

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of J. MILNER, Minor.

UNPUBLISHED
December 17, 2013

No. 315936
Wayne Circuit Court
Family Division
LC No. 12-510826-NA

Before: K. F. KELLY, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g) (failure to provide proper care or custody), (j) (reasonable likelihood of harm), and (n)(i) (parent convicted of second-degree murder). We affirm.

I. FACTUAL BACKGROUND

Respondent murdered the minor's mother while the minor, five years old at the time, was present. His mother's injuries were consistent with smothering and strangulation. She had various abrasions on her body including blunt force injuries to her head and a chop wound on her chin.

Thus, petitioner filed a petition requesting the court to take jurisdiction over the child and terminate respondent's parental rights. Petitioner alleged that respondent had a history of domestic abuse and that the minor had witnessed the murder of his mother at the hands of respondent.

The court authorized the petition and took jurisdiction over the child. The court then proceeded to termination, wherein the parties stipulated that respondent had been convicted of second-degree murder and that the minor had testified against respondent during the criminal proceedings. The guardian ad litem also stated that the minor was having behavioral problems and had been attending counseling.

The trial court found that there was clear and convincing evidence of MCL 712A.19b(3)(g) (failure to provide proper care or custody), (j) (reasonable likelihood of harm), and (n)(i) (parent convicted of second-degree murder). The court also found that termination was in the child's best interest, noting that the child was an eyewitness to the violent murder of

his mother at the hands of respondent, and that it would be harmful to the child to continue the relationship with respondent. Respondent now appeals.

II. TERMINATION OF PARENTAL RIGHTS

A. STANDARD OF REVIEW

To terminate a respondent's parental rights, the trial court must find by clear and convincing evidence that at least one statutory ground for termination has been established. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *Id.* at 90. We review for clear error both the trial court's determining that a statutory ground for termination had been proven and that termination was in the child's best interest. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App at 80 (quotation marks and citation omitted).

B. ANALYSIS

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCL 712A.19b(3)(g) permits the trial court to terminate respondent's parental rights upon a finding that "[t]he 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." MCL 712A.19b(3)(j) permits the trial court to terminate respondent's parental rights upon a finding that "[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." Lastly, MCL 712A.19b(3)(n)(i) permits the trial court to terminate respondent's parental rights if the parent was convicted of second-degree murder, MCL 750.317, and that termination is in the child's best interests.

Here, respondent brutally murdered the minor's mother while the minor was present. The child testified against respondent during the criminal proceedings, and respondent was convicted of second-degree murder. Moreover, most likely because of respondent's shocking act of violence, the child had behavioral problems and was in counseling. Respondent "has forever deprived his child[] of the love, companionship and guidance of [his] mother," which "demonstrates a callous disregard for the welfare of" his son and irrevocably damaged the parent-child relationship. *In re Mudge*, 116 Mich App 159, 162; 321 NW2d 878 (1982). Therefore, we find that the trial court did not clearly err in finding that the statutory grounds for termination had been established by clear and convincing evidence and that termination was in the child's best interests. MCL 712A.19b(5); MCR 3.977(E)(4).

Respondent, however, contends that the trial court terminated his parental rights merely because he was incarcerated, which is inconsistent with the Michigan Supreme Court's holding in *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010). However, the trial court in the instant case did not terminate respondent's parental rights simply because he was incarcerated. Rather,

the court relied on the events that led to respondent's incarceration, namely, the fact that respondent killed the minor's mother in front of the minor, which severely traumatized the minor. From this evidence, the trial court properly found that respondent had little regard for the child's welfare and was unfit to be a custodial parent. *In re Mudge*, 116 Mich App at 162-163. The trial court also considered the child's placement with relatives and found that termination was still appropriate, as a continuation of the parent-child relationship would be harmful to the minor. We find no error in the trial court's rulings.

III. CONCLUSION

The trial court properly found that there was clear and convincing evidence of the statutory grounds, MCL 712A.19b(3)(g), (j), and (n)(i), and that termination was in the best interest of the child. We affirm.

/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray
/s/ Michael J. Riordan