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STATE OF MICHIGAN

COURT OF APPEALS

In re T. RENTSMAN, Minor.

UNPUBLISHED
February 18, 2020

No. 350370
Kent Circuit Court
Family Division
LC No. 19-050264-NA

Before: SAWYER, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

Respondent-father appeals by right the court's order terminating his parental rights to his minor daughter, TR, under MCL 712A.19b(3)(b)(*i*) (child suffered sexual abuse and is likely to suffer such abuse in the foreseeable future), (j) (reasonable likelihood of harm to child if returned to the parent), and (k)(*ii*) (parent abused child or sibling of child involving criminal sexual conduct). We affirm.

Respondent pleaded guilty to first-degree criminal sexual conduct (CSC-I), MCL 750.520b, and third-degree criminal sexual conduct (CSC-III), MCL 750.520d, involving victims TR and CW; CW is respondent's other biological daughter. The CSC-I and CSC-III convictions entailed penile and digital penetration. TR was in eighth grade when respondent sexually abused her. Despite his guilty plea, respondent denied guilt when interacting with one of petitioner's caseworkers. TR's mother was extremely supportive of TR, fully complied with all of the investigations, and divorced respondent. Her parental rights were not challenged.

On appeal, respondent argues that the court clearly erred by finding that the statutory grounds for termination were proven by clear and convincing evidence and that termination of respondent's parental rights was in TR's best interests. 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); MCR 3.977(H)(3); *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); see also MCR 2.613(C).

With respect to the three statutory grounds for termination, all of which require a finding of a "reasonable likelihood" of future harm or abuse, MCL 712A.19b(3)(b)(*i*), (j), and (k)(*ii*), respondent's argument is simply that a reasonable likelihood of future harm was not proven, given that the sexual abuse happened three years earlier without any subsequent abuse by respondent, that respondent was now incarcerated, and that TR's mother divorced respondent and had sole custody of the child. We reject this flawed argument. Each of the three statutory grounds speaks of a reasonable likelihood of future harm or abuse *if the child were to be returned to a respondent's care or home.* MCL 712A.19b(3)(b)(*i*), (j), and (k)(*ii*). Accordingly, we reject outright respondent's contention that the statutory provisions were unproven because he could not harm TR in the future given his imprisonment and the divorce and custody arrangement; the statutory subsections presume a return to care. The notion that a reasonable likelihood of future harm cannot be established where a respondent would not have the physical opportunity to harm a child at a later date contravenes the plain language of MCL 712A.19b(3)(b)(*i*), (j), and (k)(*ii*). As to the apparent three-year lapse of time without additional sexual abuse allegations, we conclude that the threat of harm to TR remained in light of the evidence of respondent's manipulative and controlling behavior and the fact that respondent denied that he even sexually abused TR in the first place despite his plea. Patently, the danger persisted. The mere passage of time absent additional sexual assaults did not equate to a diminishment of the danger posed to TR. In sum, the court did not clearly err by finding that the grounds for termination were proven by clear and convincing evidence.

With respect to a child's best interests, we place our focus on those of the child rather than of 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).

In this case, respondent sexually assaulted TR; she will have to deal with the psychological trauma for years to come and is undergoing counseling; she has no bond with respondent; she does not wish to have any continuing relationship with him, and she did not visit him. It is TR's mother

who provides her with the permanency, stability, and finality that she needs. The court did not clearly err by finding that termination of respondent's parental rights was in TR's best interests.

We affirm.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Cynthia Diane Stephens