STATE OF MICHIGAN

COURT OF APPEALS

In re C. D. HANN, Minor.

UNPUBLISHED
May 14, 2020

No. 350935
Wayne Circuit Court
Family Division
LC No. 19-000086-NA

Before: GADOLA, P.J., and STEPHENS and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to the minor child, CH, under MCL 712A.19b(3)(j) (reasonable likelihood that the child will be harmed if returned to the parent's home). We affirm.

I. INTRODUCTION

In January 2019, the Department of Health and Human Services filed a petition alleging that on December 5, 2018, respondent sexually assaulted two minors, JW and TW, while babysitting JW, TW, and CH.[1] The petition was authorized, and an adjudication and termination hearing was held before a referee in August 2019. Pursuant to the tender-years exception to hearsay, the forensic interviewer testified to statements made by JW regarding the allegations. Based on the evidence presented, the referee found that sexual contact occurred between respondent and JW. The referee asserted jurisdiction and found clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(j). The referee initially found that termination was not in CH's best interests because the child was residing with his mother. The referee ordered respondent to participate in a Clinic for Child Study. Upon a motion by the Department, the trial court ordered the referee to reconsider the child's best interests. After reviewing the Child Study report, the referee concluded that termination of respondent's parental rights was in the best interests of CH.

[1] JW and TW are cousins of CH, but are not biologically related to respondent.

II. JURISDICTION

Respondent first argues that the referee clearly erred when it exercised jurisdiction under MCL 712A.2(b)(2).[2] We disagree.

We review a decision to exercise jurisdiction for clear error. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). Clear error exists "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." *Id*. at 296-297. "In order to find that a child comes within the court's jurisdiction, at least one statutory ground for jurisdiction contained in MCL 712A.2(b) must be proven, either at trial or by plea." *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008). If a trial is held, "the petitioner has the burden of proving by the preponderance of the evidence one or more of the statutory grounds for jurisdiction alleged in the petition." *In re Ferranti*, 504 Mich 1, 19; 934 NW2d 610 (2019). (quotation marks and citation omitted).

MCL 712A.2(b)(2) provides a court with jurisdiction over minors "[w]hose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in." A trial court may assume jurisdiction over a minor on the basis of criminality if the trial court concludes that the respondent engaged in the criminal behavior by a preponderance of the evidence. *In re MU*, 264 Mich App 270, 279; 690 NW2d 495 (2004). A conviction is not required to exercise jurisdiction under MCL 712A.2(b)(2). *Id*.

The referee found that sexual contact occurred between respondent and JW while CH was in the home. As noted, the forensic interviewer testified to statements made by JW in her interview; a DVD recording of the interview was also admitted into evidence.[3] In her interview, JW stated that respondent vaginally penetrated her and TW, performed oral sex on them, and made them perform oral sex on him. According to JW, when JW and TW attempted to leave the room, respondent pushed them back onto the bed. Respondent instructed JW not to tell anyone about the incident. Also, a CPS worker testified that respondent admitted to watching pornography while

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[2] When orally stating her findings, the referee found that jurisdiction existed under MCL 712A.2(b)(1) and (2), and respondent challenges the assertion of jurisdiction on both of those grounds. However, the order of adjudication states that jurisdiction existed because of "an unfit home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of the parent, guardian, nonparent adult, or other custodian," which restates the ground for jurisdiction provided in MCL 712A.2(b)(2). Courts speak through written orders rather than oral pronouncements. *In re KMN*, 309 Mich App 274, 287; 870 NW2d 75 (2015). Because only one statutory ground for jurisdiction is necessary, *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008); MCR 3.972(F), we will review whether jurisdiction was appropriate under MCL 712A.2(b)(2).

[3] Before ruling on the tender-years motion, the referee gave respondent's counsel an opportunity to obtain a transcript of his criminal trial, in which he was acquitted of all charges. A transcript of respondent's criminal trial was not obtained.

JW and TW were in the bathroom with him. According to the CPS worker, respondent told JW and TW to get out of the bathroom; he also exited the bathroom to put the tablet in the bedroom. Respondent went back into the bathroom to wash his hands and, when he returned to the bedroom, JW and TW were under the covers "messing around looking at the porn." Considering the evidence presented at the adjudication, the trial court did not clearly err in exercising jurisdiction under MCL 712A.2(b)(2).

Respondent also argues that the referee erred in finding a statutory basis for jurisdiction because CH was in the care of his non-respondent mother. We disagree. "[T]he trial court must examine the child's situation at the time the petition was filed." *In re MU*, 264 Mich App at 279. At the time the petition was filed, respondent, the mother, and CH were living in the same home and respondent was responsible for caring for CH. Respondent only moved out after the petition was filed. Accordingly, the mere fact that CH was in the mother's care throughout this proceeding does not deprive the trial court of jurisdiction.

III. STATUTORY GROUND

Next, respondent argues that the referee clearly erred in finding clear and convincing evidence to terminate his parental rights under MCL 712A.19b(3)(j). We disagree.

A trial court's factual finding that a statutory ground for termination has been proved by clear and convincing evidence is reviewed for clear error. MCR 3.977(K); *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008). Termination of parental rights is appropriate under MCL 712A.19b(3)(j) if "[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." In addition to physical harm or abuse, emotional harm also constitutes grounds for termination of parental rights under MCL 712A.19b(3)(j). *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

Respondent argues that the referee erred because no evidence was presented that CH suffered harm or trauma, or that respondent acted inappropriately toward CH. However, having heard the testimony and viewed the DVD of the forensic interview, the referee had ample grounds for its finding that respondent sexually assaulted JW while caring for CH. Even if respondent did not pose a threat of physical harm to CH, there was clearly a threat of emotional or psychological harm. See *In re Hudson*, 294 Mich App at 268. Accordingly, the referee did not clearly err in finding that there is a reasonable likelihood that CH would be at a risk of harm if returned to respondent's care.

IV. BEST-INTERESTS DETERMINATION

Finally, respondent argues that the referee erred when it found that the termination of his parental rights was in the best interests of his child. We find no clear error in the referee's best-interests determination.

We review a decision regarding a child's best interests and the decision to terminate parental rights for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court must find that termination is in the child's best interests before it can order termination of parental rights. MCL 712A.19b(5). The petitioner bears the burden to establish by a

preponderance of the evidence that termination is in the best interests of the child. *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015). "In deciding whether termination is in the child's best interest, 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 35, 41-42; 823 NW2d 144 (2012) (citations omitted). When the trial court considers the child's best interests, the focus must be on the child and not the parent. *In re Moss*, 301 Mich App 76, 87-88; 836 NW2d 182 (2013).

Respondent argues that the referee erred in determining that the termination of his parental rights was in the child's best interests because he and CH are bonded and their interactions are appropriate, as stated in the Clinic for Child Study report. However, a child's bond to the parent is only one factor for the trial court to consider in making its best-interests determination. See *In re Olive/Metts, Minors*, 297 Mich App at 41-42. We are not left with a definite and firm conviction that the referee erred in finding that respondent sexually assaulted JW while caring for CH. Given that finding, we do not see a basis from which to conclude that the referee's best-interests finding was clearly erroneous. Further, respondent admitted to the caseworker that he watched pornography while caring for the children, and then denied to the clinician at the Clinic for Child Study that he watched pornography while supervising minors.

Respondent also argues that the trial court erred in finding that termination of his parental rights was in the best interests of CH because the child is placed with his mother. "[A] child's placement with relatives weighs against termination under MCL 712A.19a(6)(a)[.]" *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). However, for the purposes of MCL 712A.19a, a biological parent is not a relative. *In re Schadler*, 315 Mich App 406, 413; 890 NW2d 676 (2016). Therefore, the referee did not err by failing to consider CH's placement with his mother.

Affirmed.

/s/ Michael F. Gadola
/s/ Cynthia Diane Stephens
/s/ Douglas B. Shapiro