STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
February 5, 2013

In the Matter of BARYLSKI, Minors.

No. 310859
Genesee Circuit Court
Family Division
LC No. 11-128165-NA

Before: TALBOT, P.J., and JANSEN and METER, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to two minor children, C.B. and Z.B., under MCL 712A.19b(3)(b)(*i*), (g), (j), and (k)(*iii*). We affirm.

Respondent argues that the trial court clearly erred when it found multiple statutory bases for termination of his parental rights. We disagree. "In order to terminate parental rights, the [trial] court must find that at least one of the statutory grounds for termination . . . has been met by clear and convincing evidence." *Matter of Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). This Court reviews for clear error a trial court's factual finding that a statutory ground has been established. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding is clearly erroneous where the reviewing court has a definite and firm conviction that a mistake has been made." *Matter of Jackson*, 199 Mich App at 25. "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

The trial court's conclusion with regard to MCL 712A.19b(3)(b)(*i*) was supported by clear and convincing evidence. MCL 712A.19b(3)(b)(*i*) provides that a court "may terminate a parent's parental rights to a child if the court finds" that "[t]he child or a sibling of the child has suffered physical injury or physical or sexual abuse" and that the "parent's act caused the physical injury or physical or sexual abuse and . . . 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." The court heard testimony that respondent had abused a child on at least three separate occasions. First, the children's mother, T.W., referred to an incident during which respondent was involved in some form of abusive altercation with a 12-year-old girl. Although the details regarding this incident were unclear, T.W. answered "[y]eah" when the court asked her, in regard to this incident, "You say you may have admitted that there was a history of child abuse?" Further, on July 14, 2010, John Banner, general manager of Genesee Recycling, witnessed respondent pick

up C.B. (only two years old at the time) by his arms, slam C.B. on the counter, and hit C.B.'s head against the glass that separated customers from workers. Banner then witnessed respondent "backhand" C.B. across his face and hit his head against a hard surface.[1] Banner told the police that respondent had told C.B., "I'm going to smack the sh-t out of you," before respondent "backhanded" the child.[2] When he inspected C.B., Banner discovered "old bruising." A little over one year later, on August 10, 2011, T.W. left C.B. with respondent while she worked. Upon returning home, T.W. discovered that C.B. had a handprint on the side of his face, and C.B. told her "daddy slapped me because I pooped."

Given the physical abuse of C.B. and given the evidence of a pattern of abuse, the trial court did not commit clear error when it determined that MCL 712A.19b(3)(b)(*i*) applied.

MCL 712A.19b(3)(g) provides that a court may terminate parental rights if "[t]he parent, without regard to intent, fails to provide proper care or custody to 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."

Respondent sold drugs and used both cocaine and marijuana. Respondent had been arrested for possession with intent to deliver cocaine and for delivery of marijuana in 2004. Even when on probation, respondent could not control his behavior and was ultimately arrested again, because he fought with another man. After all of this, respondent pleaded guilty to another drug crime in 2005 or 2006. Additionally, respondent has shown a propensity for violence, including the child-abusive activity detailed above and a domestic-violence incident in January 2009 during which he injured T.W. All of these actions showed that respondent is unlikely to be able to modify his behavior in order to provide proper care and custody for the children, given that he has continued with poor behavior for years.[3] In addition, Nikeya Johnson, a child protective services (CPS) worker assigned to the case, testified that respondent referred to CPS services as "dumb a-- parenting classes that were a waste of time and taxpayers' money." Given respondent's negative attitude toward remedial services, as well as his history of an unwillingness or inability to alter his bad and illegal behaviors, the court did not commit clear error when it found that MCL 712A.19b(3)(g) had been established by clear and convincing evidence.

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[1] Banner testified that C.B. sustained a cut on his head as a result of this incident. We further note that respondent was convicted of second-degree child abuse and domestic violence as a result of his actions at Genesee Recycling.

[2] According to Banner's testimony, the incident arose after Banner helped C.B. get some candy. When the little boy had trouble saying "thank you" because his mouth was full of candy, respondent became angry.

[3] We note that respondent, in fact, was incarcerated at the time of the termination hearing. The trial court noted that this incarceration related to a probation violation and to a fourth-degree child-abuse plea. Although the record is less than clear, it appears that the plea was made in connection with the August 2011 slapping incident.

MCL 712A.19b(3)(j) provides that a court may terminate parental rights if "[t]here 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." The evidence of physical abuse discussed above supported a finding of future physical harm, and the trial court was presented with evidence that the children would likely be harmed emotionally, as well, if they had contact with their father. See *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). The court heard audio recordings in which respondent manipulated, threatened, and verbally abused T.W. Additionally, respondent physically abused T.W. in the past. Violence and verbal abuse in the home clearly has a negative impact on children in the home. Based on the threat of physical and emotional harm posed by respondent's presence, this Court finds that the trial court did not clearly err when it found that MCL 712A.19b(3)(j) had been established.

MCL 712A.19b(3)(k)(*iii*) provides that a court may terminate parental rights if "[t]he parent abused the child or a sibling of the child and the abuse included . . . *[b]attering*, torture, or other *severe physical abuse*" (emphasis added). Given respondent's treatment of two-year-old C.B. at Genesee Recycling, we cannot find that the trial court committed clear error in finding that this statutory basis was established by clear and convincing evidence.[4]

Respondent contends that even if the court was correct in its determination that MCL 712A.19b(3)(b)(*i*), (g), (j), and (k)(*iii*) provided bases for the court to terminate respondent's parental rights, termination was not in C.B.'s and Z.B.'s best interests. We disagree.

"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). Whether termination is in the best interests of the children is based on "the evidence on the whole record and is reviewed for clear error." *In re LE*, 278 Mich App 1, 25; 747 NW2d 883 (2008).

The trial court stated the following with regard to the best-interests issue:

> It is in the best interest of the children to not be abused, and, you know, I'm sure that there is a bond between [C.B.] and [respondent], but the concern over his safety and welfare because of the abuse and all of the other things I've talked about, the domestic violence, the criminal behavior, the drugs, those concerns far outweigh the loss of the bond. With regard to [Z.B.], there is no bond because the child has just been born recently.
>
> So, I do find that it's in the children's best interest by clear and convincing evidence, both of them, that [respondent's] rights be terminated not just because of the threat that he presents—the risk of his causing dysfunction to mom. Okay?

[4] We note that Random House Webster's Dictionary (2001) defines "abuse," in part, as "bad or improper treatment." The trial court did not clearly err in essentially finding that respondent's treatment of C.B. was "severe" "bad or improper treatment" of a physical nature.

> Not only is he a threat, but he prevents mother from being an adequate parent. She can be an effective appropriate good parent to these children only, only without [respondent's] presence and participation. So, for those reasons I do find that it's the best interest [sic].

"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, [and] the child's need for permanency, stability, and finality . . . ." *In the Matter of Olive/Metts, Minors*, 297 Mich App 35; 823 NW2d 144 (2012) (citations omitted). In *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009), this Court noted that the "respondent failed to display appropriate parenting during parenting time, and she continued to involve herself in situations of domestic violence." In considering these facts, this Court held that "the trial court did not clearly err by determining that termination of respondent's parental rights was in the child's best interests." *Id*. at 130. Similarly, as discussed above, respondent has shown a history of violence and inappropriate parenting. Additionally, C.B. and Z.B. need stability in their lives. They cannot get stability from a violent father. We find no clear error with regard to the trial court's decision.[5]

Affirmed.

/s/ Michael J. Talbot
/s/ Kathleen Jansen
/s/ Patrick M. Meter

[5] Respondent refers repeatedly to the lack of services offered to him by the Department of Human Services, but he does not raise the lack of services as a separate issue in his statement of questions presented for appeal. At any rate, services are not required in cases involving "severe physical abuse." See, e.g., MCL 722.638(1)(a)(*iii*), MCL 722.638(2), and MCL 712A.19a(2)(a).