

STATE OF MICHIGAN
COURT OF APPEALS

In re FOREMAN/FRAZIER/BROTHERS,
Minors.

UNPUBLISHED
November 27, 2018

No. 342951
Ottawa Circuit Court
Family Division
LC No. 16-081818-NA

Before: MURPHY, P.J., and O'CONNELL and BECKERING, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court's order terminating his parental rights to his minor daughter under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care or custody), (h) (parent is imprisoned for such a period that child will be deprived of a normal home for a period exceeding 2 years), and (j) (reasonable likelihood of harm if child returned to parent's care). We affirm.

Respondent is in prison, having been convicted of second-degree murder and various drug and firearm charges. He was sentenced to 31 to 50 years' imprisonment for the murder conviction. Respondent's earliest possible release date is in 2037. Respondent was sent to prison for his crimes when his daughter was only about two or three years old. Respondent had no contact with his daughter for the first ten years of his imprisonment. During the pendency of the proceeding, the trial court allowed respondent's daughter to visit him in prison on a monthly basis, and she later requested and obtained permission to visit her father twice a month. She visited him twice a month for a while, but the frequency of her visits subsequently diminished, which apparently was due to her busy schedule. Respondent and his daughter communicated by e-mail and text messages to the extent permitted by prison authorities. The record indicates that a bond developed between respondent and his daughter. Respondent has not provided any financial support for his daughter, and he does not have the ability to do so during his incarceration.

On appeal, respondent challenges the trial court's ruling in regard to MCL 712A.19b(3)(j) and its best-interest determination. If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Beck*, 488 Mich 6, 10-11; 793 NW2d 562 (2010); *In re Moss*,

301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). “This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests.” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). “A finding . . . is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed[.]” *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). In applying the clear error standard in parental termination cases, “regard 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 Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court must “state on the record or in writing its findings of fact and conclusions of law[,] [and] [b]rief, definite, and pertinent findings and conclusions on contested matters are sufficient.” MCR 3.977(I)(1).

Respondent merely challenges one of the four statutory grounds that were invoked by the trial court for terminating his parental rights. “When an appellant fails to dispute the basis of a lower court's ruling, we need not even consider granting the relief being sought by the appellant.” *Denhof v Challa*, 311 Mich App 499, 521; 876 NW2d 266 (2015). Therefore, considering that only a single ground for termination suffices and assuming error relative to MCL 712A.19b(3)(j), there is no need to go any further concerning the statutory grounds for termination. And, moreover, there was no clear error in the trial court’s findings under MCL 712A.19b(3)(c)(i), (g), and (h), in light of the evidence presented to the court, especially in connection with § 19b(3)(h).¹

With respect to the trial court’s finding that termination of respondent’s parental rights was in the best interests of the child, we place our focus on the child rather than the parent. *In re Moss*, 301 Mich App at 87. In assessing a child’s best interests, a trial court may consider such factors as a “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.” *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). “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 701, 714; 846 NW2d 61 (2014).

Respondent first contends that the trial court failed to consider the bond between him and his daughter when assessing the daughter’s best interests. Although the trial court did not expressly speak to the issue of respondent’s bond with his daughter, the court acknowledged that the two had contact in prison visits, that the daughter had asked to increase those visits, and that

¹ MCL 712A.19b(3)(h) provides for termination when “[t]he parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, 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.”

a relationship had developed between respondent and his daughter. In evaluating the child's best interests, it is clear to us that the trial court plainly recognized, even though not explicitly stated, that a bond had been formed between father and daughter.

Respondent next maintains that the trial court clearly erred in finding, by a preponderance of the evidence, that termination of his parental rights was in the best interests of his daughter. As part of its best-interest analysis, the trial court first indicated that the caseworkers and guardian ad-litem had all testified in favor of termination because it was in the children's best interests.² Further, the court deemed that it would be ideal and beneficial for respondent's daughter to remain united with her two siblings in the same foster care home.³ The court found that there existed a close bond between the siblings. Most importantly for the trial court, it found that termination was in the child's best interests because she and her siblings had been in care an "extraordinarily long time" and they all were in need of permanence, finality, and stability. The court explained:

More than one witness said, "They just need an answer." . . . Basically, they are antsy, you know, they're very antsy about the whole thing; they've been waiting a very long time. Living with all this uncertainty is harmful and stressful to them. And if I deny termination of parental rights, that stress would go on. And, in my view, given the amount of time that we've had here, their need for some finality in the whole matter is very important to them and favors termination of parental rights.

The trial court determined that, in weighing all of the various factors, termination was in the best interests of respondent's daughter.⁴ Even contemplating the bond between respondent and his daughter, we cannot conclude that the trial court clearly erred in finding that termination was in the best interests of respondent's daughter. She has been thriving in foster care, will likely be adopted by her foster parents and remain with her siblings, and is indeed in need of permanence,

² The trial court also terminated parental rights with respect to the daughter's two siblings; they are not respondent's children.

³ The foster parents indicated a willingness to adopt all three children. And respondent's daughter desired to remain with her siblings. Respondent testified that although he did not want his parental rights terminated, if terminated, he hoped that his daughter could be with her siblings and he preferred that she be adopted by her foster parents, who had facilitated her visits with respondent in prison.

⁴ We do note that the trial court did take into consideration differences between the siblings, noting that respondent's daughter's younger brother was in the greatest need of permanency because of his age. See *Olive/Metts Minors*, 297 Mich App at 44. But the court was quick to point out that no matter the differences, all of the children were in need of permanency, stability, and finality. We also note that the trial court took care to indicate that there had been no relative placement. See *id.* at 43.

finality, and stability; she will be in her thirties before respondent is even considered for parole. Reversal is unwarranted.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Jane M. Beckering