

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 19, 2013

In the Matter of BELL/MELSON, Minors.

No. 312715
Wayne Circuit Court
Family Division
LC No. 12-507786-NA

Before: CAVANAGH, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

Respondent T. Bell appeals as of right from a circuit court order terminating her parental rights to her son and daughter pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (b)(iii), (g), and (j). We affirm because the trial court did not violate respondent's rights and there was sufficient evidence to support the trial court's conclusions.

Respondent contends that the court reversibly erred by refusing to adjourn the termination hearing because respondent was late to arrive. Respondent concedes that she did receive notice of the hearing to begin at 8:30 a.m. on the day in question. The court received a telephone call that respondent would arrive no later than 9:50 a.m. and the court, attempting to accommodate respondent, did not begin the hearing until that time. Respondent's attorney, who was present throughout did not object to the hearing going forward nor request an adjournment. Respondent appeared at approximately 10:30 a.m. just as petitioner's final witness was concluding her testimony. Shortly thereafter, respondent's counsel rested without calling any witnesses.

Given the lack of objection the issue whether the trial court should have adjourned the hearing has not been preserved for appeal. *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007). Therefore, our review "is limited to determining whether a plain error occurred that affected substantial rights." *Rivette v Rose-Molina*, 278 Mich App 327, 328; 750 NW2d 603 (2008).

At a dispositional hearing, "[t]he respondent has the right to be present or may appear through an attorney." MCR 3.973(D)(2). As respondent's counsel was present throughout the hearing, the court complied with this rule. In addition, MCR 3.973(D)(3) specifically provides that "[t]he court may proceed in the absence of parties provided that proper notice has been given." Accordingly, we do not find plain error under the court rules in the trial court's decision to proceed without respondent's presence. In addition, there is no claim that an adjournment should have been ordered to allow respondent to appear as a witness and she did, in fact, arrive

prior to the conclusion of the hearing and before her counsel rested. There is nothing in the record to show that respondent planned to appear as a witness in her defense.

Respondent contends that the trial court's decision to proceed in her absence violated her right of confrontation. A criminal defendant's right of confrontation guaranteed by US Const, Am VI and Const 1963, art 1, § 20 does not apply to civil proceedings, including child protective proceedings. *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993). Respondent also asserts that the court's failure to adjourn the hearing violated her due process rights, but she does not cite any authority in support of her contention that contention. A child protection proceeding does implicate some due process protections for the parent whose rights are at issue. *Id.* at 110. However, the function of the right in this setting is to avoid "the risk of erroneous deprivation of [parental rights]." *Id.* at 112. Here, respondent's counsel was present throughout the hearing and was afforded the opportunity to cross-examine all witnesses against respondent. Respondent received notice of the hearing and, indeed, was present at the hearing in time to exercise her own right to testify had she wished to do so. Under these circumstances we do not find a violation of respondent's rights to due process.

Respondent next argues that the trial court erred in finding that each of the statutory grounds for termination were established by clear and convincing evidence. We review the trial court's findings for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). We agree that the trial court erred in relying on § 19b(3)(b)(i) as a basis for terminating respondent's parental rights. That subsection applies only to a parent who caused an injury or abuse. See *In re Jenks*, 281 Mich App 514, 517-518; 760 NW2d 297 (2008). There was no evidence that respondent abused either child. However, the error was harmless because only one statutory ground for termination is required, *In re CR*, 250 Mich App 185, 207; 646 NW2d 506 (2001), and the trial court did not clearly err in finding that termination was warranted under other statutory grounds. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

The trial court did not clearly err in finding, with respect to respondent's daughter, that each of the following were established: §§ 19b(3)(b)(ii), parent had opportunity to prevent injury or abuse and failed to do so; (b)(iii), another adult injured the minor and injury or abuse is likely to recur; (g), failure to provide proper care or custody; and (j), reasonable likelihood that the child will be harmed if returned to the parent. The evidence showed that the daughter was sexually abused by respondent's boyfriend from the age of 9 until the age of 13. The daughter disclosed the abuse to respondent when she was 11, and again when she was 12, but respondent did nothing to protect the child. To the contrary, she tried to prevent Child Protective Services (CPS) involvement by persuading the child to lie to investigators and she attempted to prevent any police action. The evidence clearly showed that the child was sexually abused by another person and that respondent had the opportunity to prevent the abuse and failed to do so. Although respondent questions the child's credibility, witness credibility is an issue for the trier of fact to resolve, *Morrison v Richerson*, 198 Mich App 202, 209; 497 NW2d 506 (1992), and the trial court found the child to be a credible witness. "It is not for this Court to displace the trial court's credibility determination." *In re HRC*, 286 Mich App 444, 460; 781 NW2d 105 (2009). There was evidence that respondent did not take steps to protect the child from her boyfriend, that respondent did not seek medical attention for the child, that respondent would not cooperate in a criminal investigation of her boyfriend, that respondent continued to allow her

boyfriend into her home and to contact the child, and that respondent was generally unconcerned about the sexual abuse of her child because respondent herself had been sexually abused. This evidence supports the trial court's conclusion that respondent would not protect the child in the future and that the child was reasonably likely to be abused or otherwise harmed if placed in respondent's home.

The trial court also did not clearly err in finding, with respect to respondent's son, that §§ 19(b)(ii), parent had opportunity to prevent injury or abuse and failed to do so, and (j), reasonable likelihood that the child will be harmed if returned to the parent, were each established by clear and convincing evidence. The son's sibling was sexually abused by respondent's boyfriend and respondent was aware of the abuse and did nothing to stop it. Respondent's treatment of her daughter is probative of how she is likely to treat her son. *In re Hudson*, 294 Mich App 261, 266; 817 NW2d 115 (2011). Evidence that respondent protected her boyfriend by persuading her daughter to cover up the abuse and by not cooperating in a police investigation, and that respondent continued to allow her boyfriend into her home, showed that she placed her own needs above those of her children and that her son was likely to be harmed if returned to respondent's custody.

Further, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. *In re Trejo*, 462 Mich at 356-357; MCL 712A.19b(5). Respondent not only ignored her boyfriend's sexual abuse of her daughter, she tried to thwart investigation of the matter by instructing her daughter to lie to authorities. When a referral was finally substantiated, respondent blamed her daughter for the involvement of the authorities. The daughter's relationship with respondent was so severely damaged that the daughter advocated in favor of terminating respondent's parental rights. Further, respondent presented an attitude that it was acceptable for her daughter to be exposed to an abusive environment because respondent had tolerated a similar environment during her own childhood. Although respondent's son had not been similarly abused, it was not in his best interests to remain with a parent who had shown so little regard for her other child's safety, and who could not be expected or trusted to protect either child's safety and welfare.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Douglas B. Shapiro