

STATE OF MICHIGAN
COURT OF APPEALS

In re C. DERISLIN, Minor.

UNPUBLISHED
July 30, 2020

No. 351683
Kent Circuit Court
Family Division
LC No. 18-050866-NA

Before: BORRELLO, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court order terminating his parental rights to the minor child, CD, pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (b)(iii), (c)(i), (j) and (k)(iii). We affirm.

CD came to the attention of the court when she was apprehended by United States border patrol agents in California without being accompanied by her parents or a legal guardian. According to the petition, CD was born in Haiti in 2008 and was cared for by her paternal grandparents from the time she was approximately two years old; CD was physically abused by the grandparents. Respondent-father brought CD to Brazil to live with him when she was six years old. The petition alleged that respondent-father hit CD with “his hands, a belt, a flexible branch from a tree and a phone charger leaving red, raised welts” and that his girlfriend also hit the child. CD also witnessed domestic violence between respondent-father and his girlfriend. The petition alleged that in 2016, respondent-father sent CD, through a long and dangerous route, to the United States with his girlfriend. When CD arrived in the United States, she was apprehended by United States border patrol agents who sent her to a shelter in Chicago. CD was later placed in a foster home.

At the adjudication/dispositional hearing, CD’s case manager confirmed that all the information contained in the petition was accurate and was obtained from the United States government or other reliable sources. After additional testimony by the case manager, the trial court found by a preponderance of the evidence that there were statutory grounds to exercise jurisdiction over CD because respondent-father was unable to provide a fit home environment. The trial court determined that it would not be in CD’s best interests to be returned to Haiti or the

care of respondent-father on the basis of abuse and abandonment and thus ordered that CD remain a temporary ward of the court in her current foster-care placement.

The prosecutor eventually filed a supplemental petition requesting that the trial court terminate respondent-father's parental rights. At the termination hearing, CD and her case manager testified at length. At the conclusion of the trial, the trial court terminated respondent-father's parental rights to CD.

On appeal, respondent-father contends that the trial court erred in terminating his parental rights because the prosecutor failed to prove a statutory basis for termination by clear and convincing evidence, and additionally argues that termination was not in CD's best interests. We disagree.

"A petitioner must establish by clear and convincing evidence at least one statutory ground for termination of parental rights." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011), quoting MCL 719A.19b(5). The preponderance of the evidence standard applies to a determination as to whether termination is in the best interests of the child. *In re Kaczowski*, 325 Mich App 69, 78; 924 NW2d 1 (2018). We review for clear error both the trial court's decision that a ground for termination has been proven and its decision regarding the best interests of the child. MCR 3.977(K); *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). A decision 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." *In re Hudson*, 294 Mich App at 264 (citation omitted).

The trial court terminated respondent-father's parental rights pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (b)(iii), (c)(i), (j), and (k)(iii). Those provisions provide for the termination of parental rights if:

(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.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

(iii) A nonparent adult'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 by the nonparent adult in the foreseeable future if placed in the parent's home.

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(j) There 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.

(k) The parent abused the child or a sibling of the child, the abuse included 1 or more of the following, and there is a reasonable likelihood that the child will be harmed if returned to the care of the parent:

(iii) Battering, torture, or other severe physical abuse.

Under MCL 712A.19b(3)(b)(i) and (ii), “not only does the prosecution have the burden of showing by clear and convincing evidence that the parents injured or abused the children, or failed to protect the children from injury or abuse, but the prosecution must also show a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.” *In re Sours*, 459 Mich 624, 634-635; 593 NW2d 520 (1999) (quotation marks and citations omitted).

In this case, CD testified at the termination hearing that respondent-father hit her on more than 10 occasions with a stick, his hand, a belt, or a charger cord, on one occasion leaving a mark on her that lasted a week. CD further testified that on one occasion, respondent-father hit her in the face with his open hand so hard that it knocked her over. CD’s case manager, Lillian Kroontje, testified that respondent-father admitted to these acts of abuse and informed her multiple times that he would not agree to stop using physical punishment because it was his right as a parent to do so. Kroontje also testified that respondent-father expressed his belief that such physical punishment was necessary to prevent CD from becoming a cocaine addict. CD’s testimony supported a finding that respondent-father injured and abused her, and Kroontje’s testimony provided clear and convincing evidence that CD was reasonably likely to experience similar physical abuse if returned to respondent-father’s care. *In re Sours*, 459 Mich at 634; *In re Hudson*, 294 Mich App at 264. Therefore, the trial court did not clearly err by determining that a statutory ground for termination existed under MCL 712A.19b(3)(b)(i).

CD also testified that respondent-father’s girlfriend hit her with a charger cord and that respondent-father knew about the girlfriend’s actions but did nothing to stop her. CD’s testimony regarding the girlfriend’s abuse supports the trial court’s determination that respondent-father failed to protect her from physical abuse. See MCL 712A.19b(3)(b)(ii); *In re Sours*, 459 Mich at 634. Further, Kroontje testified that respondent-father’s girlfriend continued to live with respondent-father in Brazil at the time of the termination hearing. These living arrangements, in

conjunction with respondent-father's belief in the necessity of physical punishment, supported the trial court's determination that the minor child would likely be exposed to physical abuse by respondent-father's girlfriend if she was returned to respondent-father's care. *In re Sours*, 459 Mich at 634. Thus, the trial court did not clearly err by finding that statutory grounds for termination existed under MCL 712A.19b(3)(b)(ii).¹ Because the trial court did not err in finding that statutory grounds for the termination of respondent-father's parental rights existed under MCL 712A.19b(3)(b)(i) and (ii) and only one statutory basis for termination need be established, we need not address the additional statutory grounds found by the trial court. See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

With respect to determining a child's best interests, a trial court should weigh all the evidence available. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Factors a trial court may consider in making this determination include "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*, 297 Mich App at 41-42 (citations omitted). Other factors to consider include "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 [child]'s well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714.

In this case, the trial court considered a majority of these factors and determined that the considered factors weighed in favor of termination of respondent-father's parental rights. First, the trial court determined that CD did not have a bond with respondent-father as evidenced by her testimony that she was afraid of respondent-father and did not want to live with him or even speak with him on the telephone. The trial court also determined that respondent-father did not know how to appropriately parent CD because he focused excessively on the use of physical punishment as the proper manner of discipline for the child and there appeared to be no desire to build a loving, emotional bond with CD. Next, the trial court determined that CD needed and was deserving of permanency, stability, and finality because of the past trauma she suffered.² Moreover, CD clearly articulated a desire for permanency during her testimony.

¹ The same evidence that supported the trial court's findings under MCL 712A.19b(3)(b)(i) and (ii) also supported the trial court's determination that a statutory ground for termination existed under MCL 712A.19b(3)(j) because there was ample testimony regarding respondent-father's history of abuse and belief that physical punishment was necessary, which strongly suggested that the minor child would be harmed if she was returned to respondent-father's care.

² CD testified not only to physical abuse by respondent-father and his girlfriend, but also related that respondent-father sent her with his girlfriend to the United States when she was seven years old. CD testified that on their journey, they walked through the jungle where she saw dead bodies and witnessed a shooting. She also testified that respondent-father's girlfriend made her sleep on the floor in a hotel room one night, while the girlfriend engaged in sexual activity with a strange man in the same room.

Additionally, the trial court found that CD's foster home had many advantages over respondent-father's home, because her foster parents supported her "educationally, economically, physically, in terms of medical and dental care, and spiritually in terms of her participation, and being a member of a church." CD's testimony that she wanted to stay with her foster parents because they gave her everything she needed and cared for her more than respondent-father ever did directly supported this finding. The evidence in the record supported the trial court's above findings, as well as its findings that respondent-father had a history of domestic abuse with his girlfriend³, that respondent-father failed to adequately comply with services or a treatment plan⁴, and that CD's well-being improved while she was in foster care.⁵ Because the trial court's extensive consideration of each factor was supported by the evidence in the record, the trial court did not clearly err in finding that the termination of respondent-father's parental rights was in the minor child's best interests.

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ Deborah A. Servitto

³ CD testified to witnessing physical violence between respondent-father and his girlfriend.

⁴ Kroontje testified that she explained and what was required for reunification to respondent-father "about 20 times," but that respondent-father continually refused to answer whether he was willing to participate in a parent-agency agreement or simply indicated that he was not willing to participate. Kroontje stated that respondent-father told her that the parent-agency treatment plan she sent him was useless and that only a few days before the termination hearing, he finally sent her a signed copy of the parent-agency treatment agreement on which he had made alterations and written objections. Kroontje testified that respondent-father did not complete any tasks set forth in the parent-agency agreement.

⁵ Kroontje testified that CD did well in school, got good grades, made friends, and was involved in many activities that she enjoyed. CD also testified that she did well in school, and both CD and her foster parents expressed a desire for her adoption to them.