STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
March 26, 2013

In the Matter of KULKOSKI Minors.

No. 311770
Montcalm Circuit Court
Family Division
LC No. 2011-00512-NA

Before: STEPHENS, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court's order terminating her parental rights to her three children under MCL 712A.19b(3)(b)(*i*), (g), (j), and (k)(*iii*).[1] We affirm.

The children were removed from the home on the day that petitioner learned the parents regularly disciplined the youngest child by beating him with a "slap board" and found dangerous and unsanitary conditions in the home, including numerous piles of dog feces. The petition sought immediate termination under the four statutory grounds. Both parents pleaded no contest to the allegations and the trial court took jurisdiction without offering either parent a service plan, under MCL 722.638(1). The father eventually voluntarily released his parental rights and respondent's parental rights were terminated after a hearing.

On appeal, respondent argues that the trial court erred in terminating her parental rights because there was no direct evidence that she abused the children and she was never given an opportunity to improve her parenting skills. She also asserts that the trial court committed legal error by not properly addressing the best interest of each child individually. We note, however, that she does not assert that grounds for termination did not exist or that termination was not in the children's best interest.

[1] MCL 712A.19b(3)(b)(*i*): child or sibling suffered physical injury or physical or sexual abuse caused by the parent with reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home; MCL 712A.19b(3)(g): failure to provide proper care or custody with no reasonable expectation that parent will be able to provide proper care and custody within reasonable time; MCL 712A.19b(3)(j): reasonable likelihood that child will be harmed if returned to the parent's home; MCL 712A.19b(3)(k)(*iii*): parent abused child or sibling by battering, torture, or other severe physical abuse.

We review for clear error the trial court's findings that a ground for termination has been established and regarding the child's best interest. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91 (Corrigan, J.); 126 n 1 (Young, J.); 763 NW2d 587 (2009). 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 was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

The record in this case does not lead us to conclude that a mistake was made. Under MCR 3.965(D)(2)(a), when a parent's conduct falls within the provisions of MCL 722.638(1), reasonable efforts need not be made to prevent the removal of the child from the home. In this case, petitioner determined that a parent had abused the child or a sibling of the child by battering, torture, or other severe physical abuse. MCL 722.638(1)(a)(*iii*). Therefore, there was no error in the trial court's failure to order petitioner to offer respondent a service plan.

Nor did the trial court improperly rely on hearsay and circumstantial evidence. When respondent pleaded no contest to the allegations in the petition, she waived her rights to:

> (a) trial by a judge or trial by a jury,
>
> (b) have the petitioner prove the allegations in the petition by a preponderance of the evidence,
>
> (c) have witnesses against the respondent appear and testify under oath at the trial,
>
> (d) cross-examine witnesses, and
>
> (e) have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor[.] [MCR 3.971(B)(3).]

Michigan rules of evidence did not apply to the termination hearing. MCR 3.977(H)(2); *In re Snyder*, 223 Mich App 85, 89-90; 566 NW2d 18 (1997). Thus, the evidence relied on by the court did not need to be legally admissible, as long as it was clear and convincing that one or more facts alleged in the petition were true and that statutory grounds existed under MCL 712A.19b(3). MCL 3.977(H)(3)(a); MCL 712A.19b(3).

The trial court relied chiefly on testimony from petitioner's employee regarding statements made to her by the youngest child, respondent, and the father, and the conduct of these individuals during her visit to the house, as well the conditions she observed. That testimony was sufficient to establish that both parents physically abused the child regularly and over a long period of time. The trial court had an adequate basis on which to disbelieve respondent's testimony that she did not make some of the statements attributed to her.

Nor did the trial court commit legal error in its best interest determination. Respondent cites *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012), for the proposition that, "[T]he trial court has a duty to decide the best interests of each child individually." In *Olive/Metts*, two of the five children had been placed with relatives and were in a different situation than the other three children. We held that the trial court erred in not separately addressing the children in relative placement. *Id*. at 44. This case differs in that it does not

involve relative placement. Moreover, all three children were in the same household when the abuse was discovered, and all three children were in the same situation: one in which being removed from respondent's custody was in their best interest. We conclude that even though the trial court did not in its finding separately name each child, the trial court's decision was not error.

Respondent also argues that the trial court conveyed impatience and prohibited closing arguments, thus causing respondent to limit the number of witnesses she presented and restricting her ability to present her case. We disagree.

No objection was made to the court's handling of respondent's presentation of witnesses or the lack of closing argument. This matter is therefore unpreserved; however, we may review it if we find that failure to consider the issue would result in manifest injustice. *Nuculovic v Hill*, 287 Mich App 58, 63; 783 NW2d 124 (2010). We cannot find that manifest injustice resulted from the conduct of the termination hearing. Nowhere in the transcript is there evidence that the trial court acted to prevent respondent from presenting a particular witness, set a limit to the number of witnesses that could be presented, or imposed a time limit, nor did the court expressly prevent any party from making a closing argument. Most importantly, our review of the record indicates ample evidence supporting termination.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause