

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of A.S., Minor.

UNPUBLISHED
December 17, 2013

No. 316219
Wayne Circuit Court
Family Division
LC No. 12-510239

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

PER CURIAM.

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

I. FACTS AND PROCEDURAL HISTORY

In November 2012, the Department of Human Services (“the Department”) filed a petition to terminate respondent Wilson’s parental rights over A.S., his biological daughter. The Department alleged that respondent: (1) sexually abused S.S., A.S.’s friend¹, placing A.S. at risk of abuse; and (2) Wilson had a criminal history, which included criminal sexual conduct. A.S. was removed from Wilson’s care and placed with Wilson’s brother. The trial court conducted two proceedings: one addressed whether there were statutory grounds for termination; the other analyzed whether termination would be in A.S.’s best interests.

At trial, S.S. testified that respondent sexually molested her more than fifty times, over a period of eight years (when S.S. was 8 to 16 years old). S.S. and A.S. were friends, and S.S. frequently spent the night at respondent’s home. S.S. stated that the abuse followed a regular pattern: respondent would enter the bedroom where S.S. and A.S. were sleeping and order A.S. to leave. Wilson then raped S.S. He instructed S.S. not to tell anyone about his actions, and S.S. did not tell anyone because she was scared. When she was 16 years old, S.S. told her cousin of the assaults, and subsequently reported them to the police.

¹ S.S. also has family ties to A.S., as she is the half-sibling of A.W., another of respondent’s children. A.S., like S.S., is thus A.W.’s half-sibling.

Respondent denied all S.S.'s allegations. However, he admitted to an extensive criminal history, which includes a plea of no-contest to a CSC IV charge (which required him to register as a sex offender) and felony cocaine possession.

The trial court took jurisdiction over A.S. and found that the Department had established statutory grounds to terminate respondent's parental rights under MCL 712A.19b(3)(g) (parent is unable to provide proper care), (j) (child will likely be harmed under parent's care), and (n)(i) (parent was convicted of criminal sexual conduct and termination is in the child's best interest). The court supported its holding by finding that Wilson sexually abused S.S. for eight years and noted Wilson's prior CSC conviction.²

After hearing testimony from Wilson and child protective services (which noted that A.S. wants to return to respondent), the trial court held that termination of Wilson's parental rights was in A.S.'s best interests. It considered that A.S. had a bond with respondent and was placed with a paternal relative, but it stressed that Wilson's history as a sex offender—including the several years he molested S.S.—would put A.S. at risk, and that no “safety plan” could create a safe environment for her. It also noted that A.S.'s uncle was willing to care for her over an extended period of time.³

Wilson appeals the termination order, and claims the trial court erred when it: (1) found that there were statutory grounds for termination; and (2) held that termination was in A.S.'s best interests.

II. ANALYSIS⁴

A. STATUTORY GROUNDS FOR TERMINATION

“The existence of a statutory ground for termination of parental rights must be proven by clear and convincing evidence.” *In re LE*, 278 Mich App 1, 22, 26; 747 NW2d 883 (2008), citing MCR 3.977(F)(1)(b) and MCL 712A.19b(1). Clear and convincing evidence “must produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact-finder to come to a clear conviction, without hesitancy, of the truth of the precise facts in

² The court mistakenly stated that Wilson was convicted of third degree criminal sexual conduct, rather than fourth degree criminal sexual conduct.

³ The court also terminated the parental rights of Alexis' mother, who has not appealed.

⁴ Our Court reviews the trial court's “decision that a ground for termination has been proven by clear and convincing evidence” for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (internal citations and quotation marks omitted). The trial court's findings are only set aside if the appellate court “is left with the definite and firm conviction that a mistake has been made.” *Id.* at 41 (internal quotation marks omitted).

issue.” *Hunter v Hunter*, 484 Mich 247, 265; 771 NW2d 694 (2009) (internal quotation marks omitted).

MCL 712A.19b(3) provides, in relevant part:

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:

* * *

(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.

* * *

(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.

* * *

(n) The parent is convicted of 1 or more of the following, and the court determines that termination is in the child’s best interests because continuing the parent-child relationship with the parent would be harmful to the child:

(i) A violation of section 316, 317, 520b, 520c, 520d, 520e⁵, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316, 740.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

“The petitioner bears the burden of establishing the existence of at least one . . . ground[] by clear and convincing evidence.” *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003).

1. MCL 712A.19B3(G) AND (J)

Here, the trial court properly found clear and convincing evidence to terminate Wilson’s parental rights under MCL 712A.19b(3)(g) and (j). A.S. is at risk of physical and emotional harm if she remains in respondent’s care because respondent is a sexual predator.

Wilson makes much of the fact that S.S. is not A.S.’s sibling, and emphasizes that there is no evidence he molested his biological children. This assertion is of no relevance to MCL 712A.19b(3)(j), which allows termination of parental rights where there is a “reasonable likelihood” the child will be harmed. Such a “reasonable likelihood” of harm is present here—

⁵ Fourth degree criminal sexual conduct.

respondent molested another child over a period of eight years. Likewise, MCL 712A.19b(3)(g) only requires evidence that a parent cannot provide his child with “proper care and custody.”⁶ Further, respondent’s argument “focuses only on the potential of *physical* harm or abuse and ignores the fact that [A.S.] had been, and continue[s] to be, at risk of *emotional* harm.” *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011) (emphasis in original). Were we to assume Wilson will not sexually abuse A.S., he has already harmed her emotionally by abusing her friend S.S.—which resulted in A.S.’s placement in protective custody.

In addition to his abuse of S.S., respondent has a criminal background, which includes a prior CSC conviction and his registration as a sex offender. His home is hardly a safe place for a teenage girl. The trial court thus properly terminated respondent’s parental rights pursuant to MCL 712A.19b(3)(g) and (j).

2. MCL 712A.19B(3)(N)(I)

Nor did the trial court clearly err when it terminated Wilson’s parental rights under MCL 712A.19b(3)(n)(i). As noted, MCL 712A.19b(3)(n)(i) permits termination when:

(n) The parent is convicted of 1 or more of the following, and the court determines that termination is in the child’s best interests because continuing the parent-child relationship with the parent would be harmful to the child:

(i) A violation of section 316, 317, 520b, 520c, 520d, 520e⁷, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316, 740.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

As such, for termination under this subsection, the court must find: (1) a conviction of one or more of the listed crimes, and (2) that termination is in the child’s best interests.

Here, the trial court properly found both factors.⁸ Wilson was convicted of fourth-degree criminal sexual conduct in 2000, which satisfies the subsection’s requirement of a criminal conviction. The fact that Wilson pleaded no-contest is immaterial—though evidence of a no-contest plea is inadmissible to prove “that the defendant committed the acts forming the basis for the charge to which he entered his plea,” such evidence is admissible “for purposes of

⁶ The trial court evaluated the danger of leaving A.S. with respondent through consideration of his abuse of S.S.—an inference it is permitted to make. See *In re Powers*, 208 Mich App 582, 592–593; 528 NW2d 799 (1995), superseded by statute on other grounds in MCL 712A.19b(3)(b)(i). This common-sense approach enables the court to protect children where there is a likelihood of harm without waiting for such harm to occur.

⁷ Fourth degree criminal sexual conduct.

⁸ As the prosecution notes, it is irrelevant that the trial court erroneously referenced Wilson’s fourth-degree CSC conviction as a third-degree CSC conviction—both are listed offenses in 19b(3)(n)(i).

establishing the fact of conviction” where there “was independent proof of the misconduct leading to the charge respondent pled to.” *Matter of Andino*, 163 Mich App 764, 770, 773; 415 NW2d 306 (1987).⁹ Wilson testified to the facts that led to his no contest plea for fourth-degree criminal sexual conduct, including the fact that he was convicted and sentenced to probation—and thus provided “independent proof of the misconduct leading to the [fourth-degree criminal sexual conduct] charge.” *Id.* at 773.¹⁰

The Department also presented evidence independent from Wilson’s prior conviction to establish that termination was in A.S.’s best interests: his sexual abuse of S.S. over an eight year period. The trial court cited this abuse in its termination of respondent’s rights, and thus properly found that termination was in her best interests to ensure A.S.’s safety and protect her from further emotional harm.

3. REUNIFICATION SERVICES

Though MCL 712A.19a(2) compels the court to make “reasonable efforts to reunify the child and family,” the court need not make those efforts when “termination of parental rights is the [Department’s] goal.” *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013), citing *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). The Department may request termination in its initial petition. *Id.*, citing MCL 712A.19b(4); MCR 3.961(B)(6). When the Department does so, “termination is required . . . and additional reunification efforts shall not be ordered if” there is a statutory ground for termination and termination is in the child’s best interests. *Id.*

In this case, the Department requested termination of Wilson’s parental rights in its initial petition, and the trial court found (1) statutory grounds to terminate his parental rights and (2) that termination was in A.S.’s best interests. Wilson’s argument that the court should have made an effort to reunify him with A.S. thus lacks merit and is contrary to precedent, statute, and court rules.

B. BEST INTERESTS OF THE CHILD¹¹

⁹ *Adino*’s analysis of no contest pleas is based on *State Bar Grievance Administrator v Lewis*, 389 Mich 668, 679–681; 209 NW2d 203 (1973), which permitted use of a no contest plea as evidence of a conviction in the context of attorney-client disputes.

¹⁰ Wilson’s unsupported argument that 19b(3)(n)(i) requires a criminal conviction for sexually abusing a minor (as opposed to a criminal conviction for sexually abusing an adult) is contradicted by the plain language of the statute, which lists sex crimes (including MCL 750.520e, to which defendant pleaded no contest) that *do not* require sexual abuse of children for conviction. See *People v Kloosterman*, 296 Mich App 636, 639; 823 NW2d 134 (2012) (“[i]f the statutory language is unambiguous, the Legislature is presumed to have intended the meaning expressed and further judicial construction is impermissible”).

¹¹ Our Court reviews the trial court’s best interests determination for clear error. *Olive/Metts*, 279 Mich App at 40, citing *In re Trejo*, 462 Mich 341, 356–357; 612 NW2d 407 (2000). The

After the Department presents clear and convincing evidence of a statutory ground for termination, it must then prove by a preponderance of the evidence that termination is in the child's best interests. *In re Moss*, 301 Mich App at 76. “‘If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.’” *Olive/Metts*, 297 Mich App at 42, quoting MCL 712A.19b(5).

To determine a child's best interests, the trial court may consider a number of factors, including the respondent's bond with the child, his parenting ability, and “the child's need for permanency, stability, and finality.” *Id.* A trial court must also “explicitly address whether termination is appropriate in light of the child[]'s placement with relatives.” *Id.* at 43, citing *In re Mason*, 486 Mich 142, 163–165; 782 NW2d 747 (2010).

Here, despite respondent's assertions to the contrary, the trial court did address A.S.'s placement with her uncle as a factor in its decision to terminate respondent's parental rights. The court also observed that respondent and A.S. share a bond, and that she wants to live with him. However, the trial court weighed these findings with other factors: namely, that Wilson sexually molested S.S. for eight years and possessed a prior CSC conviction. It determined that such conduct would put A.S. at risk and that it could not develop a safety plan that would create a safe environment for her under respondent's care. Accordingly the trial court properly determined that termination of respondent's parental rights was in A.S.'s best interests.

III. CONCLUSION

For the reasons stated above, the trial court's termination of respondent's parental rights is affirmed.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Henry William Saad

trial court's findings are set aside only if the appellate court “is left with the definite and firm conviction that a mistake has been made.” *Id.* at 41.