

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 4, 2012

In the Matter of Z. G. BAKER, Minor.

No. 310371
St. Clair Circuit Court
Family Division
LC No. 12-000050-NA

Before: SAWYER, P.J., and SAAD and METER, JJ.

PER CURIAM.

Respondent appeals of right from an order terminating her parental rights to her daughter (born on November 11, 2011) under MCL 712A.19b(3)(b)(ii) and (iii), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j). We affirm.

Petitioner sought termination of respondent's parental rights, alleging that the child's putative father physically and sexually abused the child, that respondent knew of the abuse, and that respondent did not immediately remove the child from the dangerous situation. Testimony at the termination hearing indicated that respondent had difficulty recognizing that the putative father's actions were wrong and that when respondent spoke with service workers she did not seem terribly upset about the incidents.

To justify termination of parental rights, the trial court must find that at least one statutory ground for termination of parental rights has been established by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo Minors*, 462 Mich 341, 360; 612 NW2d 407 (2000). Thereafter, the trial court must terminate parental rights if it finds that doing so would be in the child's best interests. MCL 712A.19b(5).

We review for clear error a trial court's determination that a statutory ground for termination has been proven by clear and convincing evidence. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). We also review for clear error a trial court's finding that termination of parental rights is in the best interests of the child. *Trejo*, 462 Mich at 356-357.

Respondent argues that the trial court clearly erred by terminating her parental rights under MCL 712A.19b(3)(b)(ii) and (iii).¹ We disagree.

Respondent claimed she did everything she could to protect the baby, but the evidence showed that respondent only removed the child from the putative father's care after a fourth incident of abuse, during which the putative father rubbed the baby's genitals and made a lewd comment. Before this, the putative father had abused the child two times sexually and once physically. During the physical-abuse incident, the putative father was angry with the child for crying, so he swore at her and bounced her violently on a bed to the point that her "eyes had rolled to the side or back of her head and stared off and then had rolled forward" and looked abnormal. During the sexual-abuse incidents, the putative father blew on the baby's genitals, and also sprayed her genitals with water and remarked about the effect.² Evidence showed that respondent had difficulty comprehending that the putative father's actions posed a danger to the child and that she did not take timely action to protect the child. In addition, a service worker testified that there was evidence that respondent was maintaining contact with the putative father.³ The record adequately supports the trial court's conclusion that clear and convincing

¹ MCL 712A.19b(3)(b)(ii) and (iii) provide:

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:

* * *

(ii) The parent who had the opportunity to prevent the physical injury or physical and sexual abuse failed to do so and the court find 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.

² We note that the evidence in the lower-court record varies concerning the sequence of the various instances of abuse. Respondent maintains that the rubbing incident was the final incident.

³ The trial court overruled an objection to the worker's testimony.

evidence existed to terminate respondent's parental rights under MCL 712A.19b(3)(b)(ii) and (iii).⁴

Next, respondent argues the trial court clearly erred by terminating her parental rights under MCL 712A.19b(3)(g) and (j).⁵ We disagree.

Respondent failed to provide proper care and custody when she and the child lived with the putative father's family because she took no significant action after she witnessed the putative father abuse the child on several occasions. Testimony established that later, respondent no longer lived with the putative father's family; however, her lack of insight into the dangerous situation in which she allowed the child to live supports a finding that she could not provide reasonable care and custody for the baby within a reasonable time given the child's age. Respondent failed to remove the child from the putative father's presence even though the putative father had abused the child, had sexually assaulted her, and had killed family pets. MCL 712A.19b(3)(j) requires the court to evaluate future performance. Given respondent's behavior and lack of adequate earlier response, the evidence supported a finding that the child would remain at risk in respondent's custody.

Respondent argues that she should have received services and an opportunity to demonstrate that she could provide safe care for the child. However, petitioner is not required to make any efforts toward reunification in cases where a parent or custodian has committed "[c]riminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate" against a child. See MCL 722.638(1)(a)(ii) and MCL 712A.19a(2)(a). This holds true even if the respondent did not commit the sexual abuse herself but instead failed to protect the child. MCL 722.638(2). The testimony concerning the rubbing of the child's genitals indicates that this case did indeed involve penetration or attempted penetration.⁶ See, e.g.,

⁴ It could be argued that subsection MCL 712A.19b(3)(b)(iii) does not apply because the putative father was a "parent" instead of a "nonparent." However, paternity has not been established, and, at any rate, only one statutory ground need be established to justify termination of parental rights. *Trejo*, 462 Mich at 360.

⁵ MCL 712A.19b(3)(g) provides:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child 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.

MCL 712A.19b(3)(j) provides:

(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.

⁶ Testimony indicated that the putative father "us[ed] one hand to spread the genitals apart" and used "two fingers moving back and forth in a quick motion."

People v Bristol, 115 Mich App 236, 238; 320 NW2d 229 (1981) (discussing the broad definition of “penetration” in the context of criminal sexual conduct), and MCL 750.520a(r) (defining “penetration” for purposes of criminal sexual conduct).

Finally, respondent argues that termination of her parental rights was not in the best interests of the child. We disagree. The best interests of a child are not served by leaving the child in the custody of a parent who does not respond adequately to dangerous situations. In addition, respondent did not have a stable living situation at the time of the termination hearing. The trial court did not clearly err in finding that termination of respondent’s parental rights was in the child’s best interests. MCL 712A.19b(5).

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Patrick M. Meter