

STATE OF MICHIGAN
COURT OF APPEALS

In re CASTRO, Minors.

UNPUBLISHED
September 13, 2018

No. 342345
Kent Circuit Court
Family Division
LC No. 17-050915-NA

Before: MURRAY, C.J., and CAMERON and LETICA, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court’s order terminating his parental rights to his two minor children, PC and AC, under MCL 712A.19b(3)(g) (parent without regard to intent fails to provide proper care and custody, no reasonable expectation of otherwise in a reasonable time),¹ MCL 712A.19b(3)(h) (parent is imprisoned for a period exceeding 2 years, and the parent has not provided for the children’s proper care and custody, and there is no reasonable expectation that the parent will be able to do so within a reasonable time), and MCL 712A.19b(3)(j) (reasonable likelihood that the child will be harmed if returned). On appeal, respondent-father challenges the trial court’s best-interests determination. We affirm.

PC and AC’s mother died in 2012 and respondent-father remarried. He and his spouse lived together in the family home with PC, AC, the spouse’s two children, and her 14-year-old sister. The children came into care after respondent-father was arrested for sexually abusing the 14-year-old sister. During the pendency of this case, respondent-father remained in jail until he pleaded no contest to first-degree criminal sexual conduct and child sexual abusive activity. He

¹ MCL 712A.19b(3)(g) has been amended, effective June 12, 2018. See 2018 PA 58. Under the version of the statute in effect at the time of these proceedings, termination is appropriate if “[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.” MCL 712A.19b(3)(g) (emphasis added). Under the new version of the statute, termination is appropriate if “[t]he parent, *although, in the court’s discretion, financially able to do so*, 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.” MCL 712A.19b(3)(g) as amended by 2018 PA 58 (emphasis added).

was convicted and sentenced to 9 years to 25 years' imprisonment for first-degree criminal sexual conduct and a concurrent term of 9 years to 20 years' imprisonment for child sexual abusive activity.

Petitioner sought the termination of respondent-father's parental rights, and at the conclusion of the termination trial, the trial court found that clear and convincing evidence established grounds for termination under MCL 712A.19b(3)(g), (h), and (j). On appeal, respondent-father does not challenge the statutory grounds for termination. As such, we may presume that the trial court did not clearly err in finding that the unchallenged statutory grounds were established by clear and convincing evidence. *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998), overruled in part on other grounds *In re Trejo*, 462 Mich 341; 612 NW2d 407 (2000). When a statutory ground for termination is proven, the trial court shall order termination of parental rights if termination is in the child's best interests in light of the evidence as set forth in the whole record. *In re LE*, 278 Mich App 1, 25; 747 NW2d 883 (2008).

Respondent-father argues on appeal that the trial court should not have terminated his parental rights because petitioner failed to prove that termination served the children's best interests. He contends that the children's best interests would be better served if they lived with his spouse and that the foster-care agency failed to assess her suitability. We disagree.

Once a statutory ground for termination has been proven, the trial court must find that termination is in the children's best interests before it can terminate parental rights. MCL 712A.19b(5); MCR 3.977(E)(4). A trial court must find by a preponderance of the evidence that termination serves the best interests of the children before it may terminate parental rights. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

We review for clear error a trial court's best-interest decision. MCR 3.977(K); *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). A factual finding is clearly erroneous if we have a definite and firm conviction that a mistake was made. *Id.* We give deference to the "trial court's factual findings at termination proceedings if those findings do not constitute clear error." *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). We also defer to the trial court's special opportunity to judge the credibility of witnesses. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

When considering best interests, the trial court must focus on the child rather than the parent. *In re Moss*, 301 Mich App at 87. The trial court may consider several factors including the children's bond to the parent, the parent's parenting ability, the children's need for permanency, stability, and finality, *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted), how long the children have lived in their present home, and the likelihood that they "could be returned to [the] parents' home within the foreseeable future, if at all." *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

In *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014), this Court summarized:

The trial court should weigh all the evidence available to determine the children's best interests. To determine whether termination of parental rights is in

a child's best interests, the 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. The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption. [Quotation marks and citation omitted.]

A trial court may also consider a parent's history of child abuse. *In re Powers*, 244 Mich App 111, 120; 624 NW2d 472 (2000). Further, a child's safety and well-being, including the risk of harm a child might face if returned to the parent's care, are relevant to a best-interest determination. *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011).

In this case, the record reflects that the trial court considered all of the evidence in the record when analyzing the best-interests of the children, and correctly held that a preponderance of the evidence supported the trial court's decision to terminate the respondent-father's parental rights. The foster-care worker's testimony established that the bond between the children and respondent-father was weak. The evidence established that respondent-father expressed only a general interest in the children during the pendency of this case. Specifically, he failed to seek detailed information regarding their well-being and showed little interest in their daily activities. Further, the record does not indicate that the children had any bond with respondent-father's spouse, the children's stepmother. This best-interest factor weighed against respondent-father's retention of his parental rights.

The record lacks evidence of respondent-father's parenting ability because his incarceration prevented him from exercising parenting time and, therefore, the agency could not observe his parenting skills. Nevertheless, the record suggests that while respondent-father and their stepmother had the children in their care and custody, both neglected to care for the children's educational needs. Both PC and AC scored very low on standardized tests, and AC, who attended the fourth grade, was completely illiterate. Respondent-father failed to show the requisite concern for their educational well-being, evidencing a deficiency in his parenting ability. Furthermore, this shows that the stepmother's parenting skills were also lacking. We conclude that this best-interest factor weighed against respondent-father's retention of his parental rights.

The record indicates that the children needed permanency, stability, and finality. Their mother died in 2012. Respondent-father remarried, but during the pendency of this case, the children's stepmother showed little interest in having parenting time with the children. The children's foster-care worker spoke to her about parenting time, but she showed no interest in visiting the children. The limited contact she did have with the children was cut off because she made an inappropriate and upsetting telephone call to them. Consequently, the foster-care agency determined it would be inappropriate to place the children in the family home with their stepmother. We believe that the record evidence established that the children's stepmother lacked the requisite interest in providing the children permanency, stability, and finality.

Respondent-father was also unable to provide the children permanency, stability, and finality due to his long-term incarceration. His earliest release date is 2026. By that time, the

children will have reached the age of majority. Consequently, respondent-father will not be able to provide for any of the children's needs before then. Therefore, we conclude that this best-interest factor weighed against respondent-father's retention of his parental rights.

Further, the record reflects that the children's foster home provided them numerous advantages over respondent-father's home. The foster parents met the children's physical, medical, and emotional needs, and they properly worked at addressing the children's educational deficits. Respondent-father, however, had no ability to provide for the children financially during his incarceration, he neglected their educational needs, and seemed only remotely interested in their well-being. The record also reflects that the children's stepmother had no employment, so she also lacked the ability to provide for the children. Moreover, she seemed uninterested in providing for their care and custody. Indeed, based upon the stepmother's conduct, the agency determined that she lacked interest in caring for them, lacked interest in parenting time, and never followed up to participate in the case service plan to enable family reunification. Although respondent-father expressed interest in having his spouse care for his children, the foster-care worker's un rebutted testimony established that, when he communicated with her in an attempt to engage her in the case service plan, he received no affirmative response regarding her willingness to care for the children. The children's foster-care worker testified that he made respondent-father aware of the situation yet nothing changed. Accordingly, this best-interest factor weighed against returning the children to respondent-father's home.

The record also indicates that respondent-father failed to comply with his case service plan in any meaningful way. The children's foster-care worker made available to him packets of parenting skills worksheets, but respondent-father never worked on them. Consequently, this best-interest factor also weighed against respondent-father's retention of his parental rights.

The record established that the children were thriving while in care. Their needs were being properly met in every respect by their foster parents. They were succeeding in school and were involved in many extracurricular activities. Further, the possibility of adoption existed with their foster parent's daughter who had established a bond with them. The record indicates that she had been considered by the foster-care agency as an appropriate person to adopt the children, which would enable them to stay together as a family. This best-interest factor weighed against respondent-father's retention of his parental rights.

The trial court correctly found that respondent-father had not abused his own children. The trial court, however, rightfully expressed concern regarding respondent-father's sexual assault of his 14-year-old sister-in-law and his lack of admission of guilt. The trial court also expressed concern regarding the stepmother's ability to provide a safe and secure environment for the children because she refused to acknowledge the substantial evidence that investigators presented that confirmed respondent-father's sexual abuse of her minor sister. Based on the record, we cannot conclude that the trial court's concerns were unfounded or that it had to disregard these facts in its decision-making process.

Review of the entire record supports the trial court's conclusion that a preponderance of the evidence established that termination of respondent-father's parental rights served the children's best interests. They were thriving in their foster home where all of their needs were more than adequately met. They were bonding with a potential adoptive parent. Respondent-

father had no ability to provide for their care and custody during his prison term, and his minimum sentence assured that he would not be able to do so until after the children reached the age of majority. The relevant factors articulated in *In re White* weighed in favor of terminating respondent-father's parental rights, and a preponderance of the evidence in the record supports that determination. Therefore, we conclude that the trial court did not clearly err in determining that termination of respondent's parental rights served the children's best interests.

Affirmed.

/s/ Christopher M. Murray

/s/ Thomas C. Cameron

/s/ Anica Letica