

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of L. VANNESTE, Minor.

UNPUBLISHED
November 26, 2013

No. 315867
St. Clair Circuit Court
Family Division
LC No. 12-000315-NA

Before: FORT HOOD, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

Respondent appeals the trial court's order that terminated his parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (g), and (j). For the reasons set forth below, we affirm.

The initial petition requested the court to take jurisdiction of the minor child and terminate respondent's parental rights because respondent sexually assaulted A.J., the minor child's teenaged half sister. Respondent denied the allegations and the matter went to trial.

Respondent was the live-in boyfriend of the mother of the minor child and her two older half sisters. At the trial, A.J. testified that respondent raped her while the two of them were alone in their home. According to A.J., respondent dragged her into his bedroom, hit her in the head with his fist, and threatened her with a gun during the incident. A.J. testified that respondent laundered the bedding after the attack. Other witnesses, including medical personnel and the police, testified they observed physical injuries to A.J., which were consistent with her testimony. The police investigated and found a gun in respondent's car, and bed linens in the washer and dryer. After hearing all the evidence, the court assumed jurisdiction over the minor child pursuant to MCL 712A.2(b)(1) and (2), and terminated respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i), (g), and (j).¹ Respondent challenges the trial court's: (1)

¹ MCL 712.19b(3)(b)(i) states that a court may terminate parental rights if clear and convincing evidence shows that a sibling of the child has suffered sexual abuse "and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home." MCL 712.19b(3)(g) provides that a court may terminate parental rights when 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

exercise of jurisdiction; and (2) holding that the statutory grounds for termination were established by clear and convincing evidence.

We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). To properly exercise jurisdiction, the trial court must find by a preponderance of the evidence that a statutory basis for jurisdiction exists. *Id.* In other words, to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination listed in MCL 712A.19b(3) is met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The trial court's ultimate decision to terminate parental rights is reviewed for clear error. MCR 3.977(K). A decision is clearly erroneous if the appellate court is left with a definite and firm conviction that the trial court made a mistake. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

Here, the trial court exercised jurisdiction to protect the minor child because of A.J.'s claims that respondent sexually assaulted her. The court found A.J.'s claims credible, noting that other evidence corroborated her testimony. The court's decision was largely based on its credibility assessment and this Court will defer to that assessment. MCR 2.613(C); MCR 3.902(A); *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). The evidence established that respondent brutally attacked and sexually assaulted the minor child's half sister in the children's home. This attack demonstrated a substantial risk of harm to the minor child's mental well-being, and justified the trial court's exercise of jurisdiction under MCL 712A.2(b)(1). The violent episode also established that the home was unfit due to respondent's criminality and depravity, and jurisdiction was properly exercised under MCL 712A.2(b)(2) as well. Accordingly, the court did not clearly err when it exercised jurisdiction over the minor child.

Respondent challenges the veracity of A.J.'s testimony, and argues that the court clearly erred in believing that testimony. He contends that A.J. testified inconsistently and/or illogically, and observes that her statements demonstrate she dislikes him. But these allegations, were they true, do not make the trial court's finding that respondent sexually assaulted A.J. clearly erroneous. Put simply, the trial court believed the evidence supported A.J.'s version of events and not respondent's. We are required to give appropriate deference to the trial court's assessments of the parties' credibility. MCR 2.613(C); MCR 3.902(A); *In re Ellis*, 294 Mich App at 33.

Nor did the trial court err when it terminated respondent's parental rights to the minor child under MCL 712A.19b(3)(b)(i) or (j). Although there was no evidence that respondent abused this minor child, his conduct with respect to A.J. suggests how he would treat his own child. *In re Foster*, 285 Mich App 630, 631; 776 NW2d 415 (2009). For this reason, termination was warranted under subsection (3)(b)(i). See *In re Jenks*, 281 Mich App 514; 760 NW2d 297 (2008). The evidence also supports the court's finding that there was a reasonable

care and custody within a reasonable time considering the child's age." MCL 712A.19b(3)(j) states that termination is appropriate if "[t]here 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."

likelihood of future harm, based on respondent's conduct, justifying termination under subsection (3)(j) as well.²

Affirmed.

/s/ Karen M. Fort Hood

/s/ Henry William Saad

/s/ Stephen L. Borrello

² Termination was not warranted under subsection (3)(g) because there was no evidence that respondent ever failed to provide proper care and custody for the minor child. However, this error was harmless because clear and convincing evidence supported the other statutory grounds. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).