

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ROBERTS/SMITH, Minors.

UNPUBLISHED
October 17, 2013

No. 314750
St. Clair Circuit Court
Family Division
LC No. 11-000195-NA

In the Matter of C.E.J. SMITH, Minor.

No. 314751
St. Clair Circuit Court
Family Division
LC No. 11-000195-NA

Before: SAAD, P.J., and SAWYER and JANSEN, JJ.

PER CURIAM.

In Docket No. 314750, respondent-mother appeals by right the trial court's order terminating her parental rights to her two minor children under MCL 712A.19b(3)(b)(ii), (b)(iii), (g), and (j). In Docket No. 314751, respondent-father appeals by right the same order terminating his parental rights to his child under the same statutory subsections. We affirm in both appeals.

The original petition alleged that a family friend, Gonzalez, had been convicted of attempting to accost children for immoral purposes, had been a suspect in other sexual abuse cases, and was listed on the sex offender registry. Although respondents admitted knowing Gonzalez was listed on the registry, they allowed him to babysit their children and sleep in their home. After a sleepover at respondents' home, the nine-year-old daughter of a neighbor accused Gonzalez of sleeping in the same bed as the young girls and having sex with her while she was sleeping. Respondent-mother admitted knowing that Gonzalez was in bed with her older daughter and the neighbor girl. However, she nevertheless stated that she trusted Gonzalez around her children. Later, both minor girls at issue in this case told respondent-mother that Gonzalez had had sex with them. A physical examination corroborated their accusations. A few days later, respondents' daughters reported that the sexual abuse included digital, oral, and vaginal penetration. The oldest daughter stated that she had sex with Gonzalez numerous times, watched pornographic movies with him, and watched him perform sexual acts on her younger sister.

The trial court found that statutory grounds to terminate respondents' parental rights were established, but took the matter of the children's best interests under advisement. Respondents and the children then received more than a year of services before petitioner filed a supplemental petition. A termination hearing was held after the children had been in care for 17 months. The trial court heard testimony from case workers, a life skills program coordinator, respondents' counselor, the children's counselors, both respondents, and relatives and friends who were called as character witnesses. The service providers recommended termination of respondents' parental rights because they had not benefitted from services, lacked commonsense skills, did not know how to evaluate who would be appropriate around their children, struggled during visitation, and had no significant bond with the children. Moreover, the evidence established that the children were not attached to respondents and never talked about missing them. Following the hearing, the trial court terminated both respondents' parental rights.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence, *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011), and that termination of parental rights is in the best interests of the children, MCL 712A.19b(5). We review the trial court's factual findings for clear error. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009).

In Docket No. 314750, respondent-mother argues only that termination of her parental rights was not in the best interests of her children. We disagree. Each of the therapists and caseworkers who worked with and observed the family noted a lack of bonding between respondents and their children. The foster mother testified that the children never asked about respondents. Although respondent-mother argues that any lack of bonding was attributable to the court's decision to require supervised visitation, there was no evidence to support the claim that supervised visitation interfered with the parent-child bond. The testimony showed that the children worried about respondents and wanted to remain with their foster parents. Respondent-mother lacked sensitivity to the children, which affected the nature of their relationship and the children's ability to bond with her.

Respondent-mother contends that there was no evidence that the children's maternal grandfather posed a threat to them. Despite respondent-mother's assertion, the record evidence shows that the older daughter accused her maternal grandfather of touching her inappropriately. Even if this claim were never substantiated, however, the girl's statement showed that she was uncomfortable around her maternal grandfather. Given the serious nature of the allegation and the atrocious sexual abuse that the children previously suffered, it was insensitive of respondent-mother to expose her children to additional discomfort. For the girls to feel safe in respondent-mother's care they needed assurance that she would protect them and listen when they felt threatened or uncomfortable. Respondent-mother's decision to bring her daughters to her father's home showed that she was not concerned for their safety.

Respondent-mother further contends that termination of her parental rights was not in the children's best interests because she benefitted from services. However, the record shows that respondent-mother was unable to implement the skills and lessons she learned in counseling and parenting classes. There was no evidence to suggest that respondent-mother could protect her children from further abuse or that she could identify a person who might pose a threat to them.

In fact, the record shows that respondent-mother lacked common sense and the initiative to advocate for her children. A parent must benefit from the services offered and improve his or her parenting skills to the point where the children will no longer be at risk in his or her custody. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). “In other words, it is necessary, but not sufficient, to physically comply with the terms of a . . . [treatment] plan.” *Id.* Quite simply, respondent-mother did not demonstrate that the children would no longer be at risk in her care. The trial court did not clearly err by finding that termination of respondent-mother’s parental rights was in her children’s best interests. MCL 712A.19b(5); see also MCR 3.977(K).

In Docket No. 314751, respondent-father argues that the statutory grounds for termination were not established by clear and convincing evidence. We disagree. Termination of respondent-father’s parental rights was proper under MCL 712A.19b(3)(b)(ii) and (b)(iii) because his child was sexually abused by a family friend and respondent-father failed to prevent the abuse. Respondent-father knew that Gonzalez was a registered sex offender, had a criminal history, and was convicted of sexually assaulting minors in the past. Yet he allowed Gonzalez to stay in the home overnight and babysit the children. Respondent-father’s poor judgment continued while the trial court had jurisdiction. After the children were removed from respondents’ care, a relative reported that respondent-father allowed another sex offender to work on a vehicle located at their house. He also allowed his daughter to spend time around her maternal grandfather, even though there were allegations that he had been sexually abusive to her sister. Respondent-father also failed to ensure that either child had increased supervision during large gatherings. Given respondent-father’s poor judgment and limited concern for his child’s well-being, it was reasonably likely that the child would suffer abuse in the future in his care. MCL 712A.19b(3)(b)(ii) and (b)(iii).

Further, respondent-father failed to demonstrate the ability to provide proper care for his child, who would likely suffer harm in the future if returned to his home. The testimony showed that respondent-father was unable to understand appropriate discipline after completing parenting classes and a life skills program. He was also unable to implement constructive criticism offered by caseworkers or therapists for any prolonged period of time. He was often frustrated with the children. Respondent-father’s work stress carried over during visits and he was unaware of his behavior or treatment of the children even after it was pointed out to him. He was unable to control his frustration even in a supervised setting when he knew he was being observed.

Respondent-father also lacked common sense. Although respondent-father claims that the caseworker only addressed the issue of contact with the maternal grandfather after it had happened, he should not have needed specific instructions to keep his daughter away from someone who had been accused of sexual assault. Rather than take responsibility for his actions, respondent-father claimed that respondent-mother had never told him that the children should not go to her father’s house. Respondent-father should not have taken the risk that the children might be abused again. In addition, respondent-father’s claim that he completed all court-ordered services and that the caseworker made a serious factual error in determining that he had not learned from the services is unsupported by the record.

The trial court did not clearly err by finding that respondent-father was unable to provide proper care and custody for his daughter and that his daughter would likely be harmed if returned to his home. MCL 712A.19b(3)(g) and (j).

Nor did the trial court clearly err in its best-interests determination. MCR 3.977(K). The trial court correctly found that termination of respondent-father's parental rights was in his daughter's best interests. There was no bond evident between respondent-father and his daughter. Moreover, it was certainly not in the child's best interests to be exposed to the risk of further harm or sexual abuse. Respondent-father continued to allow many visitors in and out of his home, compromising his ability to supervise his daughter. More importantly, as already explained, he allowed his daughter to be around her maternal grandfather, a man who had been accused of sexual assault in the past. The trial court properly determined that the child was in need of an environment where she would not be at risk of further sexual abuse. Termination of respondent-father's parental rights was in the child's best interests. MCL 712A.19b(5).

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Kathleen Jansen