

STATE OF MICHIGAN
COURT OF APPEALS

In re CUPP, Minors.

UNPUBLISHED

May 14, 2020

No. 351293

Monroe Circuit Court

Family Division

LC No. 19-024732-NA

Before: MURRAY, C.J., and RONAYNE KRAUSE and TUKEL, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating his parental rights to his minor children, KC and EC (together “the children”), under MCL 712A.19b(3)(b)(i) (parent’s act caused sibling of a child to suffer sexual abuse), (g) (parent, although financially able to do so, fails to provide proper care or custody), (j) (reasonable likelihood of harm if child is returned to home of parent), and (k)(ii) (parent abused a sibling of the child and abuse included criminal sexual conduct). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1).

I. UNDERLYING FACTS

Between 2012 and 2018 respondent sexually abused FP, the stepsister of the children and respondent’s stepdaughter, at least six times in her bedroom. The sexual abuse involved respondent kissing FP on the mouth, performing sexual acts with her while they both wore clothes, and digitally penetrating her vagina. Respondent additionally attempted at least two times to have FP perform fellatio on him, but his attempts were unsuccessful. The children were usually at home when the abuse occurred. FP did not tell her mother, AC, about the abuse until after FP had filed a police report in 2018.

FP’s police report triggered these proceedings. Petitioner filed a petition for permanent custody alleging that petitioner sexually abused FP. The petition was authorized and after multiple termination hearings petitioner’s parental rights to the children were terminated. During the course of the proceedings, two prior allegations of sexual abuse against respondent came to light. AC first learned of these allegations during these proceedings. Respondent denied the allegations and additionally denies that he sexually abused FP. Respondent now appeals the trial court’s order terminating his parental rights.

II. STATUTORY GROUNDS

Respondent argues that the trial court erred because it found that statutory grounds to terminate his parental rights existed as a result of his contesting FP's allegations that he sexually abused her. We disagree.

A. STANDARD OF REVIEW

This Court “reviews for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination.” *In re White*, 303 Mich App 701, 709-710; 846 NW2d 61 (2014). To be clearly erroneous, a trial court’s determination must be more than possibly or probably incorrect. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). “A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.” *Id.* In reviewing the trial court’s determination, this Court must give due regard to the unique “opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *Id.*, citing MCR 2.613(C). Finally, this Court must consider “the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *Id.*

B. ANALYSIS

“Only 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 at 32. The trial court found four statutory grounds for terminating respondents’ parental rights by clear and convincing evidence, MCL 712A.19b(3)(b)(i), (g), (j) and (k)(ii). In relevant part, MCL 712A.19b(3) authorizes a trial court to terminate parental rights if it finds by clear and convincing evidence that:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent’s act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent’s home.

Respondent argues that the trial court clearly erred in finding that subsection (3)(b)(i) had been satisfied because he denied FP’s allegations, and her testimony was uncorroborated by forensic evidence. But “[i]t is not for this Court to displace the trial court’s credibility determination.” *In re HRC*, 286 Mich App 444, 460; 781 NW2d 105 (2009). Thus, we must defer to the trial court’s finding that FP’s testimony was credible.

The trial court explicitly found that FP’s testimony was credible and that respondent’s testimony was not credible. Specifically, the trial court found that FP did not have a motive to lie, she made “an honest effort to tell the truth,” she was clearly uncomfortable during her testimony, and that she did not avoid answering the questions posed to her or avert her eyes. In contrast, the trial court characterized respondent’s testimony as “evasive” and noted that respondent’s

testimony about prior sexual assault allegations and investigations against him was inconsistent. The record fails to establish that the trial court clearly erred by making these findings. Thus, respondent sexually assaulted FP. Respondent's treatment of FP is probative of how he would treat the children, *In re LaFrance Minors*, 306 Mich App 713, 730; 858 NW2d 143 (2014). As such, the trial court did not err by finding statutory grounds to terminate his parental rights under MCL 712A.19b(3)(b)(i) because his sexual abuse of FP is evidence that he may sexually abuse the children in the future. Because there are statutory grounds to terminate respondent's parental rights under MCL 712A.19b(3)(b)(i) we need not examine the remaining statutory grounds supporting termination.

III. BEST INTERESTS

Respondent argues that termination of his parental rights was not in the children's best interests. We disagree.¹

A. STANDARD OF REVIEW

"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, 40-41; 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 ruling regarding best interests are reviewed for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). Furthermore, "[t]his Court gives effect to the Legislature's intent as expressed in the statute's terms, giving the words of the statute their plain and ordinary meaning. When the language poses no ambiguity, this Court need not look beyond the statute or construe the statute, but need only enforce the statute as written." *In re LE*, 278 Mich App 1, 22-23; 747 NW2d 883 (2008) (citations and quotation marks omitted).

C. ANALYSIS

"The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App at 713. 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. "In deciding whether termination is in the child's best interests, 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). "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 at 714. When the trial court makes its best interests-

¹ Respondent failed to include the best interests challenge in his statement of questions involved. As such, we need not consider it. *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 221; 761 NW2d 293 (2008). Nevertheless, we choose to do so here given the nature of the rights involved in this case.

determination, it may rely upon evidence in the entire record, including the evidence establishing the statutory grounds for termination. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized in *In re Moss*, 301 Mich App at 83.

Furthermore, “[a] child’s placement with relatives is a factor that the trial court is required to consider” when making its best-interests determination, *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015), and “a child’s placement with relatives weighs against termination.” *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). “Relative” is defined by MCL 712A.13a(1)(j) as

an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce.

Thus, a child’s biological parent is not that child’s “relative” for purposes of the statute. See MCL 712A.13a(1)(j); *In re Schadler*, 315 Mich App at 413.

When terminating respondent’s parental rights, the trial court explicitly found that the children were bonded to respondent, but that respondent had damaged those bonds when his sexual abuse of FP necessitated his separation from the family. The trial court further noted that if respondent had continued contact with the family, this would stress the children’s relationship with FP and their mother. Specifically, the relationship between FP and the children would be harmed if they had continued contact with the man FP accused of sexually assaulting her. Additionally, the trial court opined that as the children grew and came to a better understanding of incest and sexual abuse that they might begin to resent their mother for allowing respondent, a perpetrator of sexual abuse and incest, to have continued contact with the family. Based on his conduct, respondent did not establish that he had sufficient parenting ability to care for the children and their need for permanency and stability supported terminating his parental rights.

The record supports the trial court’s findings. Respondent sexually abused FP. He refused to admit that his conduct with FP was inappropriate. Additionally, the letters KC and EC wrote to respondent under the direction of their therapist revealed that they were deeply upset with respondent and blamed him for the family’s separation. Furthermore, the children’s therapist testified that they were tired of having Children’s Protective Services come to their home; they were also tired of having to repeatedly talk about respondent’s inappropriate conduct with FP. As a result of respondent’s conduct, the children would need continued therapy and, even if respondent’s parental rights were not terminated, the children would not have a normal relationship with respondent. The children’s therapist also testified that she could not predict how a relationship between respondent and the children would affect the rest of their family. Thus, termination of respondent’s parental rights was in the children’s best interests.

Finally, respondent argues that the trial court erred by failing to explain why the children’s placement with a relative, their biological mother, did not outweigh the other factors. But a parent is not a relative for purposes of MCL 712A.13a(1)(j). See *In re Schadler*, 315 Mich App at 413.

Thus, the trial court was not required to consider the relative placement factor in this case. *Id.* Consequently, the trial court did not err in determining that termination of respondent's parental rights was in the best interests of the children.

IV. CONCLUSION

For the reasons stated, the trial court's order terminating respondent's parental rights is affirmed.

/s/ Christopher M. Murray

/s/ Amy Ronayne Krause

/s/ Jonathan Tukel