STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
January 15, 2019

In re JOHNSON, Minors.

No. 345024
Wayne Circuit Court
Family Division
LC No. 18-000118-NA

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

PER CURIAM.

Respondent appeals as of right an order terminating his parental rights to his minor children, HJ and JJ, pursuant to MCL 712A.19b(3)(b)(*i*) (sexual abuse of a sibling caused by the parent), (g) (failure to provide proper care or custody), (j) (reasonable likelihood of harm if returned to custody of the parent), and (k)(*ii*) (criminal sexual conduct involving penetration or attempted penetration). We affirm.

Respondent first argues that the evidence supporting termination of his parental rights under MCL 712A.19b(3)(j) was not clear and convincing. However, respondent's attorney explicitly indicated before the trial court that respondent did not dispute that the statutory grounds had been established by clear and convincing evidence, thereby waiving appellate review of this issue. See *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011) (stating that a respondent may not claim error arising from action the he or she deemed proper in the lower court); *Holmes v Holmes*, 281 Mich App 575, 588; 760 NW2d 300 (2008) ("A party cannot stipulate [to] a matter and then argue on appeal that the resultant action was error.") (quotation marks and citation omitted). Furthermore, "[o]nly one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Thus, even if respondent had not waived appellate review of this issue, his failure to challenge the remaining statutory grounds renders this issue moot.

Respondent also argues that termination of his parental rights was not in the best interests of HJ and JJ. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the

evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's conclusions regarding best interests are reviewed for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *Id*. (quotation marks and citation omitted).

"The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). In considering the child's best interests, the trial court's focus must be on the child and not the parent. *In re Moss*, 301 Mich App at 87-89. Among other factors, "the court may consider 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." *In re Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted). Under the doctrine of anticipatory neglect, "[h]ow a parent treats one child is certainly probative of how that parent may treat other children." *In re LaFrance Minors*, 306 Mich App 713, 730; 858 NW2d 143 (2014) (alteration in original, quotation marks and citation omitted).

The trial court did not clearly err by concluding that termination of respondent's parental rights was in the best interests of HJ and JJ. The evidence demonstrated that respondent sexually abused HJ and JJ's then 13-year-old half-sister, resulting in his plea-based convictions of first-degree criminal sexual conduct (CSC-I), MCL 750.520b, and child sexually abusive activity MCL 750.145c(2). He was sentenced to 10 to 30 years' imprisonment for the CSC-I conviction. A forensic family clinician and Children's Protective Services worker both testified that continuation of respondent's parental rights would be harmful to HJ and JJ because it would interfere with their ability to overcome the negative consequences of respondent's sexual assault as part of a cohesive family unit. The trial court credited the witnesses' opinions, agreed that HJ and JJ would not benefit if respondent were to retain his parental rights, and further found that respondent's sexual abuse of the children's half-sister suggested that he posed a threat to HJ and JJ in the future.

In arguing that termination of his parental rights was not in the children's best interests, respondent emphasizes his parental bond with HJ and JJ, as well as the fact that they will be at least 17 and 19 years old, respectively, when he is released from prison. But these facts were well known to the trial court and do not overcome the evidence supporting the trial court's best-interest determination. We, therefore, are not definitely and firmly convinced that the trial court erred in finding that termination of respondent's parental rights was in the best interests of HJ and JJ.

Affirmed.

/s/ Anica Letica
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter