STATE OF MICHIGAN

COURT OF APPEALS

In re BELLOMY, Minors.

UNPUBLISHED
March 13, 2018

No. 340199
Wayne Circuit Court
Family Division
LC No. 97-353766-NA

Before: TALBOT, C.J., and BECKERING and CAMERON, JJ.

PER CURIAM.

I. INTRODUCTION

Respondent-father appeals as of right the order terminating his parental rights to his three minor children: ELB, LCB, and XCB (the minor children). Respondent's rights were terminated pursuant to MCL 712A.19b(3)(b)(*i*) (parent caused physical injury or physical or sexual abuse of a child and there is reasonable likelihood of future abuse), (g) (parent failed to provide proper care or custody), (j) (parent's conduct or capacity is reasonably likely to cause harm to a child), (k)(*ii*) (child abuse by parent involves criminal sexual conduct with penetration, attempted penetration, or assault with intent to penetrate), and (k)(*ix*) (sexual abuse by parent). We affirm.

Petitioner, the Department of Health and Human Services (DHHS), filed a petition to terminate respondent's parental rights after substantiating allegations that respondent sexually assaulted his daughter ELB on multiple occasions. Specifically, ELB testified respondent frequently and inappropriately touched her buttocks, occasionally touched her breasts while she was showering (under the guise that he was performing a breast examination), and respondent repeatedly made ELB lay in bed with him while he wore only underwear and pressed his penis against her buttocks. Respondent argues that petitioner failed to overcome the presumption that respondent is a fit parent by establishing a statutory ground for termination, and that the trial court erred when it determined that termination was in the best interests of the minor children. We disagree.

II. STANDARD OF REVIEW

"The clear error standard controls our review of both the court's decision that a ground for termination has been proven by clear and convincing evidence and . . . the court's decision regarding [a] child's best interest." *In re Medina*, 317 Mich App 219, 226; 894 NW2d 653 (2016) (quotation marks and citations omitted). See also MCR 3.977(K). " 'A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm

conviction that a mistake has been made.' " *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016), quoting *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). "In applying the clear error standard in parental termination cases, 'regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.' " *In re Schadler*, 315 Mich App at 408-409, quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

III. STATUTORY GROUNDS FOR TERMINATION

Petitioner bears the burden to establish by clear and convincing evidence at least one ground for terminating respondent's parental rights. *In re Gonzales/Martinez*, 310 Mich App 426, 431; 871 NW2d 868 (2015). "To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013), citing *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000). In this case, the trial court found that five statutory grounds for termination had been established: MCL 712A.19b(3)(b)(*i*), (g), (j), (k)(*ii*), and (k)(*ix*). The relevant statutory provisions state:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
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> (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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> (*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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> * * *
>
> (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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> * * *
>
> (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.

* * *

(*ix*) Sexual abuse as that term is defined in section 2 of the child protection law, MCL 722.622. [MCL 712A.19b(3)(b)(*i*), (g), (j), (k)(*ii*), and (k)(*ix*).]

In this case, the most easily and clearly established statutory ground for termination is found in MCL 712A.19b(3)(k)(*ix*), which allows for termination where "sexual abuse," as defined by MCL 722.622, occurs at the hands of a parent. " 'Sexual abuse' means engaging in sexual contact or sexual penetration as those terms are defined in section 520a of the Michigan penal code, MCL 750.520a, with a child." MCL 722.622(z). "Sexual contact" is further defined as follows:

(q) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

(*i*) Revenge.

(*ii*) To inflict humiliation.

(*iii*) Out of anger. [MCL 750.520a(q).]

In this case, the trial court did not clearly err in finding clear and convincing evidence that respondent intentionally touched ELB's intimate parts and the clothing covering her intimate parts, and that respondent did so for the purpose of "sexual arousal or gratification," or out of anger. MCL 750.520a(q).

ELB testified respondent consistently and inappropriately grabbed her buttocks, and on the occasions that she confronted the behavior, respondent would proclaim that ELB's buttocks belonged to him, and he could do what he wanted to her. ELB further testified that, approximately four times, respondent entered the bathroom while she was showering and began touching her breasts, claiming that he was "checking for cancer." Finally, ELB claimed that, at least five times, respondent made her lay in bed with him while he wore only underwear, and respondent proceeded to press his penis against ELB's buttocks. ELB testified that when she tried to "squirm[] away," respondent would "grab [her] back." She also testified that this particular form of abuse tended to occur "when something bad happens" that causes respondent to get "really mad." In fact, ELB testified that after respondent caught ELB with a phone she was not supposed to have and "got really mad," it was her anxiety about impending sexual abuse that caused ELB to run away from home to contact the police.

Respondent himself admitted to the conduct underlying the majority of ELB's allegations. The DHHS representative testified at trial that respondent admitted he once touched ELB's breasts in the shower, though he claimed the contact was for the purpose of a breast

examination. Respondent also claimed that ELB called him into the bathroom and initiated the contact. He admitted that he also occasionally pinched ELB's buttocks, but clarified that the contact was not sexual and ELB never complained. Finally, respondent admitted that, although he would lie in bed with ELB in only his underwear, there was always a blanket between respondent and ELB, and the contact was not sexual, but was for the purpose of comforting ELB. The trial court found that respondent's justifications for his conduct were not credible and were, in fact, "disingenuous" and "ludicrous." We will not disturb the trial court's credibility determinations. *In re Schadler*, 315 Mich App at 408-409.

Not only were respondent's explanations inherently suspect, ELB's adult sister, SLB, provided credible and compelling testimony that tended to prove respondent's actions were sexual in nature. SLB testified that she experienced similar sexual abuse at the hands of respondent, stating that respondent sexually penetrated her three to five times. SLB said respondent would come into the bathroom while she was showering to "check [her] breasts for breast cancer," and he would have her lie in bed with him and make her hug him.

Given the testimony of ELB and SLB, and given the admissions of respondent, the trial court's determination that a statutory ground existed to support termination of respondent's parental rights was not clearly erroneous. The evidence suggests that respondent sexually abused ELB by engaging in sexual contact with her for the purpose of sexual arousal, and even perhaps touched ELB in a sexual manner out of anger pursuant to MCL 712A.19b(3)(k)(ix). See also MCL 750.520a(q).

Although the trial court need only establish *one* statutory ground for termination, the remaining statutory grounds were properly established. See *In re Moss*, 301 Mich App at 80 (noting that "at least one" statutory ground must be established). MCR 712A.19b(3)(b)(*i*) provides grounds for termination where "[t]he child or a sibling has suffered physical injury or physical or sexual abuse" caused by the parent, and "there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future" if placed with the parent. For the same reasons as subsection (3)(k)(*ix*), the testimony of ELB—supported by the testimony of SLB—was sufficient to establish that ELB suffered sexual abuse at the hands of respondent. Moreover, based upon respondent's history of abuse, including years of victimization of SLB and ELB, and based upon respondent's former conviction for third-degree child abuse, there is no discernable clear mistake in the trial's determination that there was a reasonable likelihood that the minor children would suffer further abuse at the hands of respondent in the foreseeable future.

MCR 712A.19b(3)(g) provides grounds for termination where "[t]he 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." Similarly, MCR 712A.19b(3)(j) provides grounds for termination where "[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 parent. This Court has found that both subsection (3)(g) and subsection (3)(j) are triggered where a respondent-parent causes or fails to safeguard a child from intentional abuses, even where the specific perpetrator is unknown. See *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011) (holding that termination of parental rights pursuant to subsections (3)(g) and (3)(j) "is permissible even in the absence of determinative evidence regarding the identity of the perpetrator when the evidence

shows that the respondents must have either caused the intentional injuries or failed to safeguard the children from injury"). In this instance, the evidence clearly suggests that respondent not only personally perpetrated sexual abuse against ELB, but that he had a history of perpetrating the same against others. Respondent's conduct and his failure to provide proper care and custody suggests a reasonable likelihood that the minor children would be harmed if left in his custody.

Finally, MCR 712A.19b(3)(k)(*ii*) provides grounds for termination where a parent abuses a child or the sibling of a child and the abuse includes "[c]riminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate." The trial court found respondent's conduct indicative of "grooming behavior," in which a perpetrator attempts to normalize inappropriate contact with a child so that "little by little," the conduct becomes more and more egregious. The testimony of SLB supports this conclusion, as she testified that respondent sexually penetrated her approximately three to five times. Although ELB did not testify that she was penetrated, the consistency and increasing regularity of the abuse against her—ultimately becoming so predictable she attempted to run away to avoid it—suggests that respondent had the ultimate intention of normalizing the sexual contact and penetrating ELB. The combined testimony of ELB and SLB, at the very least, is sufficient such that the trial court's determination that respondent ultimately intended to sexually penetrate ELB was not clearly erroneous. Thus, there was clear and convincing grounds for termination of respondent's parental rights under MCR 712A.19(b)(3)(k)(*ii*) because ELB was sexually abused, and LCB and XCB were siblings of a child who was sexually abused.

IV. BEST-INTEREST DETERMINATION

"Even if the trial court finds that the Department has established a ground for termination by clear and convincing evidence, it cannot terminate the parent's parental rights unless it also finds by a preponderance of the evidence that termination is in the best interests of the children." *In re Gonzales/Martinez*, 310 Mich App at 434, citing MCL 712A.19b(5) and *In re Moss*, 301 Mich App at 90. "In making its best-interest determination, the trial court may consider 'the whole record,' including evidence introduced by any party." *In re Medina*, 317 Mich App at 237, citing *In re Trejo*, 462 Mich at 353. "With respect to the trial court's best-interest determination, we place our focus on the child rather than the parent." *In re Schadler*, 315 Mich App at 411, citing *In re Moss*, 301 Mich App at 87. "The 'primary beneficiary' of the best-interest analysis 'is intended to be the child.' " *In re Medina*, 317 Mich App at 239, quoting *In re Trejo*, 462 Mich at 356. "Evidence of how a parent treats one child is evidence of how he or she may treat the other children." *In re Hudson*, 294 Mich App 261, 266; 817 NW2d 115 (2011), citing *In re A H*, 245 Mich App 77, 84; 627 NW2d 33 (2001).

The trial court found that termination of respondent's parental rights to the minor children would serve their best interests because of the likelihood that the children would suffer further abuse at the hands of respondent if he were to retain his rights. Indeed, the testimony suggests that respondent had been sexually abusing ELB for several years, and that prior to that, respondent had abused SLB in the same manner. DHHS was also able to show that child protective services complaints had been substantiated against respondent twice before—once in 1997 and again in 1999—in addition to a 1997 conviction for third-degree child abuse involving SLB.

Respondent contends, at the very least, that there is no evidence that he perpetrated any abuse against LCB and XCB, and contrarily, the evidence suggests that they have a bond with respondent and want him to retain his rights. The trial court acknowledged, however, that LCB and XCB surely love respondent, but prioritized "their mental health," "overall character and development," and their general protection from respondent and his history of perpetrating abuse. Given that history, and the total sum of the evidence, we find that the trial court did not clearly err in finding by a preponderance of the evidence that termination was in the children's best interests.[1]

Affirmed.

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Thomas C. Cameron

[1] Respondent briefly argues that he was not afforded reasonable efforts for reunification. However, the DHHS sought termination in the initial petition, and therefore, it was not required to provide respondent with any reunification services. See *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009) (stating that the petitioner is not required to provide reunification services when termination of parental rights is the agency's goal in the first petition).