

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 14, 2013

In the Matter of WITTMAN, Minors.

No. 312096
Genesee Circuit Court
Family Division
LC No. 10-127087-NA

Before: DONOFRIO, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(h) (parent imprisoned for more than two years, has failed to provide proper care and custody, and will be unable to provide proper care and custody within a reasonable time) and (n)(i) (parent convicted of a specified offense and termination is in child's best interests). Because the trial court did not clearly err by determining that termination of respondent's parental rights was in the children's best interests, we affirm.

Respondent's sole argument on appeal is that the trial court erred by finding that termination of his parental rights was in the children's best interests. See MCL 712A.19b(5). We review for clear error a trial court's best interests determination. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). In making that determination, the court may consider the parent's parenting ability, *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009), the child's bond to the parent, *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004), the child's safety and well-being, *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011), and the child's "need for permanency, stability, and finality," *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992). The court must decide the best interests of each child individually. *In re Olive/Metts*, 297 Mich App 35; ___ NW2d ___ (2012), slip op at 3.

In terminating respondent's parental rights, the trial court relied in part on MCL 712A.19b(3)(n)(i), which requires a determination that respondent was convicted of a specified offense and that termination is in the child's best interests because continuing the parent-child relationship would be harmful to the child. Respondent does not challenge that finding on appeal. We note that the evidence showed that respondent is a pedophile who had sexually abused one of his own children. He was convicted of 14 counts of possession of child sexually abusive material and two counts of assault with intent to commit criminal sexual penetration. He was serving a prison term, and his earliest release date is in July 2015. Thus, the evidence

supports the trial court's determination that termination of respondent's parental rights was in the children's best interests.

The primary issue that delayed resolution of this case for many months was whether the children's right to veterans' benefits, by virtue of respondent's veteran status, would be affected if respondent's parental rights were terminated. The parties presented conflicting hearsay evidence on that issue, and it was unclear from the record whether the children currently received any benefits. Moreover, there was no evidence that any of the children intended to take advantage of educational funding if it was available. The trial court recognized that the outcome of the benefits issue was unclear, but opined that, in any event, the issue was not a valid basis to decline to terminate respondent's parental rights.

Contrary to respondent's argument, the trial court did not shift the burden of proof to him to prove that termination was not in the children's best interests. After recognizing that petitioner had presented evidence showing that termination was in the children's best interests, the court commented that it was respondent's position that termination was not in the children's best interests because of the potential loss of veterans' benefits. The court then observed that respondent had not presented clear evidence that such benefits were at risk. By commenting on the lack of evidentiary support for respondent's position, the trial court did not shift the burden of proof to respondent.

Further, although the trial court did not expressly consider the best interests of each child individually, all of the children's circumstances were the same. Thus, there is no basis for concluding that the outcome would have been different if the court had discussed each child individually. Accordingly, the trial court did not clearly err by finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto