

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 31, 2013

In the Matter of MCKINNEY, Minors.

No. 309888
Oakland Circuit Court
Family Division
LC No. 11-784824-NA

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and BOONSTRA, JJ.

PER CURIAM.

Respondent J. McKinney appeals as of right from a circuit court order terminating his parental rights to four minor children: EM, IM, AM and RM, pursuant to MCL 712A.19b(3)(b)(i), (g), (j), and (k)(ii). We affirm.

Respondent argues that the trial court erred in finding that a statutory ground for termination was established by clear and convincing evidence, and also erred in finding that termination of his parental rights was in the children's best interests. Respondent characterizes the children's assertions of abuse against him as "absolutely not substantiated" by medical evidence or mandatory reporters of child abuse at the children's schools and church. He also highlights that at a doctor's office, AS, a ward of respondent and his former wife for several years, recanted her allegations of sexual abuse.

The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once the petitioner has proven a statutory ground for termination by clear and convincing evidence, the circuit court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). This Court reviews for clear error a circuit court's decision to terminate parental rights. MCR 3.977(K). The clear error standard controls our review of "both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich at 356-357. A decision qualifies as clearly erroneous when, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes this Court as more than just maybe or probably wrong. *In re Trejo*, 462 Mich at 356. We give deference to the circuit court's special opportunity to observe and judge the credibility of witnesses. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The circuit court did not clearly err in finding clear and convincing evidence warranting termination of respondent's parental rights under MCL 712A.19b(3)(b)(i), (g), (j) and (k)(ii). Through the lengthy evidentiary hearing testimony of Care House forensic interviewer Jennifer Dubs, who explained that when separately interviewing the children she adhered to child interview protocols that she had followed approximately 1,000 times previously, respondent's children and AS gave similar, unprompted, and unscripted accounts of respondent's severe physical abuse of all the children. The children described respondent's choking of two of the boys with his hands, his beatings of some of the children with his hands and a plastic hanger, and repeated instances in which respondent beat the children with a black belt. Dubs also recounted AS's first documented revelation of her sexual abuse by respondent, which spanned a period of approximately five years and encompassed respondent's forced fellatio with the child and an extensive course of anal penetrations. At the termination hearing, AS testified regarding respondent's sexual abuse and it was similar to her descriptions to Dubs.¹

Other evidence corroborated various portions of the children's accounts of respondent's physical and sexual abuse: Oakland County Deputy Sheriff Maurice Martin testified at the evidentiary hearing that he responded to an April 25, 2011 call from the McKinney children's mother alleging "child abuse against the father"; Martin, who had "train[ing] to forensically interview children[,] individually questioned the children, who revealed, among other physical abuse by respondent, the following: IM told Martin that respondent had choked him and hit his face with a belt, and respondent advised IM "to say he fell on a skateboard or something . . . if somebody asked"; EM similarly related to Martin respondent's choking of IM and beating of IM with a belt, and added that "dad gets mad a lot and whips . . . [us] all"; AS revealed to Martin that she had seen respondent "banging [AM's] head on a . . . metal futon and throwing him across the room," as well as bloody marks on IM's face, and heard respondent threaten to kill AM. CPS worker Pandora Brown testified at the evidentiary hearing that she also separately interviewed the children in conformity with her forensic training on April 25, 2011, and that they disclosed similar accounts of physical abuse by respondent; Brown also saw "[a] bruise" on IM's right cheek.

At the evidentiary hearing and the termination hearing, the children's mother testified about her April 24, 2011 observation of a mark on IM's cheek and IM's attribution of the mark to respondent having used a belt to strike him. The children's mother also testified at the evidentiary hearing regarding the children's initial disclosures of some physical abuse by respondent, and her subsequent notification of the police. At the termination hearing, the children's mother identified a photograph of the mark on IM's cheek, and recalled that during an

¹ Respondent repeatedly references AS's recantation of the sexual abuse allegations during a doctor visit with her paternal grandmother. However, respondent ignores AS's termination hearing testimony that after her Care House interview, she told a doctor "that nothing had happened," but only because her "[respondent's mother] told me not to tell," and to say that the children's mother had told AS to lie about respondent at the Care House. At the evidentiary hearing, AS also expressed to Dubs that respondent warned her not to tell anyone about the sexual abuse because someone "would call the police."

emergency room doctor's examination of IM and AM, the children's mother saw scratches "[a]ll over their bod[ies]." The children's mother also recounted at the termination hearing that around Valentine's Day 2011, she observed "a big red mark on the side of [AM's] face" and bruising on an arm, and identified photographs of these injuries.

The circuit court watched recordings of four of the children's Care House interviews during the evidentiary hearing, and made extensive findings of fact at the conclusion of the evidentiary hearing. The court took judicial notice of the evidentiary hearing record at the commencement of respondent's termination hearing. Standing alone, Dubs's evidentiary hearing testimony regarding the five children's detailed and similar accounts of respondent's physical abuse, and AS's detailed descriptions of respondent's sexual abuse, provided clear and convincing evidence of respondent's acts of physical and sexual abuse of the children. The evidence of record concerning Martin's, Brown's, and the children's mother's elicitation of similar though more limited statements of the children attributing physical abuse to respondent only give more credence to the children's revelations to Dubs. Moreover, the circuit court plainly found the children's accounts credible, a determination that we will not revisit on appeal. *In re HRC*, 286 Mich App at 459. The children's accounts of abuse clearly and convincingly establish all four statutory grounds that the circuit court invoked in terminating respondent's parental rights.

Respondent also disputes the circuit court's finding that termination of his parental rights served the children's best interests. We conclude that the circuit court did not clearly err in finding that termination of respondent's parental rights served the children's best interests, given the abundant evidence of respondent's acts of physical and sexual abuse, and the foster care worker's testimony that the children seemed "more much more calm and at ease" than when they first arrived in foster care, had improved in school academically and behaviorally, and none of the children had voiced a desire to return to respondent's custody.²

Affirmed.

/s/ Amy Ronayne Krause
/s/ Mark J. Cavanagh
/s/ Mark T. Boonstra

² According the recently filed prosecutor's brief: "Following the termination of his parental rights, Father pled no contest to a reduced charge of Second Degree Criminal Sexual Assault. He is scheduled to be sentenced by the Honorable Wendy L. Potts of the Oakland County Circuit Court on January 23, 2013. Two counts of First Degree CSC were dismissed in exchange for his no contest plea." Prosecutor's brief at page 10. While this Court is able to see the register of actions from the underlying case, we have no way to know the facts of it, nor the identity of the victim. If the victim was one of respondent's children, or AS or any other minor, that would further strengthen the reasons to terminate his parental rights.