

STATE OF MICHIGAN
COURT OF APPEALS

In re HASH, Minors.

UNPUBLISHED
July 22, 2021

No. 355975
Ontonagon Circuit Court
Family Division
LC No. 18-000006-NA

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

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to his minor children, TLH and TJH, pursuant to MCL 712A.19b(3)(b)(i)¹ (parent’s act caused physical injury or sexual abuse) and (j) (reasonable likelihood of harm if returned to parent). For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

Respondent was the father of TJH and TLH, and although he was separated from the children’s mother, he continued to have visitation with the minor children. In 2018, respondent was arrested and charged with second-degree criminal sexual conduct. While he was in jail, respondent disclosed to law enforcement and a Department of Health and Human Services (DHHS) worker that he had sexually abused TLH. Respondent stated that he drove TLH to a secluded area and asked her if she would have sex with him, which she refused, and he persuaded her to put her hand on his penis over his clothes. During the conversation with law enforcement and the DHHS worker, respondent also discussed sexual abuse that he had committed toward approximately six other child victims. Respondent victimized children of people that respondent befriended or dated, as well as children who were acquaintances of TJH or TLH. There was testimony that respondent used TJH’s cell phone to contact other minors for sexual purposes. TJH’s counselor testified that TJH knew how respondent had used TJH’s cell phone, that TJH had discussed this matter with her, and that TJH was upset by it. According to TJH’s counselor, TJH “understood that a grown man reaching out to younger girls for the purpose of sex was definitely

¹ The trial court found that MCL 712A.19b(3)(b)(i) applied to TLH but not TJH.

wrong,” and TJH “had a hard time separating his desire to have a relationship with dad from the fact that dad had violated a sacred trust there between father and son.”

The trial court terminated respondent’s parental rights to TLH under MCL 712A.19b(3)(b)(i) and to TJH under MCL 712A.19b(3)(j). Respondent now appeals.

II. ANALYSIS

A. STATUTORY GROUNDS

Respondent first argues that the trial court erred by terminating respondent’s parental rights on the basis of his incarceration under MCL 712A.19b(3)(h)² (incarceration of parent depriving child of a normal home). However, the trial court made no such finding.

We review for clear error the trial court’s determination that at least one statutory ground for termination is supported by clear and convincing evidence. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (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 BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

² MCL 712A.19b(3)(h) provides:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(h) The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child’s proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

In this case, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i) and (j);³ the trial court did not cite MCL 712A.19b(3)(h),⁴ nor did the trial court merely rely on respondent's incarceration as a ground for termination. To the extent the trial court referenced the fact that respondent was incarcerated, the reference was made in the context of the trial court's discussion of respondent's history of being convicted and accused of committing sexual offenses against minor children. The trial court discussed this history to show that respondent's treatment of his own daughter, TLH, was part of an established pattern of engaging in sexually abusive conduct toward minors, which the trial court found to be an indication that TLH was reasonably likely to suffer from sexual abuse in the future if respondent's parental rights were not terminated. See MCL 712A.19b(3)(b)(i). Respondent does not challenge the propriety of the trial court's findings in this regard on appeal but instead focuses solely on claiming that the court's statutory grounds finding was based on his incarceration and MCL 712A.19b(3)(h).

Our Supreme Court has held that "[i]ncarceration alone is not a sufficient reason for termination of parental rights." *In re Mason*, 486 Mich 142, 146; 782 NW2d 747 (2010). However, as we have discussed, there is no support in the record for the contention that the trial court relied on MCL 712A.19b(3)(h) or respondent's incarceration alone to justify its conclusion that a statutory ground supporting termination had been established.

Respondent has not advanced any argument on appeal that the trial court's reliance on MCL 712A.19b(3)(b)(i) or (j) was erroneous. Respondent's entire statutory grounds argument is directed at challenging the propriety of relying on a ground that was not actually relied on by the

³ These provisions of MCL 712A.19b(3) provide as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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.

* * *

(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.

⁴ Although the prosecutor argued during her closing statement that the court could rely on MCL 712A.19b(3)(h) as a ground for termination, it is clear from the trial court's explanation of its decision on the record that it only relied on MCL 712A.19b(3)(b)(i) and (j). The trial court thus did not accept this argument advanced by the prosecutor.

trial court. Under these circumstances, respondent has abandoned any appellate challenge to the trial court's statutory grounds findings. "A party cannot simply assert an error or announce a position and then leave it to this Court to discover and rationalize the basis for [his] claims, or unravel and elaborate for [him his] argument, and then search for authority either to sustain or reject [his] position," *In re TK*, 306 Mich App 698, 712; 859 NW2d 208 (2014) (quotation marks and citation omitted). "The failure to brief the merits of an allegation of error constitutes an abandonment of the issue." *People v Iannucci*, 314 Mich App 542, 545; 887 NW2d 817 (2016) (quotation marks and citation omitted); see also *Froling v Carpenter*, 203 Mich App 368, 373; 512 NW2d 6 (1993). Termination need only be supported by one statutory ground. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). Accordingly, respondent has not demonstrated any error by the trial court with respect to its statutory grounds determination.

B. BEST INTERESTS

Respondent also argues that termination of his parental rights was not in the best interests of the children, essentially because he was subject to incarceration until after they would become adults and because they currently lived with their mother. We review for clear error a trial court's decision that termination is in a child's best interests. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

"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." *Id.* "Best interests are determined on the basis of the preponderance of the evidence." *In re LaFrance Minors*, 306 Mich App 713, 733; 858 NW2d 143 (2014). When determining the best interests of the child, a trial court should weigh all available evidence and consider a variety of factors, including the child's bond to the parent; the child's need for permanency, stability, and finality; the parent's history of visitation with the child; and the child's well-being while in care. *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014).

The record revealed that respondent sexually abused TLH and asked her to have sexual intercourse with him. TLH's counselor testified that she and TLH discussed TLH's relationship with respondent, that TLH was "hurt" by respondent, and that TLH indicated that respondent never really paid attention to her or engaged in activities with her. TLH testified that respondent did not spend much time with her and that respondent usually spent time with TJH. TLH also testified, "At times, I forget I even have a dad." According to TLH's counselor, attempts to discuss the incident of sexual abuse committed by respondent would cause TLH to "shut down," dissociate, and "throw[] up a brick wall of, 'I don't remember.'" TLH's counselor explained that this was a common means of avoiding painful memories. Respondent also admitted to sexually assaulting at least six other minor children.

With respect to TJH, there was evidence that respondent used TJH's cell phone to contact minors for sexual purposes, and respondent sexually abused TJH's friends. DHHS worker Shannon Clinesmith testified that respondent was having a negative influence on TJH by modeling unhealthy relationships and involving TJH in respondent's inappropriate activity. TJH's counselor testified as follows about TJH's relationship with respondent:

[TJH] missed his dad. He loves his dad, and he was willing to set aside some of his strong core values and beliefs on what is right and wrong in order to have a relationship with dad. He had, seems to me, had a very strict moral compass, and he was willing to set that aside in order to have this relationship.

Clinesmith testified regarding both children that it was necessary to pursue termination of respondent's parental rights, despite that he was not eligible for release from incarceration until after the children became adults, because termination would prevent respondent from potentially causing further trauma by accessing or involving himself with the children's medical records, mental health records, or educational records. Clinesmith acknowledged that there was no indication that respondent had taken such actions during the approximately two and a half years the case had been pending.

The trial court found that termination was in TLH's best interests because there was no bond between TLH and respondent and TLH already seemed to operate as if she did not have a relationship with respondent. With respect to TJH, the trial court noted that TJH had struggled with reconciling his desire to have a relationship with respondent and his own clear sense of right and wrong. However, the trial court found that termination of respondent's parental rights was in TJH's best interests because "the Court is of the firm conviction that it is in his best interest not to be exposed to the mindset that brought these matters before the Court in the first place." The trial court further stated that respondent's "history cycling through this behavior with young girls it not something that needs to be mentored or mirrored--mentored to or mirrored by [TJH], and it is in his best interest that this parental relationship be terminated, as well." We conclude that the trial court's best interests findings were not clearly erroneous.

To the extent respondent argues that it was not in the children's best interests to terminate his parental rights because the children will be adults by the time he is released from incarceration, respondent ignores the negative effects of his actions on his children, which we have already discussed in this opinion. The facts presented in this case reveal that respondent is a serial child rapist. We cannot conceive of how placing any minor child in his care would be in the best interests of that minor child, hence, on this record, we do not find it clearly erroneous for the trial court to have determined that it was in the children's best interests for them to not have *any* relationship with respondent while he remains incarcerated and to terminate respondent's parental rights. "[T]he focus at the best-interest stage has always been on the child, not the parent." *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013).

Finally, respondent's argument that the placement of the children with their mother weighed against termination because the children were placed with a relative is misplaced. "[T]he fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests" because "a child's placement with relatives weighs against termination" under MCL 712A.19a(8)(a). *In re Olive/Metts Minors*, 297 Mich App at 43 (quotation marks and citations omitted). However, while a court must consider the fact that a child is placed with relatives in determining whether termination is in the child's best interests, a child's placement with relatives does prohibit the trial court from concluding that termination of parental rights is in the child's best interests. *Id.* Here, the trial court expressly acknowledged that the children were placed with their mother, but the court nonetheless found that termination of respondent's parental rights was still in the children's

best interests. Moreover, a biological mother does not fall under the definition of “relative” for purposes of MCL 712A.19a, which is contained in MCL 712A.13a(1)(j).⁵ See also *In re Schadler*, 315 Mich App 406, 412-413; 890 NW2d 676 (2016). Thus, this argument also does not establish clear error by the trial court.

Affirmed.

/s/ Stephen L. Borrello
/s/ Deborah A. Servitto
/s/ Cynthia Diane Stephens

⁵ MCL 712A.13a(1)(j) provides as follows:

“Relative” means 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. A stepparent, ex-stepparent, or the parent who shares custody of a half-sibling shall be considered a relative for the purpose of placement. Notification to the stepparent, ex-stepparent, or the parent who shares custody of a half-sibling is required as described in section 4a of the foster care and adoption services act, 1994 PA 203, MCL 722.954a. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. A placement with the parent of a putative father under this subdivision is not a finding of paternity and does not confer legal standing on the putative father.