

STATE OF MICHIGAN
COURT OF APPEALS

In re A. K. WIERTALLA, Minor.

UNPUBLISHED

April 16, 2020

No. 350331

Manistee Circuit Court

Family Division

LC No. 18-000012-NA

Before: SAWYER, P.J., and LETICA and REDFORD, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court’s order terminating his parental rights to the minor child, AW, pursuant to MCL 712A.19b(3)(b)(i) (sexual abuse of the child’s sibling). We affirm.

I. FACTUAL BACKGROUND

On October 26, 2018, respondent was found guilty by a jury of three counts of first-degree criminal sexual conduct (CSC-I) involving the sexual abuse of AW’s minor sister. The court sentenced respondent to 35 to 80 years imprisonment. The Department of Health and Human Services (DHHS) petitioned to terminate respondent’s parental rights to AW and respondent pleaded responsibility to the allegations concerning his CSC-I convictions. Throughout the proceeding, AW remained in the care of her biological mother, KC. The guardian ad litem noted that KC was blameless in the situation, that AW was bonded with her mother, and that she had everything she needed at home with her siblings.

At the termination hearing, KC testified that AW asked about her father only “once in a blue moon” and did not seem affected by his absence. She also testified that she had never taken AW to visit respondent while incarcerated and did not plan on doing so unless it was required. The trial court determined that clear and convincing evidence established statutory grounds for termination, but noted that it could not terminate respondent’s rights without finding that DHHS had proven that termination also served AW’s best interests. The trial court considered respondent’s judgment of sentence and KC’s testimony in the context of several relevant best-interest factors used to determine best interests for purposes of child custody. The court noted AW’s young age and pointed out that any minimal bond that she had with her father appeared to be diminishing because of the length of respondent’s incarceration. The trial court noted that AW

did not have strong emotional ties to respondent because she was not affected by his absence and asked about him only once in a while. The trial court noted that defendant's CSC-I conviction weighed against the factors addressing moral fitness and domestic violence. Finally, in terms of other factors, the trial court recognized that respondent would be removed from AW's life for a substantial time given his incarceration and that failure to terminate his rights would mean that AW would not have the potential to have an intact family should another father-figure wish to adopt her. The court determined that DHHS established by a preponderance of the evidence that it would be in AW's best interests to terminate respondent's parental rights.

II. ANALYSIS

On appeal, respondent argues only that DHHS did not prove by a preponderance of evidence that termination served AW's best interests. We disagree.

We review for clear error a trial court's decision that termination is in a child's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "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 BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004) (citations omitted).

Termination of parental rights is appropriate when the trial court determines that one or more grounds for termination are supported by clear and convincing evidence *and* that termination is in the child's best interests. *In re LaFrance Minors*, 306 Mich App 713, 732-733; 858 NW2d 143 (2014). "Best interests are determined on the basis of the preponderance of the evidence." *Id.* at 733 (citation omitted). A trial court may consider evidence introduced by any party and consider the evidence on the whole record to determine whether termination is in a child's best interests. *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). To determine whether termination serves a child's best interests, the trial court should consider a variety of factors, including:

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 701, 713-714; 846 NW2d 61 (2014) (quotation marks and citations omitted).]

This Court has recognized that a court may consider the best-interest factors from the Child Custody Act of 1970 (CCA) "for guidance" in the context of termination of parental rights cases. *In re COH*, 495 Mich 184, 205 n 13; 848 NW2d 107 (2014).

Respondent argues that the only evidence offered in this case was respondent's judgment of sentence, the Child Protective Services investigator's testimony, and KC's testimony, none of which addressed the best interests of AW. The record reflects, however, that the trial court reviewed evidence on the whole record at length to determine whether termination served AW's best interests. The trial court specifically addressed the applicable factors discussed in *White*, such as the child's bond to the parent, the history of domestic violence, the history of visitation, and

possibility of future adoption. The trial court also addressed several factors from the CCA, such as emotional bonds, moral fitness, and the length of respondent's incarceration, and explained how each factor weighed in favor of finding that termination served AW's best interests. The trial court correctly determined that a preponderance of the evidence on the record as a whole established that termination served AW's best interests.

Affirmed.

/s/ David H. Sawyer

/s/ Anica Letica

/s/ James Robert Redford