STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of N. FORTENBERRY, Minor.

UNPUBLISHED
December 3, 2013

No. 314783
Ingham Circuit Court
Family Division
LC No. 12-001494-NA

Before: WHITBECK, P.J., and WILDER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the child at issue under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and MCL 712A.19b(3)(j) (reasonable likelihood of harm). We affirm.

Prior to the proceedings in this case, respondent shared a home with the mother of the child at issue, a second woman, and the children he had fathered by both women. On September 24, 2012, he severely beat the second woman, resulting in bruising, three broken vertebra, two broken ribs, and burns to her breasts, where respondent had put out a cigarette. Thereafter, petitioner filed a petition seeking to terminate the parental rights of respondent and the child's mother.[1] A criminal case against him was pending at the time of the proceedings in this case.[2]

The evidence presented at trial and at the dispositional hearing established that respondent frequently abused the women he lived with and that the women were accustomed to this abuse. However, the evidence showed that respondent never abused his children and that he abused the women outside the presence of the children. The trial court found that given the prevalence of domestic violence in the home, the statutory grounds for termination had been established and termination was in the best interests of the child. The court concluded that while respondent had never abused the child and the child may not have witnessed the abuse of the women, the child was aware of the abuse and it was detrimental to the child's emotional and psychological well-being. While there was no expert to testify as to impact domestic violence

[1] The parental rights of the mother were not terminated.

[2] In a separate case, respondent's parental rights to his three children by the second woman were terminated, which we subsequently affirmed. *In re Fortenberry*, unpublished opinion per curiam of the Court of Appeals, issued July 2, 2013 (Docket No. 314377).

had on the child, it is axiomatic that a father beating and abusing the mother of a child will have an impact on the child and therefore, we find the trial court did not err in the termination of parental rights of such a father.[3]

Respondent argues that the trial court erred in finding that the statutory grounds for termination of his parental rights were established and that termination was in the best interests of the child. We find that neither argument has merit. We review for clear error a trial court's determination that statutory grounds for termination have been established by clear and convincing evidence. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). "A finding is clearly erroneous if the appellate court is left with a definite and firm conviction that a mistake has been made." *Myland v Myland*, 290 Mich App 691, 694; 804 NW2d 124 (2010) (quotation marks omitted). The trial court's interpretation of statutes and court rules is reviewed de novo. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

Respondent's parental rights were terminated under MCL 712A.19b(3)(g) and (j), which provide as follows:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
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> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
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> * * *
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> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. Respondent argues that while he abused his girlfriends, he never abused his children. This argument wholly ignores the severe emotional harm children may be exposed to by living in a home where violence is perpetrated by one of the children's parents and that the perpetrator of such violence should not be allowed to continue to have parental rights. This Court has established that emotional harm alone is sufficient to establish grounds for termination. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115

[3] We distinguish this situation from *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119 (2011) where this Court found that parental rights may not be terminated simply because the parent is a victim of domestic violence. In this case, as is obvious, respondent is the perpetrator of the violence.

(2011). Here, the record supports the trial court's finding that the child was likely to suffer severe emotional harm, if she had not suffered it already, as a result of respondent's pervasive violent and abusive lifestyle. We are not left with a definite and firm conviction that a child in respondent's home would not be aware of the domestic violence given its prevalence and the visible indications the women bore, such as bruises and other injuries. Further, the court's conclusion that respondent showed no remorse or regret for his actions is likely based in part on his demeanor, which is given due deference by this Court. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). However, the finding is also supported by the evidence of record. For example, a child protective service (CPS) caseworker testified that respondent minimized his responsibility for the September 24, 2012, assault, saying the victim should have known that texting another man would make him angry. Further, the CPS caseworker was asked about respondent's demeanor during her interview of him, and she stated that "he didn't seem upset at all." And when he did start to show some emotion over the injuries inflicted on the victim, respondent quickly "started talking about his father. He was proud that his father was, quote, a pimp in Detroit and wearing colored suits and had lots of rings." There was no evidence that the circumstances of the home would be changed within a reasonable time.

Respondent also argues that the court erred in finding that termination of his parental rights was in the best interest of the child. A trial court's determination that termination of parental rights is in the best interest of the child by a preponderance of the evidence is reviewed for clear error. *In re Rood*, 483 Mich at 91; *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

The trial court's determination that termination of respondent's parental rights was in the child's best interest was not clearly erroneous. From the testimony at trial and at the dispositional hearing, it appears that respondent had a close bond with the child. However, the environment in which that bond existed was intolerable, being rife with respondent committing numerous acts of domestic violence and abuse. As the trial court stated, "[T]here is no question to me that there probably is a bond with [the child] and her father. However, . . . the Court has to balance that bond with the harm to" the child. The child lived in a home where respondent continually abused her mother and the mother(s) of her half-siblings, exposing her to severe emotional harm. Therefore, we are not left with a definite and firm conviction that the trial court erred in its best-interest determination.

Respondent also argues that petitioner should have provided reunification services to him. This argument ignores well-settled law. "Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105, 117 (2009). However, the petitioner "is not required to provide reunification services when termination of parental rights is the agency's goal." *Id*. at 463. In this case, petitioner sought termination of respondent's parental rights in its initial petition. Accordingly, it was not required to provide respondent with any reunification services.

Affirmed.

/s/ William C. Whitbeck
/s/ Kurtis T. Wilder
/s/ Amy Ronayne Krause