

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 20, 2011

In the Matter of BROWN/KING, Minors.

No. 303571
Ingham Circuit Court
Family Division
LC Nos. 11-000041-NA
11-000042-NA,
11-000043-NA, &
11-000044-NA

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights under MCL 712A.19b(3)(b)(ii) and (j).¹ We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. MCR 3.977(K); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent's parental rights to her four children were terminated at the combined adjudication trial and initial disposition for failure to protect the oldest child, J.B., from sexual abuse by respondent's husband. Respondent's husband was J.B.'s stepfather and the biological father of the younger three children. Respondent maintained at trial that J.B. lied about the abuse and argues, in part, on appeal that the evidence was insufficient to support the trial court's termination of her parental rights and its conclusion that termination was in the children's best interests because the testimony of several witnesses clearly established J.B.'s propensity to lie.

Subsection 19b(3)(b)(ii) requires evidence of three elements, all of which were met in this case. First, the evidence showed that J.B., the half-sister of the other three children, suffered sexual abuse. J.B. testified and the trial court found her credible, making findings of fact that her

¹ Respondent claims her rights were also improperly terminated under MCL 712A.19b(3)(b)(i) and (3)(k)(ii). However, the trial court terminated the parental rights of the father of the King minors under those subsections.

stepfather had sexually abused her at age eight and resumed the abuse at age ten. Other witnesses testified to the child's behavioral issues, anger when disciplined, and propensity to lie when in trouble, but deference is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it, *Miller*, 433 Mich at 337, and we have no firm and definite conviction upon review of the entire record that the trial court erred in finding J.B. credible and that the stepfather sexually abused her.

Second, the evidence showed that respondent had an opportunity to prevent the abuse, but failed to do so. The evidence clearly showed that J.B. alleged the abuse directly to respondent in 2006, but respondent immediately characterized it as a lie and did not seek professional help in assessing the child's well-being or determining whether her statements were true. J.B. recanted the 2006 allegation a week after making it, but the trial court found credible her statement that she told her maternal grandmother she was recanting only in exchange for the stepfather's promise to stop the abuse, thus providing evidence that respondent had reason to know abuse was occurring and an opportunity to prevent further abuse. The trial court noted that respondent should have been suspicious when eight-year-old J.B. described an act of oral sex, and respondent should have been proactive in investigating how J.B. learned about such a concept, but respondent took no action, and when J.B. again alleged sexual abuse in 2010, respondent responded in the same manner, immediately claiming that J.B. was lying.

Third, the evidence showed a reasonable likelihood that J.B. would suffer abuse in the foreseeable future if placed in respondent's home. The evidence at the time of trial and initial disposition showed that respondent still resided with J.B.'s stepfather and did not separate from him or file for divorce until after the trial court had entered the order terminating her parental rights. Given evidence that the child was sexually abused in respondent's home in 2006 and from 2008 to 2010, clear and convincing evidence showed there was a reasonable likelihood that she would suffer continued sexual abuse by her stepfather and emotional abuse and neglect by respondent in the foreseeable future if returned to respondent's home. All three elements of § 19b(3)(b)(ii) were established by clear and convincing evidence regarding J.B. and, as half-siblings of the abused child, were established regarding the younger three children as well.

Only one statutory ground is required to terminate parental rights, *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004), but the trial court also found clear and convincing evidence to support termination under § 19b(3)(j). The requirement under § 19b(3)(j) that the trial court find a likelihood of harm to the child if returned to the parent's home is incorporated in the more specific terms of § 19b(3)(b)(ii) and, as discussed above, clear and convincing evidence showed a reasonable likelihood of harm to the oldest child if she were returned to respondent. With respect to the younger three children, there was no evidence that they had suffered neglect or abuse in respondent's care. However, under the doctrine of anticipatory neglect, the trial court need not wait to adjudicate parental rights to them until they are harmed, too. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). In considering the youngest three children, the trial court found that respondent's home was one in which they would not be protected because respondent had failed to protect the oldest child. In addition, it found that respondent lacked empathy and insight into signs of sexual abuse, lacked awareness of how an eight-year-old would know about oral sex, remained with her husband despite having cause to know he abused her daughter, and made a concerted effort involving the extended family to ostracize and portray the oldest child as a liar.

The evidence on the whole record, including witnesses' testimony and the psychological evaluations, showed that J.B. had difficult behaviors, reacted aggressively and negatively whenever disciplined, and viewed herself as the stepchild in respondent's home. It also showed that the family and relatives were distressed as a result of her allegations of abuse. Nevertheless, clear and convincing evidence, viewed in light of the trial court's ability to judge the credibility of the witnesses, showed that respondent failed to protect J.B. from the very significant harm of sexual abuse and exercised poor judgment in failing to respond when J.B. made the allegations, thus giving rise to serious doubt about whether she would protect the other children from harm. Therefore, the trial court did not err in terminating respondent's parental rights to all the children under § 19b(3)(j).

Additionally, the trial court did not clearly err in finding termination of respondent's parental rights in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court set forth many facts in its "Supplemental Findings Regarding the Best Interests of the Children," in which it determined that termination was in all the children's best interests. While not every finding of the trial court was established by evidence rising to the level of clear and convincing evidence, sufficient evidence showed that the oldest child was sexually abused and that respondent failed to adequately protect her and did not respond in the manner of a concerned, aware parent. The trial court did not clearly err in finding that respondent could not be relied on to protect her children from ordinary harm, given that she failed to protect J.B. from the significant harm of sexual abuse. Thus, the court did not clearly err in determining that termination was in the children's best interests.

Affirmed.

/s/ Mark J. Cavanagh

/s/ David H. Sawyer

/s/ Patrick M. Meter