

STATE OF MICHIGAN
COURT OF APPEALS

In re E. W. MORLEY, Minor.

UNPUBLISHED
March 21, 2024

No. 364871
Oakland Circuit Court
Family Division
LC No. 2021-883714-NA

In re R. I. POTTER, Minor.

No. 364872
Oakland Circuit Court
Family Division
LC No. 2021-883713-NA

Before: FEENEY, P.J., and REDFORD and YATES, JJ.

PER CURIAM.

Respondent appeals as of right two January 6, 2023 orders that terminated his parental rights to his minor children, EWM and RIP.¹ Respondent’s parental rights were terminated under MCL 712A.19b(3)(b)(i) (the child or a sibling of the child has suffered physical injury or physical or sexual abuse), (g) (failure to provide proper care or custody), (j) (reasonable likelihood the children will be harmed if returned to the parent), (k)(ii) (the parent has committed criminal sexual conduct against the child or the child’s sibling), and (k)(ix) (the parent has engaged in sexual abuse against the child or the child’s sibling). We affirm in both dockets.

I. BACKGROUND

This matter began when petitioner, the Department of Health and Human Services (DHHS), filed a petition with respect to each child. The petitions alleged respondent had sexually

¹ The appeals were consolidated “to advance the efficient administration of the appellate process.” *In re E W Morley Minor; In re R I Potter Minor*, unpublished order of the Court of Appeals, entered February 14, 2023 (Docket Nos. 364871; 364872).

abused RIP. RIP made the disclosures of abuse during a forensic interview. The petitions also alleged respondent had not seen or provided for EWM in years. The children's respective mothers were not named as respondents. DHHS requested that the trial court authorize the petitions, exercise jurisdiction, and terminate respondent's parental rights at the initial dispositional hearing. After a preliminary hearing, the trial court authorized the petitions, and respondent was not provided parenting time. The petitions were later amended to add allegations that respondent subjected the children's respective mothers to domestic violence, including violence in the children's presence.

Before trial, DHHS moved to admit four-year-old RIP's statements concerning respondent's sexual abuse. After reviewing a video of the forensic interview and hearing the testimony of Megan Stanley, who conducted the interview, the trial court admitted the statements. A combined adjudication trial and statutory grounds hearing was held over several days in August 2022, September 2022, and October 2022. Evidence was presented concerning RIP's statements, respondent's criminal history, respondent's relationships with the children's mothers, and respondent's failure to provide proper care and custody. The trial court exercised jurisdiction and found grounds for termination were established under MCL 712A.19b(3)(b)(i), (g), (j), (k)(ii), and (k)(ix).

In January 2023, the best-interests hearing was held. After hearing testimony from two caseworkers, the trial court found by a preponderance of the evidence that termination of respondent's parental rights was in the children's best interests even though they were in the custody of their respective mothers. These appeals followed.

II. ADMISSION OF RIP'S STATEMENTS INTO EVIDENCE

Respondent argues the trial court abused its discretion by admitting RIP's statements into evidence. We disagree.

A. STANDARDS OF REVIEW

"This Court reviews the trial court's decision to admit or exclude evidence for an abuse of discretion. To the extent that [a] determination of the evidentiary question requires an examination of MCR 3.972(C)(2). . . , [this Court's] review is de novo." *In re Archer*, 277 Mich App 71, 77; 744 NW2d 1 (2007) (citations omitted). This Court reviews a trial court's factual findings for clear error following an evidentiary hearing. *In re Gonzales/Martinez*, 310 Mich App 426, 430; 871 NW2d 868 (2015). "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 Miller*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 364195); slip op at 2.

B. ANALYSIS

"During the adjudicative phase, a trial may be held to determine whether any of the statutory grounds alleged in the petition have been proven." *In re Archer*, 277 Mich App at 80 (quotation marks and citation omitted). "Although the rules of evidence for a civil proceeding apply during such a trial, hearsay statements of children pertaining to acts of child abuse are

admissible at the trial if the criteria for reliability set out in MCR 3.972(C)(2) . . . are satisfied.”
Id. In relevant part, MCR 3.972(C)(2) states:

Any statement made by a child under 10 years of age or an incapacitated individual under 18 years of age with a developmental disability as defined in MCL 330.1100a(26) regarding an act of child abuse, child neglect, confirmed sexual abuse, or confirmed sexual exploitation, as defined in MCL 722.622(g), (k), (q), or (r), performed with or on the child by another person may be admitted into evidence through the testimony of a person who heard the child make the statement as provided in this subrule.

(a) A statement describing such conduct may be admitted regardless of whether the child is available to testify or not, and is substantive evidence of the act or omission if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness. This statement may be received by the court in lieu of or in addition to the child’s testimony.

Under MCR 3.972(C)(2)(a), the trial court must determine, “ ‘in a hearing held before trial,’ ” whether the statement possesses adequate indicia of trustworthiness. *In re Archer*, 277 Mich App at 81, quoting MCR 3.972(C)(2)(a). The reliability of a statement depends on the totality of the circumstances surrounding the making of the statement. *In re Brimer*, 191 Mich App 401, 405; 478 NW2d 689 (1991). “Circumstances indicating the reliability of a hearsay statement may include spontaneity and consistent repetition, the mental state of the declarant, use of terminology unexpected of a child of a similar age, and lack of motive to fabricate.” *Id.* Evidence the statements were made during a forensic interview also supports an indicia of trustworthiness. *In re Archer*, 277 Mich App at 82.

In this case, the trial court held a pretrial, tender-years evidentiary hearing on DHHS’s motion to admit hearsay statements made by RIP regarding sexual abuse. The evidence at issue on appeal includes statements RIP made to Stanley during a forensic interview. The trial court reviewed a video recording of the interview, where RIP reported respondent digitally penetrated his anus, and heard testimony from Stanley at the evidentiary hearing. At the end of the hearing, the trial court ruled the statements RIP made were sufficiently trustworthy for purposes of MCR 3.972(C)(2)(a) and admissible at trial. This was not an abuse of discretion.

The circumstances surrounding RIP’s statements provided adequate indicia of trustworthiness. Stanley was qualified as a trained forensic interviewer of children,² and the trial court found Stanley’s testimony to be “very credible,” “thoughtful and earnest.” Stanley testified she followed the forensic interviewing protocol which is designed to obtain information in a “non-leading, non-bias forensically sound manner.” Stanley interviewed RIP in a room that was suitable for a child of his age; RIP was four years old at the time. The room included things like Play-Doh and “fidget toys,” and Stanley testified it is common for children to play with objects while being interviewed. During the forensic interview, RIP reported to Stanley that respondent digitally

² Ms. Stanley testified that she had conducted close to 600 forensic examinations during her career.

penetrated his anus on two occasions in Rochester, Michigan, where respondent lived at all relevant times.

According to Stanley, RIP described the assaults using age-appropriate terminology. Specifically, RIP reported respondent touched his “butt,” noting respondent “does it up top. . . .” RIP also pointed toward his buttocks and said “up and up and up.” When asked for clarification, RIP repeated this information and again clarified respondent engaged in this behavior. When RIP made these statements, he was playing with Play-Doh. According to Stanley, RIP mimicked respondent’s actions using Play-Doh and inserted his finger in and out of a hole in the Play-Doh. RIP did not report anyone else touched his buttocks. Based on Stanley’s questions, she did not believe RIP’s buttocks were touched for nonsexual purposes.

At the beginning of the interview, Stanley questioned RIP as to what constituted a truth and a lie. According to Stanley, RIP “did great.” Stanley also asked questions to ensure RIP was not instructed on what to say, and she was satisfied with his responses. Stanley believed RIP felt safe to be honest during the interview.

Respondent nonetheless takes issue with some of RIP’s responses which did not always address Stanley’s questions. Stanley testified it was “completely normal” for children who are four years old to “jump around in conversation[.]” Additionally, RIP has Autism Spectrum Disorder, and respondent reported RIP is “a little mentally delayed.” RIP was also asked to discuss a difficult topic: sexual assault that a trusted family member perpetrated on him. While respondent argues the trial court should not have found RIP’s statements to be credible, this Court must give “due regard to the trial court’s special opportunity to observe the witnesses.” *In re Miller*, ___ Mich App at ___; slip op at 2. The trial court reviewed the video of the forensic interview and observed Stanley’s testimony. In light of the record, which includes the trial court’s detailed findings of fact and credibility determinations, the trial court did not abuse its discretion by deeming RIP’s hearsay statements admissible at trial pursuant to MCR 3.972(C)(2)(a).

III. STATUTORY GROUNDS

Respondent next argues the trial court clearly erred by finding statutory grounds for termination.³ We disagree.

A. STANDARD OF REVIEW

“We review for clear error the trial court’s finding that there are statutory grounds for termination of a respondent’s parental rights.” *In re A Atchley*, 341 Mich App 332, 343; 990 NW2d 685 (2022). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm

³ On appeal, respondent fails to address the trial court’s decision to terminate his parental rights under MCL 712A.19b(3)(g). Only one statutory ground for termination needs to be established to warrant termination. *In re Trejo Minors*, 462 Mich 341, 360; 612 NW2d 407 (2000, superseded in part by statute as stated in *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013)). We nonetheless address one statutory ground that respondent did challenge for purposes of completeness. *Id.*

conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Miller*, ___ Mich App at ___; slip op at 2.

B. ANALYSIS

"[R]egard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Mota*, 334 Mich App 300, 320; 964 NW2d 881 (2020) (quotation marks and citation omitted). In this case, after five days of trial, including two days of testimony by the respondent, the trial court conducted a significant and detailed evaluation of the witnesses and their testimony:

Before I go into the specific facts that I want findings about I want to address each of the witness' credibility because I think that's important given the nature of the allegations and the, the totality of the circumstances[.] I think it's important to evaluate what I'm hearing, who I'm hearing it from and how that came across not just because that certainly affected my opinion about testimony that at times was conflicting between witnesses.

The court then went on to find that the forensic interviewer's responses were "thoughtful and earnest" and her testimony in describing what occurred during RIP's interview at the CARE House was "very credible." The trial court also found the Child Protective Services (CPS) investigator and CPS specialist were both credible.

Both of the children's mothers testified at trial. According to the trial court, EWM's mother was "articulate" and "did not embellish any information when discussing specific domestic violence incidents;" "I found her to be very credible as a witness." RIP's mother also did not embellish the violence in the home but described "similar themes across all of the stories which [are] yelling, screaming, name calling, throwing things." She also testified she never expected that respondent would do something like this and that RIP was more bonded to respondent, which led the trial court to "find her to be a very credible witness." In contrast, however, respondent's testimony was at times inconsistent; he provided conflicting testimony that RIP's mother admitted to penetrating the child but he told the police something different in documents that were admitted into evidence. He also gave illogical explanations for events:

There were times that I was uncertain if [respondent] really believed the answers he was giving or if he gave the answers that he thought would better suit him. And that's the best way I can put it.

Because his "story was not internally consistent," the trial court found that respondent's testimony was not credible. We defer to the trial court's credibility determination underlying its factual findings. *In re Mota*, 334 Mich App at 320.

"To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence." *In re Pederson*, 331 Mich App 445, 472; 951 NW2d 704 (2020). We conclude the trial court did not clearly err by finding termination of respondent's parental rights was proper under MCL 712A.19b(3)(j), which authorizes termination when "[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.” The harm contemplated under (j) includes emotional harm, as well as physical harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

After receiving testimony at the adjudication and initial dispositional hearings, the trial court found that respondent sexually abused RIP and refused to take responsibility for his actions. Respondent also subjected the children to domestic violence early in their lives. The court also determined it is likely the children would be subjected to neglect if placed in respondent’s care because respondent elected not to work at times and had unstable housing. Respondent acknowledged he is not and was not involved in EWM’s education. RIP will likely require specialized services because of his autism diagnosis, and there is no indication respondent will provide for these needs. Indeed, respondent did not participate in RIP’s therapy before the proceedings commenced. Additionally, respondent does not have a relationship with EWM because he stopped attending supervised parenting times years earlier, and respondent has an unhealthy, inappropriate relationship with RIP because respondent subjected him to sexual abuse. The trial court’s finding that termination of respondent’s parental rights was proper under MCL 712A.19b(3)(j) was not clearly erroneous.

IV. BEST INTERESTS

Respondent argues the trial court clearly erred by finding termination of his parental rights was in the children’s best interests. Respondent also argues termination violated his constitutional rights. We disagree.

A. STANDARDS OF REVIEW

“This Court . . . reviews de novo questions of constitutional law.” *Barretta v Zhitkov*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 364921); slip op at 5 (alteration in original; quotation marks and citation omitted). We review a trial court’s best-interest determination for clear error. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). “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 Miller*, ___ Mich App at ___; slip op at 2.

B. ANALYSIS

“The trial court must order the parent’s rights terminated if DHHS has established a statutory ground for termination by clear and convincing evidence and it finds by a preponderance of the evidence on the whole record that termination is in the children’s best interests.” *In re White*, 303 Mich App at 713. This Court focuses on the children—not the parent—when reviewing best interests. *In re A Atchley*, 341 Mich App at 346. When determining best interests,

the court should consider a wide variety of factors that may include the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home. The trial court may also consider a parent’s history of domestic violence, the parent’s compliance with his or her case service plan, the parent’s visitation history with the child, the children’s well-being while in care, and the possibility of

adoption. [*In re White*, 303 Mich App at 713-714 (quotation marks and citations omitted).]

The trial court found that respondent and EWM were not bonded because respondent has not been involved in his life for a number of years. Respondent also physically abused EWM's mother in his presence when he was an infant. While respondent and RIP were bonded, the bond was not healthy. Indeed, respondent subjected RIP, who has special needs, to sexual abuse and domestic violence. The evidence supported the conclusion that respondent's domestic violence negatively affected RIP's relationship with his mother; RIP emulated or mimicked respondent's behavior in the home by screaming and throwing things at his mother and pulling her hair and pinching her.⁴ Respondent also failed to take responsibility for sexually assaulting RIP. See *In re CR*, 250 Mich App 185, 196-197; 646 NW2d 506 (2002), overruled on other grounds by *In re Sanders*, 495 Mich 394 (2014) (holding because there was a "serious dispute on the record concerning whether [the respondent] had a healthy bond of any sort with her children," termination of her parental rights was in the children's best interests).

While the parent-child bond is only one factor for the trial court to consider, *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012), the trial court also determined that respondent was unable to provide stability to the children. Respondent often lived in hotels and was unemployed at times despite being able to work. He also failed to consistently provide financial support to the children, and he had not provided emotional support to EWM in a number of years. Respondent also failed to participate in RIP's therapy. Meanwhile, the children were doing well in the care of their respective mothers.⁵

We acknowledge "a child's placement with relatives is a factor the trial court is required to consider when making its best-interests determination, and a child's placement with relatives weighs against termination." *In re Mota*, 334 Mich App at 321 (quotation marks and citations omitted). MCL 712A.13a(1)(j)(i) was amended by 2022 PA 200, effective October 7, 2022, to provide that a "relative" is any "individual who is at least 18 years of age and is . . . [r]elated to the child within the fifth degree by blood, marriage, or adoption. . . ." This definition includes the children's respective mothers, with whom they reside. The trial court expressly acknowledged this relationship. While respondent argues the children's placement with their respective mothers negated the trial court's finding termination was in the children's best interests, "the parental rights of one parent may be terminated without the termination of the parental rights of the other parent. . . ." *In re Medina*, 317 Mich App 219, 232; 894 NW2d 653 (2016).

Given the totality of the facts in this case, a preponderance of the evidence established that termination of respondent's parental rights was in the children's best interests. The trial court did not clearly err. As a result, respondent's constitutional argument necessarily fails. See *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000), superseded in part by statute as stated in *In re*

⁴ The trial court observed that RIP "is clearly affected significantly by what he's seeing in front of him from [respondent's] behavior and it's not good."

⁵ The trial court also noted that respondent never acted to protect RIP when respondent claimed that RIP's mother was the one sexually assaulting the child.

Moss, 301 Mich App 76, 83; 836 NW2d 182 (2013) (“Once the petitioner has presented clear and convincing evidence that persuades the court that at least one ground for termination is established . . . , the liberty interest of the parent no longer includes the right to custody and control of the children.”).

V. CONCLUSION

Accordingly, the trial court did not clearly err by finding that DHHS established at least one statutory ground to terminate respondent’s parental rights by clear and convincing evidence. The trial court did not clearly err by finding termination of respondent’s parental rights was in the children’s best interests, and respondent’s constitutional rights were not violated. We affirm.

/s/ Kathleen A. Feeney
/s/ James Robert Redford
/s/ Christopher P. Yates