STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
November 15, 2018

In re G. BURROWS, Minor.

No. 342830
Genesee Circuit Court
Family Division
LC No. 17-134178-NA

Before: M. J. KELLY, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Respondent appeals by right from the circuit court's order terminating his parental rights to the minor child GB pursuant to MCL 712A.19b(3)(b)(*i*), (g), and (k)(*iii*). We affirm.

To terminate parental rights, a trial court must find the existence of a ground for termination listed in MCL 712A.19b has been proved by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). We review for clear error the trial court's factual findings in terminating parental rights, its decision that a ground for termination has been proven by clear and convincing evidence, and its determination regarding the child's best interests. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009).

The trial court terminated respondent's parental rights to GB under MCL 712A.19b(3)(b)(*i*), (g), and (k)(*iii*), which provide:

> (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:
>
> (*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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> * * *
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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.[1]

* * *

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

* * *

(*iii*) Battering, torture, or other severe physical abuse.[2]

The trial court did not clearly err in terminating respondent's parental rights to GB under these statutory grounds. Respondent severely physically abused GB and was unable to provide proper care of him. Respondent spanked the child at least 60 times over a period of no more than two hours. This resulted in a criminal charge of felony child abuse, third degree, to which respondent entered a guilty plea. Respondent admitted to spanking GB and to putting a sock in GB's mouth in effort to quiet him while respondent struck him. Although respondent claims on appeal that the incident leading to the child's removal was the only time he administered physical punishment, the evidence established that he had previously physically injured GB by twisting and bruising the child's nipple, which respondent claimed occurred during horseplay.

In claiming that he struck the 10-year-old child in an area of his body that was not supposed to suffer lasting damage, respondent disregards the emotional trauma GB experienced from having been struck more than 50 times over a one to two hour period. Likewise, respondent's admission that he accidentally struck GB's lower back instead of his buttocks shows that there was no safe or appropriate way to physically discipline a child and that in so doing he risked extensive injury to GB. Respondent clearly struggled to understand appropriate discipline.

Moreover, the child has mental health issues, including ADHD and multiple personality disorder. He also has disciplinary problems. GB would be a challenge for any parent to handle,

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[1] MCL 712A.19b(3)(g) was amended effective June 12, 2018. See 2018 PA 58. Under the version of the statute in effect when respondent's rights were terminated, cited above, the trial court does not consider the parent's intent when it finds that the parent failed to provide proper care or custody of the child and that there is no reasonable expectation the parent will be able to do so in a reasonable time. Under the amended version of the statute, the 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 do so in a reasonable time. MCL 712A.19b(3)(g) as amended by 2018 PA 58.

[2] MCL 712A.19b(3)(k) was amended effective June 12, 2018. See 2018 PA 58. The version of the statute relied on by the court in this case, cited above, does not consider whether there is a reasonable likelihood that the child will be harmed if returned to the care of the parent, while the amended version does. MCL 712A.19b(3)(k) as amended by 2018 PA 58.

but there is no assurance he can be kept safe when parented by someone with respondent's specific mental health issues. Respondent's psychological assessment revealed that he had significant personality dysfunctions. He denied accountability when presented with imperfect outcomes. His unrestrained, rash, and assaultive behavior would need to be monitored to ensure that he does not abuse GB further. Contrary to respondent's claim that there was no substantial risk to GB in the future, the psychological evaluation revealed there was no way to predict whether respondent could appropriately manage future reactions. Likewise, respondent's claim that the psychological report was given undue weight because he had no history of abuse is without merit because it provided an in-depth look at respondent's personality, propensities, and weaknesses.

Respondent's personal issues compromised his ability to care for his son. Respondent's psychological profile reflected a strong need to pursue unusually challenging endeavors and evince unrealistic goal directed behavior. He was frequently able to coax others into doing things they would not otherwise do. Moreover, respondent's dynamic with GB was not a healthy or nurturing one motivated by parental concern. The record shows that when interviewed by Children's Protective Services (CPS) respondent never asked how GB was doing. Thus, after considering respondent's psychological evaluation, the severity of GB's injuries, the testimony and the fact that the child has mental health issues, the trial court properly concluded that respondent cannot provide proper care of GB.

Once a statutory ground for termination has been established, the court must order termination of parental rights if termination is in the child's best interests. MCL 712A.19b(5). Respondent contends that the trial court erred in its best-interest determination. Contrary to respondent's claim, it is not in GB's best interests to be raised by a caregiver who is unrestrained and rash and who has not demonstrated the ability to parent a child with GB's specific mental health and behavioral issues. It is not in GB's best interests to be in a home with a parent who is at risk for physically abusing him again. GB expressed concern about going back to respondent's house. He expressed fear of respondent. Given GB's challenging behavioral issues and his tendency to be violent and manipulative, it is in his best interests to be raised by a caregiver who can support and nurture him and demonstrate calm and stability. Respondent's unrestrained and restless tendencies would undermine any progress GB made in improving his own conditions. It was not surprising that GB's behavioral issues worsened once respondent became involved in his life when he was six years old, and there is no reason to believe that would improve. Thus, termination of parental rights was in the child's best interests.

We affirm.

/s/ Michael J. Kelly
/s/ David H. Sawyer
/s/ Jane E. Markey