STATE OF MICHIGAN

COURT OF APPEALS

In re HAGENSON/BAKER, Minors.

UNPUBLISHED
April 22, 2021

No. 355302
Schoolcraft Circuit Court
Family Division
LC No. 18-328501-NA

Before: MURRAY, C.J., and MARKEY and LETICA, JJ.

PER CURIAM.

Respondent-father, P. Hagenson, appeals by right the trial court's order terminating his parental rights to his minor children, KH, MB, and EH, pursuant to MCL 712A.19b(3)(c)(*i*) and (*ii*). Because the trial court did not clearly err by finding that the statutory grounds for termination were established by clear and convincing evidence and that termination of respondent's parental rights was in the children's best interests, we affirm.

Respondent, who was 44 years old at the time of the termination hearing in February 2020, has fathered six children by three different women. J. Van Dyke is the mother of his three oldest children: sons PH, LH, and JH. S. Vohs is the mother of respondent's daughter KH, and J. Baker is the mother of the two youngest children, MB and EH. During the lower court proceedings, the trial court exercised jurisdiction over respondent's five minor children.[1] At the conclusion of the termination hearing, the court found that termination of respondent's parental rights was not in the best interests of LH and JH. Consequently, only respondent's parental rights to KH, MB, and EH were terminated and are at issue in this appeal.

In August 2018, respondent lived with his then wife, J. Baker, their two children, MB and EH, and J. Baker's 11-year-old daughter, AS.[2] The family resided in a remote area of the Upper Peninsula. LH and JH lived nearby in Manistique with their mother, J. Van Dyke. They would

[1] Because PH had reached the age of majority, lived independently, and enlisted in the military, he was not included in any of the petitions.

[2] Sometime during this child protective proceeding, respondent filed for divorce from J. Baker. A judgment of divorce was entered in September 2019.

see respondent every few months. KH lived primarily with her mother, S. Vohs, downstate in Macomb County.

On or about August 10, 2018, AS disclosed to her mother that she had experienced an inappropriate encounter with respondent in the middle of the night on August 2, 2018. On August 11, 2018, Children's Protective Services (CPS) received a complaint of suspected sexual abuse. During the investigation that followed, AS was forensically interviewed by CPS, the Child Advocacy Center, and the Michigan State Police. Near the time of the disclosure, respondent and J. Baker separated or were in the process of separating.

On September 6, 2018, an emergency order was entered permitting petitioner, the Department of Health and Human Services (DHHS), to remove the children from respondent's care and place them with their biological mothers. On that same day, DHHS filed a petition requesting that the court authorize the petition, take jurisdiction of the children, and remove the children from respondent's home. The trial court authorized the petition, placed respondent's children with their biological mothers, and ordered that any visitation between respondent and the children be supervised. The order also precluded respondent from having any contact with his stepdaughter, AS.

At the adjudicative trial, the jury found that one or more of the statutory grounds for jurisdiction alleged in the petition had been proven. Consistent with the jury's verdict, the trial court entered an order of adjudication finding that DHHS had established a statutory basis for the court to exercise jurisdiction over the children under MCL 712A.2(b). The order of adjudication provided that jurisdiction was based on a "failure to provide, when able to do so, support, education, medical, surgical, or other necessary care for health or morals," a "substantial risk of harm to mental well-being," and "an unfit home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian."

At a dispositional hearing in March 2019, CPS worker Matthew Eveningred testified that respondent had been visiting with MB and EH twice a week and that the visits were appropriate. Respondent was not visiting with JH and LH because their mother had refused to permit the visits, and the teenagers themselves claimed to be both too busy and not interested in seeing respondent. Regarding KH, contact was limited to weekly telephone calls because she was living downstate with her mother. Eveningred requested that respondent be ordered to participate in substance-abuse and sexual-offender assessments. Eveningred acknowledged that although respondent had previously participated in a sexual-offender assessment in 2014, it needed to be updated. At the conclusion of the hearing, the trial court ordered respondent to, among other things, maintain a safe and stable home, refrain from possessing or using illegal drugs or alcohol, participate in random drug and alcohol testing, submit to sexual-offender and substance-abuse assessments, and to comply with the recommendations contained in the assessments.

In September 2018, DHHS filed a petition seeking termination of respondent's parental rights to all five of his minor children. Following a two-day hearing, the trial court terminated respondent's parental rights to the three youngest children, KH, MB, and EH. Thereafter, this appeal ensued.

On appeal, respondent argues that the trial court clearly erred by finding that DHHS proved by clear and convincing evidence the statutory grounds for termination and by finding that DHHS proved by a preponderance of the evidence that termination of respondent's parental rights was in the children's best interests.

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); MCR 3.977(H)(3); *In re Beck*, 488 Mich 6, 10-11; 793 NW2d 562 (2010); *In re Moss,* 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "A finding . . . is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed[.]" *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). In applying the clear error standard in parental termination cases, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); see also MCR 2.613(C).

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(*i*) and (*ii*).[3] These statutory provisions permit termination of parental rights under the following circumstances:

> (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.
>
> (*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received

[3] Respondent incorrectly asserts that the court terminated his parental rights pursuant to MCL 712A.19b(3)(c)(*i*) and (g). Because of respondent's error, he fails to specifically address and challenge termination under MCL 712A.19b(3)(c)(*ii*). "When an appellant fails to dispute the basis of a lower court's ruling, we need not even consider granting the relief being sought by the appellant." *Denhof v Challa*, 311 Mich App 499, 521; 876 NW2d 266 (2015). Because only one statutory ground need be established to support termination and because respondent fails to challenge one of the grounds relied on by the court to terminate his parental rights, respondent's appellate challenge necessarily fails as a matter of law with respect to the statutory grounds. Nevertheless, we shall continue our analysis.

> notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

The record supports the trial court's reliance on these statutory grounds.

The court assumed jurisdiction over respondent's children after a jury found that one or more of the statutory grounds for jurisdiction alleged in the petition had been proven. Specifically, the petition alleged that respondent mistreated his 11-year-old stepdaughter, AS, on the evening of August 2, 2018. AS testified during the adjudicative trial that after her mother "passed out" that evening, respondent entered her bedroom and badgered her to go for a ride in his vehicle. AS finally complied with respondent's request, thinking that if she went with him he would eventually leave her alone. While they were together, respondent rubbed AS's back, stomach, and inner thigh in a manner that made AS very uncomfortable. AS testified that respondent was drinking alcohol and smoking marijuana during these events and that he offered her these substances, but she declined the invitation. AS stated that respondent made threats, warning her not to tell anyone about what had occurred. Although respondent denied inappropriately touching AS, he admitted to having at least one drink that evening and also admitted that he smoked marijuana daily.[4] Other evidence corroborated AS's version of the events. AS testified that after this encounter with respondent, she texted her stepbrother LH to tell him what had happened and how uncomfortable she felt. LH admitted that he received a text message from AS on the evening of August 2, 2018, in which she indicated that she needed to talk to him about something. At the time of the termination hearing, the trial court found AS credible and further concluded that she had described touching of a sexual nature. We defer to the court's credibility assessment. *In re Miller*, 433 Mich at 337.

After the trial court assumed jurisdiction over respondent's children, the court ordered respondent to, among other things, maintain a safe and stable home, refrain from possessing or using illegal drugs or alcohol, participate in random drug and alcohol testing, submit to a sexual-offender assessment and a substance-abuse assessment, and, thereafter, to comply with the recommendations contained in the assessments. The court noted that the services were intended not only to address respondent's parenting issues but also to keep the children safe.

At the time of termination, 529 days had elapsed since the filing of the petition, and 346 days had passed since the initial dispositional hearing. During this time, respondent did not comply with the spirit or the intent of the trial court's orders. Respondent argues to the contrary, asserting that he underwent an assessment in May 2019 that found no substance-abuse issues. Although respondent did participate in a video substance-abuse assessment with PITA Group, an entity he found online, respondent was repeatedly told that this assessment did not constitute an adequate evaluation. Respondent voluntarily participated in that assessment for purposes of a petition to restore his driver's license. During this assessment, respondent reported that he had stopped using alcohol in March 2012 and that there had been no slips or relapses since that time. The evaluator concluded that "there is no evidence to doubt that Mr. Hagenson's abstinence will continue as it

[4] Respondent indicated that he had a medical marijuana card and smoked marijuana to treat pain.

has in the past" and that "he doesn't have any active or ongoing addiction problems." Noticeably absent from the evaluation was any indication that respondent had disclosed his continued alcohol use, the events related to the petition in the instant case, or his daily marijuana use, which produced a positive screen for THC as recently as April 17, 2019.

Respondent also appeared for a substance-abuse assessment in December 2019, but the clinician noted that respondent was combative, uncooperative, untruthful, and belligerent during the assessment; consequently, the clinician was unable to provide anything other than a provisional diagnosis. Indeed, the clinician noted that the encounter and resulting report did not constitute a valid substance-abuse assessment. Further, because of his behavior, the clinic precluded respondent from returning for further assessment.

Respondent also did not meaningfully comply with the requirement that he participate in a sexual-offender assessment. Respondent was placed on the sex-offender registry following a 1996 conviction of attempted third-degree criminal sexual conduct. He was approximately 21 years old at the time of the conviction, and the victims were under the age of 16. In 2014, after he began a relationship with J. Baker, DHHS requested that respondent participate in a sexual-offender assessment because he would be in contact with J. Baker's daughter, AS. In 2014, Dr. Dan Forrester concluded that respondent was at low risk of reoffending. After the 2018 petition was filed in this case, the court ordered respondent to undergo another assessment. In reports generated in August 2019 and January 2020, Dr. Forrester again concluded that respondent was at a low risk of reoffending. But Dr. Forrester apparently accepted as credible respondent's version of events during these assessments. Respondent had not been candid about the circumstances of his 1996 conviction, and he materially misrepresented the nature of AS's allegations and the testimony she gave during the adjudicative phase. Therefore, the trial court found the assessments by Dr. Forrester to be invalid and gave them little, if any, weight.

Not only did respondent fail to meaningfully participate in the two most critical tools in the case-service plan, he also disregarded the court's other orders, abandoned his children for 10 weeks, and exhibited behaviors that were highly suggestive of a significant substance-abuse problem. Despite being prohibited from doing so by court order, respondent frequently contacted his teenage sons. By contrast, he failed to consistently communicate through authorized telephone visits with his daughter KH, who lived downstate with her mother. At the end of May 2019 and in violation of court order, respondent left Michigan and flew to his sister's home in Florida. Shortly thereafter, he and his sister embarked on a trip across the country. Respondent was gone for approximately 10 weeks, and during this time he missed the in-person weekly parenting time that he had with MB and EH. During a telephone conversation with the caseworker in June 2019, respondent indicated that he did not intend to return to Michigan. When he did return in August 2019, he claimed that he had experienced an emotional breakdown and was seeking treatment from his sister, who allegedly was retired from a career as some sort of counselor. Upon respondent's return to Michigan, the trial court suspended respondent's parenting time. The court noted that respondent had abandoned his children, and he had yet to comply with the required assessments.

Shortly after the suspension of his parenting time, respondent repeatedly texted KH's mother in the middle of the night for more than three hours. Although most of these messages were incoherent, the police were alerted when one of the text messages alluded to a possible threat. Respondent texted: "[KH] I will kill u as . . . ." During a welfare check that followed, respondent

was found at his home in a highly inebriated state. Later that day, he entered the DHHS's facilities, the police department, and the courthouse in a visibly intoxicated state. His behavior culminated in his arrest and conviction for being drunk and disorderly. Although he was sentenced to probation, he ultimately spent 30 days in jail after he twice violated his probation. On the day before the termination hearing, respondent went to JH's place of employment where they had a brief confrontation. In addition to the unsupervised and unauthorized contact, it was equally notable that respondent was driving despite the fact that he did not have a valid driver's license.

The conditions that led to adjudication included, essentially, improper supervision, exacerbated by substance use, and touching of a sexual nature. Respondent was ordered to comply with a case-service plan designed to improve his parenting skills and keep the children safe. During the 11 months that followed, additional conditions arose, including more concerning substance abuse for which respondent was given an opportunity to address and correct. Respondent was repeatedly ordered to comply with the assessments that would have benefited reunification efforts. Despite this, he refused to candidly and meaningfully engage in the assessments. Indeed, when questioned during the termination hearing, respondent indicated that he would not benefit from substance-abuse treatment because he did not have any substance-abuse issues. Clearly, the conditions that led to adjudication and the conditions that arose thereafter continued to exist, and there was no evidence that they would be rectified within a reasonable time considering the young ages of the three children at issue in this appeal. Accordingly, the trial court did not clearly err when it found that there existed clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(*i*) and (*ii*). A parent's failure to comply with a court-ordered treatment plan is indicative of neglect and evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well-being. *In re Trejo Minors*, 462 Mich 341, 346 n 3; 612 NW2d 407 (2000).

Respondent argues that a trial court cannot base termination solely on anticipatory neglect. The anticipatory-neglect doctrine recognizes that "how a parent treats one child is probative of how that parent may treat other children." *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001) (quotation marks and citations omitted). Respondent contends that because it was only alleged that he mistreated his stepdaughter and because there was no testimony that he harmed his own biological children, there was insufficient evidence for the court to conclude that there was a reasonable likelihood that his children would suffer injury or abuse in the foreseeable future. In support of his position, respondent relies on this Court's decision in *In re LaFrance Minors*, 306 Mich App 713; 858 NW2d 143 (2014). Respondent, however, misinterprets the application of the anticipatory-neglect doctrine, and his reliance on *In re LaFrance* is misplaced.

In *In re LaFrance*, the respondents appealed the termination of their parental rights to four children. The petition did not allege any abuse or neglect in connection with the three older children, and no abuse or neglect was ever alleged as occurring during the course of the proceedings regarding those three children. *Id.* at 715. Instead, the case involved the respondent father's failure to recognize that the youngest child, a mere newborn, was severely ill with a virus. *Id.* at 716. The trial court, when terminating parental rights to the three oldest children, relied heavily on the doctrine of anticipatory neglect. *Id.* at 730. This Court found, however, that while the anticipatory-neglect doctrine can militate in favor of termination, the doctrine had little relevance under the unusual factual circumstances presented to the Court. *Id.* at 730-731. The Court noted that there was no evidence that the respondents had ever abused or neglected any of

their three older children. *Id.* Further, the ages and medical conditions of the three older children stood in sharp contrast to the youngest child, who required special medical care. *Id.* at 731. The Court observed that the infant's unique medical issues and the respondents' history of failing to recognize her needs "heighten[ed] the risk that respondents might again fail to appreciate the special needs and vulnerabilities of their infant daughter." *Id.* at 732. The Court held, however, that "because no special needs or vulnerabilities exist in relation to the three older children, we conclude that the trial court erred by invoking anticipatory neglect to extend those concerns to them as well." *Id.*

In *In re LaFrance*, the older children did not have the same vulnerability as their infant sibling. Consequently, the Court found it improvident to apply the anticipatory-neglect doctrine. Furthermore, because there were no identifiable risks to the older children, the Court held that the trial court erred when it terminated the respondents' parental rights to their three older children. By contrast, in this case, the conditions that existed at the time of termination—conditions that respondent refused to address—placed respondent's own children at risk of harm should they be returned to his care. There was clearly a nexus between his drug and alcohol use and his parenting, as evidenced by his actions on August 2, 2018, and his behavior during the pendency of this case. Throughout the proceedings, respondent failed to participate in an assessment necessary to address substance-abuse issues that clearly exacerbated his parenting deficiencies. Accordingly, this is not simply a case where the doctrine of anticipatory neglect is employed to impute potential neglect or justify an assumption that respondent's children might be at risk of harm in the future. Instead, the evidence demonstrated that because respondent had not addressed the issues that led to adjudication, his children would not be safe in his care. Accordingly, the anticipatory-neglect doctrine had little application to this case at the time of termination.

Next, respondent challenges the trial court's finding that termination of his parental rights was in the children's best interests. We find no clear error in this regard. In *In re Mota*, __ Mich App __, __; __ NW2d __ (2020); slip op at 11, this Court explained:

> With respect to a child's best interests, we place our focus on the child rather than the parent. In assessing a child's best interests, a trial court may consider such factors as a 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. The trial court may also consider how long the child was in foster care or placed with relatives, along with the likelihood that the child could be returned to the parents' home within the foreseeable future, if at all. [Quotation marks, citations, and brackets omitted.]

The trial court did not clearly err when it found that termination of respondent's parental rights was in the children's best interests. Contrary to respondent's assertions, the court weighed several factors when it considered the children's best interests. The court considered the children's ages, respondent's lack of progress with the case-service plan, and the children's need for permanency, safety, and stability. The trial court distinguished the needs of the two oldest boys, both teenagers, from those of their much younger siblings.

At the time of termination, KH was eight years old and living with her mother downstate. Respondent had made little effort to keep in contact with her through court-authorized telephone calls. MB was 5 years old, and EH was only 2. Although respondent, in general, regularly visited his two youngest children, he thought nothing of leaving and missing 10 weeks of parenting time. Indeed, when he left without the court's permission in May 2019, he had no intentions of returning to Michigan. When he returned, the court suspended his parenting time. Consequently, at the time of termination, it had been approximately eight months since respondent had seen his two youngest children, which certainly impacted any bond between respondent and the children. Moreover, respondent's actions demonstrated that he was unable to put his children's needs ahead of his own.

Respondent's three youngest children were doing well in the custody of their biological mothers without contact from respondent. Children, especially ones as young as KH, MB, and EH, require a parent who can provide them with a safe, stable, and permanent environment. By contrast, the evidence in this case established that the children would be at risk of harm in respondent's care. Respondent had not addressed his substance-abuse issues and, as a result, lacked the skills necessary to safely parent his young children. Accordingly, the trial court did not clearly err when it found that termination of respondent's parental rights to KH, MB, and EH was in the children's best interests.

We affirm.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Anica Letica