, 191 Mich App 710, 714; 478 NW2d 667 (1991). Consistent with this is MCR 3.920(B)(4)(b), which allows for substituted where personal service is impracticable, and provides as follows:

> If the court finds, on the basis of testimony or a motion and affidavit, that personal service of the summons is impracticable or cannot be achieved, the court may by ex parte order direct that it be served in any manner reasonably calculated to give notice of the proceedings and an opportunity to be heard, including publication.

In determining whether personal service would be impracticable, the trial court must first find that reasonable efforts were made to locate respondent. *In re Adair*, 191 Mich App at 714-715.

In any event, the petition alleged that respondent mother's whereabouts were unknown and unascertainable. Child Protective Services (CPS) worker, Erica Shelby, testified at the September 1, 2016 preliminary hearing regarding efforts that were made to locate respondent mother. She testified that "[a] telephone call has been made to [respondent mother] and [an] unscheduled home visit was made to the last-known address, which that home appeared to the worker as being abandoned." When asked if respondent father had any idea of respondent mother's whereabouts, Shelby answered, "Not that I'm aware of."[5]

Further, petitioner also had no contact with respondent mother during the investigation of this case. At a September 20, 2016 hearing, the trial court ordered attempted personal service and attempted service by certified mail on respondent mother, if an address could be found, and service by publication. At a November 18, 2016 hearing, the trial court stated, "[W]e have no

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[4] MCR 3.920(B)(4)(a) provides that "[e]xcept as provided in subrule (B)(4)(b), a summons required under subrule (B)(2) must be served by delivering the summons to the party personally."

[5] Respondent father later testified at trial that he does not know respondent mother's whereabouts or where she resides; he last saw her in June 2016 and has had no contact with her since then. TLP testified that she does not remember the last time she saw respondent mother.

idea where [respondent mother] is. We have various addresses that we've been working . . . ." The trial court later stated again, "We have no idea where [respondent mother] is," and again, ordered attempted personal service, attempted service by certified mail, and service by publication. At the beginning of trial, the court again stated, "[W]e have really no idea where [respondent mother] is. She is not here, has not appeared, does not have counsel." The court noted that personal service was attempted but that the house was found to be empty, service by certified mail had been attempted, and that service by publication had been effectuated. The lower court file contains proofs of the multiple unsuccessful attempts to serve respondent mother personally and by certified mail at her last known home address, as well as the proof of service by publication in the Detroit Legal News. On the final date of the dispositional hearing, the trial court again stated that "we don't really know where [respondent] is. I don't believe we have a good address. She has not appeared. She does not have counsel." The trial court also said that respondent mother was "nowhere to be found. We've actively looked for her."

We conclude that the trial court's comments effectively constitute a finding that personal service of the summons on respondent mother was impracticable and that reasonable efforts were made to locate her. The court noted on numerous occasions that respondent mother's whereabouts were unknown, and indicated that there were various addresses that were being "work[ed]." The court heard Shelby's testimony regarding petitioner's efforts to locate respondent mother, including by telephone and by visiting her last known home address, which appeared to be abandoned. The lower court file contains proofs of three unsuccessful attempts to personally serve respondent mother at her last known home address, as well as two unsuccessful attempts to serve her by certified mail. Indeed, respondent father did not even know respondent mother's whereabouts or where she resided, and there is no indication that any her relatives were available or willing to provide information concerning her whereabouts. Overall, the trial court adequately expressed satisfaction that reasonable efforts had been undertaken to locate respondent mother and that personal service was impracticable.

Because substituted service by publication was effectuated in accordance with the statute and court rule, the trial court properly obtained personal jurisdiction over respondent mother. Therefore, respondent mother failed to establish a due process violation.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ Michael J. Kelly