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STATE OF MICHIGAN

COURT OF APPEALS

In re B. AVERY, Minor.

UNPUBLISHED
November 14, 2019

No. 348908
Newaygo Circuit Court
Family Division
LC No. 18-009107-NA

Before: MURRAY, C.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

Respondent-father appeals by right the family court's order terminating his parental rights to the minor child, BA, pursuant to MCL 712A.19b(3)(b)(*i*) (parent caused the sexual abuse of a sibling of the child and the child will likely suffer abuse if returned to the parent). We affirm.

In July 2018, petitioner submitted a petition to the family court indicating that BA and his three siblings, including NT,[1] were living in deplorable conditions with their mother and that a complaint had been received that the mother had left her four children on their own for several days while she sold and used drugs. At the time of the petition, the children ranged in ages from one to 11; NT was 11 years old and BA was nine years old. The record revealed that the youngest child did not have any diapers, that there was not enough food in the home, that garbage, some covered with flies, was strewn everywhere, that there were numerous cats, that the home smelled like feces and urine, that there was no bedding on any of the beds, and that one child's room was blocked with an overturned bed in the doorway. When petitioner's personnel went to the home, NT disclosed her mother's dealings with drugs and involvement in other illegal activities, and NT described how she had been left to care for her siblings with minimal food and supplies. The home did not have running water for a period of time, and there were no clean utensils, forcing the children to eat the little food that was available with their hands. The children had little to nothing by way of clothing, and NT had great difficulty reaching her mother despite texting and calling her countless times. Further, petitioner reported that NT disclosed

[1] Respondent is not the father of NT or the other two children.

that before he left for prison on an intoxicated driving offense, respondent had touched her in an inappropriate and sexual manner. Respondent denied the sexual abuse allegations.

NT, whom the family court expressly found to be a credible witness, testified that when she was nine years old respondent had touched and rubbed her vagina and forced her to touch his penis. These acts occurred in a single transaction and on a mattress upon which NT and BA had been sleeping. NT's account of the sexual abuse that transpired was mostly consistent with the description of the abuse that she had communicated to a police officer, her mother, and a foster-care worker. The family court found that MCL 712A.19b(3)(b)(*i*) was established by clear and convincing evidence. The court essentially applied the doctrine of anticipatory neglect or abuse, concluding that BA would be placed at risk of abuse if returned to respondent in light of NT's abuse.[2] The family court also found that termination of respondent's parental rights was in BA's best interests because he would "be at risk of sexual abuse if placed with" respondent. We note that criminal sexual conduct charges based on NT's allegations were pending against respondent at the time of termination.

Respondent argues that the family court clearly erred by finding that there existed clear and convincing evidence supporting termination under MCL 712A.19b(3)(b)(*i*) and by finding by a preponderance of the evidence that termination was in BA's best interests when there was no definitive proof of criminal sexual conduct committed against NT.

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Beck*, 488 Mich 6, 10-11; 793 NW2d 562 (2010); *In re Moss,* 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "A finding . . . is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed[.]" *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). 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 Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); see also MCR 2.613(C). The trial court must "state on the record or in writing its findings of fact and conclusions of law[,] [and] [b]rief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1).

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[2] The doctrine of anticipatory neglect, or in this case anticipatory abuse, recognizes that the manner in which a parent treats one child is probative of how that parent may treat another child. *In re LaFrance Minors*, 306 Mich App 713, 730; 858 NW2d 143 (2014); *In re Powers*, 208 Mich App 582, 592-593; 528 NW2d 799 (1995), superseded in part on other grounds by statute in MCL 712A.19b(3)(b)(*i*).

Under MCL 712A.19b(3)(b)(*i*), parental rights to a child may be terminated when "a sibling of the child has suffered . . . sexual abuse," "[t]he parent's act caused the . . . sexual abuse[,] and . . . 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." "Sexual abuse" involves "engaging in sexual contact or sexual penetration as those terms are defined in . . . MCL 750.520a[] with a child." MCL 722.622(z). "Sexual contact" encompasses "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 . . . ." MCL 750.520a(q). "Sexual penetration" entails "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required." MCL 750.520a(r).

NT's testimony provided sufficient evidence that she was sexually abused by respondent.[3] And the doctrine of anticipatory abuse supported the finding that there was a reasonable likelihood that BA would suffer abuse in the foreseeable future if placed in respondent's care. See *In re LaFrance Minors*, 306 Mich App 713, 730; 858 NW2d 143 (2014); *In re Powers*, 208 Mich App 582, 592-593; 528 NW2d 799 (1995), superseded in part on other grounds by statute in MCL 712A.19b(3)(b)(*i*). We cannot conclude that the family court clearly erred in finding that MCL 712A.19b(3)(b)(*i*) was proven by clear and convincing evidence. On appeal, respondent argues that NT was not a credible witness, that her testimony was inconsistent with her earlier disclosures, that she had a motivation to fabricate, and that she had been coached. Even were there some truth to these assertions, the matters were all for the family court to address, assess, and resolve, not this Court on appeal. See *In re HRC*, 286 Mich App 444, 460; 781 NW2d 105 (2009) ("It is not for this Court to displace the trial court's credibility determination."); see also MCR 2.613(C); *In re Miller*, 433 Mich at 337.

With respect to a child's best interests, we place our focus on the child rather than the parent. *In re Moss*, 301 Mich App at 87. In assessing a child's best interests, a trial court may consider such factors as a "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." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). "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." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

Respondent simply argues that there was no definitive proof of criminal sexual conduct. Again, there was sufficient evidence of sexual abuse, and any asserted shortcomings in the

[3] We note that even in the context of a criminal prosecution for criminal sexual conduct, with its elevated burden of proof, "[t]he testimony of a victim need not be corroborated." MCL 750.520h. Contrary to respondent's argument, "definitive" proof of sexual abuse is not required.

evidence related to credibility was for the family court to assess, not us. Because of the limited nature of respondent's argument regarding BA's best interests, we need not explore any more on the matter.[4]

We affirm.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Jane M. Beckering

[4] We note that the family court's findings on BA's best interests were scarce to say the least. For future reference, we advise the court to discuss the subject of a child's best interests in more depth and detail. We also note that respondent does not frame any argument around the fact that BA is male and NT is female. Abuse is abuse, and we find the gender difference irrelevant.