STATE OF MICHIGAN

COURT OF APPEALS

In re DAVIS-HEADD/PROGRAIS, Minors.

UNPUBLISHED
September 10, 2020

Nos. 350042; 350043; 350044
Wayne Circuit Court
Family Division
LC Nos. 18-001159-NA;
18-001160-NA; 18-001161-NA

Before: JANSEN, P.J., and K. F. KELLY and CAMERON, JJ.

PER CURIAM.

In these consolidated appeals,[1] respondent appeals as of right the orders terminating his parental rights to his children, GD, RD, DP, DD, and KD under MCL 712A.19b(3)(b)(*i*), (b)(*ii*), (j), and (k)(*iii*). Finding no errors warranting reversal, we affirm. This appeal is decided without oral argument. MCR 7.214(E)(1)(b).

I. BASIC FACTS

Between 2015 and 2018, respondent had three contacts with Children's Protective Services (CPS) workers, but the claims could not be substantiated when respondent refused to allow the children to be interviewed. In 2018, the children stopped attending school purportedly to be home-schooled. In early June 2018, CPS workers again attempted to investigate, but respondent refused to participate. After notice of potential police intervention, respondent allowed CPS workers to see the children, but a discussion with the children was not permitted. Additionally, the children were dressed in long sleeves and shorts that were shin-length such that abuse or bruising was not apparent. Once again, the allegations of abuse could not be substantiated.

On June 24, 2018, a 911 telephone call was placed indicating that children were being physically abused. Apparently, an anonymous caller advised that a beating had occurred for over

[1] On August 12, 2019, this Court consolidated the three appeals. *In re Davis-Headd/Prograis Minors*, unpublished order of the Court of Appeals, entered August 12, 2019 (Docket Nos. 350042, 350043, and 350044).

45 minutes, the activity was "beyond a whipping," and the perpetrator advised that he was going to "kill everybody." Additionally, the perpetrator advised the children to take off their clothes, lay down, and put their head in a pillow to prevent anyone from hearing their crying.

CPS workers and the police arrived at the home, and a male was heard screaming, "[y] ou think you can do whatever you want going behind my back. She doesn't love you. I'm your dad." A police officer encountered respondent who represented that there was one child in the home. The eldest child, then eleven-year-old GD, spoke to the police and said, "[p]lease don't leave us here." The other four children were found upstairs. GD and his brother, then nine-year-old RD, both had visible bruises on their bodies, and they appeared nervous, scared, and fearful. All of the children were physically shaking and repeated that they should not be speaking to the authorities.

The children were removed from the home. GD and RD were placed with their mother, an ex-wife of respondent. Seven-year-old DP was placed with her mother. Finally, four-year-old DD and three-year-old KD were the product of respondent's marriage to then current wife KMDH.[2] It was alleged that KMDH was aware of the child abuse, failed to protect them, and also abused the children. Therefore, DD and KD were placed with a maternal aunt. Because of the nature of the allegations, respondent was not permitted to have contact with the children. Initially, it was believed that services would be provided to respondent and the goal was reunification of the family. However, after the medical examinations and interviews with the children, the Department of Health and Human Services (DHHS) filed petitions requesting termination of respondent's parental rights.

GD testified that the abuse began when he was eight-years-old. Respondent used whips and belts to commit the abuse, and sometimes, tied up the children. The abuse could occur for any reason, such as GD secretly contacting his mother or at the instigation of KMDH. However, the abuse could also occur for seemingly no reason. GD reported being woken up at 3:00 a.m. to be hit and beaten. The children would not be beaten at the same time. Yet, GD knew what was occurring to RD[3] because he could hear the sounds of hitting and crying. Aside from respondent's abuse, GD was also hit and slapped by KMDH. In addition to being beaten by respondent, the children witnessed respondent's domestic violence upon KMDH. Two incidents were significant. On one occasion, respondent threw a phone and hit KMDH in the eye. Another time, respondent

[2] KMDH filed for divorce from respondent and engaged in services to obtain the return of her children DD and KD. She described the couple's relationship as "very violent." KMDH also testified that respondent kept a loaded gun near their bed.

[3] RD testified that he was beaten at least every other day. After the beating, he generally had bruises everywhere, but his face. Although GD and RD were the primary recipients of the abuse, DP advised that she was once beaten for wearing the wrong shoes, for accidentally pulling down DD's pants, and for not washing her hands properly. Additionally, DD was asked what a spanking was, and he said it meant getting hit with a belt everywhere, but the face. In the forensic interview, DD revealed that he could hear GD and RD being beaten because of the screams, and DD and KD, the two youngest children, were spanked on their hands.

choked KMDH to the point where she was rendered unconsciousness on the floor, and the children thought she had died.

Although it was represented that respondent removed the children from school to be home-schooled, it was asserted that the removal was actually precipitated by an inquiry about the bruising on the children. KMDH only taught the children sign language, and they were forced to remain in their rooms all day because KMDH did not like RD, GD, and DP, her non-biological children. Additionally, GD asserted that the children were not adequately fed, and respondent and KMDH left the children unsupervised. GD claimed that relatives and teachers were aware of the abuse, but no one would help them. In fact, GD testified that his paternal grandmother applied makeup to cover his bruises the night before he went to school.

Respondent testified[4] that he "spanked" GD, RD, and DP for inappropriate behaviors and that spanking was a "last resort." He would not punish the children when he was angry and never woke them up to discipline them. He denied being violent against KMDH, but rather he merely restrained her when she attacked him. He contended that the children were never left unsupervised and that they had enough to eat. He also presented family members and friends to attest that he had a good relationship with his children, and they did not observe bruises on the children. Although he was not provided services, respondent testified that he participated in counseling and parenting classes.

Following a termination and best interest hearing, the trial court terminated respondent's parental rights to all his children.

I. STATUTORY GROUNDS

Respondent alleges that the trial court erred when it found that sufficient evidence was presented to terminate his parental rights under MCL 712A.19b(3)(b)(*i*), (b)(*ii*), (j), and (k)(*iii*). However, only a single statutory ground needs to be established to support termination of parental rights under MCL 712A.19b(3). *In re Martin*, 316 Mich App 73, 90; 896 NW2d 452 (2016). Because there was sufficient evidence to support MCL 712A.19b(3)(b)(*i*), we disagree.

In order to terminate parental rights, a trial court must find that a statutory ground has been established by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). The trial court's findings regarding statutory grounds are reviewed for clear error. *Id*. "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." *Id*. (citation and quotation marks omitted).

A. MCL 712A.19b(3)(b)(*i*)

[4] Respondent was later convicted of second-degree child abuse, MCL 750.136b(3), and a claim of appeal is pending in Docket No. 351635. He was also convicted of domestic violence, MCL 750.81, and a claim of appeal is pending in Docket No. 352149.

If a child or the sibling of a child has suffered physical injury, a court may terminate a parent's parental rights under MCL 712A.19b(3)(b)(*i*) if "[t]he parent's act caused the physical injury," 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."

Contrary to respondent's assertion, there was sufficient evidence to support this basis for termination of parental rights. For a nearly three-year period, respondent evaded the attempt by DHHS to investigate the children's well-being and speak with them. However, an anonymous 911 caller reported that abuse had occurred for over 45 minutes, threats to kill were made, and this conduct was beyond a "whipping." CPS workers and the police arrived and were able to speak with GD, who requested that the agency not leave the children there. The evidence disclosed that respondent hit GD for approximately 10 minutes and only stopped because the police arrived, while he beat RD for a longer time. Both GD and RD testified that this was not an isolated incident, but rather, respondent had hit GD and RD multiple times with a belt and whip in the past. They showed the bruises on their bodies to the authorities. GD and RD also testified that respondent would make them take off their clothes, bend over the bed, put their faces in a pillow, and then he would use a belt to hit them on all areas of their bodies other than their faces. Dr. Tonya Touchstone testified that GD's and RD's physical exams were considered "abnormal" because of multiple bruises on their bodies. In addition, respondent admitted that he hit GD and RD with a belt multiple times, and acknowledged hitting DP with a belt on two occasions. DP reported that, on one occasion, she was hit for wearing the wrong shoes. Thus, the evidence indicates that respondent's acts caused the physical injury to GD, RD, and DP.

Furthermore, the trial court did not err in finding that there is a reasonable likelihood that the children would suffer from injury or abuse in the foreseeable future if returned to respondent's care. Despite respondent's representation that he would not beat his children in the future, the evidence supports the trial court's finding that respondent lacked remorse, lacked credibility, and failed to accept responsibility for his actions. Respondent testified that he believed he could use corporal punishment on his children, and he only punished them to the extent necessary to improve their behavior. He expressed this belief despite the fact that he repeatedly told his children not to tell anyone about the abuse, saying "what happens in this house stays in this house." Respondent denied that he was ever physically abusive to his current wife, KMDH, and the mother of DD and KD, despite evidence that he choked her to the point of unconsciousness. Respondent claimed he was always calm when he hit his children, and never woke them up to punish them, despite testimony that respondent "was always mad," and even woke GD up at 3:00 a.m. in order to beat him. Respondent testified that he had a great relationship with GD, despite GD's testimony that he "felt miserable" on a daily basis while living with respondent, did not like living at respondent's house, and would day dream about living with his mother. The evidence indicates that respondent failed to acknowledge the severity of the abuse and the affect it had on his children. Thus, there was sufficient evidence to terminate respondent's parental rights under MCL 712A.19b(3)(b)(*i*).[5]

[5] The same evidence offered to support MCL 712A.19b(3)(b)(*i*) also supports MCL 712A.19b(3)(j) (likelihood of harm if children returned to the parent) and MCL 712A.19b(3)(k)(*iii*) (abuse included battering, torture, or other severe physical abuse).

II. BEST INTERESTS

Respondent argues that the trial court erred in determining that it was in the children's best interests to terminate his parental rights. We disagree.

"[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 at 90 (footnote omitted). This Court reviews the trial court's ruling that termination is in the child's best interests for clear error. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "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 Moss*, 301 Mich App at 80 (citation and quotation marks omitted).

"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." MCL 712A.19b(5). "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*, 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).

The trial court did not err in concluding that termination of respondent's parental rights was in his children's best interests despite relative placements. Respondent severely and repeatedly abused GD and RD. He also physically abused DP on at least two occasions. GD and RD did not want to live with respondent, and both were happy to be living with their mother. In fact, GD started calling himself by a different name because he did not want the same name as respondent. On the basis of GD's and RD's own statements, there appeared to be no bond between respondent and either GD or RD.

Moreover, all the children were subject to living in an environment filled with domestic violence. Although respondent did not beat DD and KD with a belt or whip, both of those children witnessed the violence inflicted on GD, RD, DP, and KMDH. DD was not even four years old at the time he was removed from respondent's home, and he recounted during his forensic interview that respondent beat DP with a belt, during which DD overheard DP screaming loudly in the bedroom. DD was also aware that GD and RD received beatings that left bruises on their bodies everywhere but their faces. In addition, respondent testified that his form of discipline for DD and KD was a slap on the hand because it was age appropriate. However, he acknowledged that he would graduate punishment to a "swat on the behind with [his] hand," and when that was no longer an effective form of discipline, the children may get a "swat on the butt with a belt." Thus, on the

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Accordingly, whether MCL 712A.19b(3)(b)(*ii*) can be satisfied in light of *In re LaFrance Minors*, 306 Mich App 713, 725; 858 NW2d 143 (2014) is irrelevant.

basis of respondent's own reasoning, the youngest children were spared from more severe abuse solely because of their ages. Furthermore, all of the children were doing well with their respective mothers. All of the children's mothers believed respondent's parental rights should be terminated. CPS workers also believed it was in the children's best interests for respondent's parental rights to be terminated. The evidence indicates that respondent failed to provide the safety and stability the children needed. We conclude that the trial court did not err in finding it was in the children's best interests to terminate his parental rights.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Thomas C. Cameron