

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 16, 2013

In the Matter of J. METIVIER, Minor.

No. 310861
Genesee Circuit Court
Family Division
LC No. 11-128291-NA

Before: M. J. KELLY, P.J., and CAVANAGH and MURRAY, JJ.

PER CURIAM.

Respondent father appeals by right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(b)(i), (g), (j), and (k)(ii). Because we conclude that there were no errors warranting relief, we affirm.

In order to terminate a parent's parental rights, the trial court must first find that at least one statutory ground for termination under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Rood*, 483 Mich 73, 101; 763 NW2d 587 (2009). If the trial court finds that one or more grounds for termination exist, it must order termination if it also finds that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews the trial court's findings for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); MCR 3.977(K). Clear error exists "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).

Respondent had the minor child with a woman who already had children. The minor child's seven-year-old half-sister, MR, told her mother that respondent had been sexually assaulting her for some time and her mother reported it to police officers in July 2011.

MR related that, on multiple occasions, respondent had rubbed himself against her backside, forced her to put her mouth over his penis, and forced her to masturbate him. Respondent repeatedly denied having sexually assaulted MR. The trial court examined the evidence and testimony and found that respondent had sexually abused MR and, on that basis, concluded that petitioner had established three grounds for terminating respondent's parental rights to the minor child. See MCL 71A.19b(3)(b)(i) (providing for termination where the parent

sexually abused the child or a sibling of the child), (j) (providing for termination where there is a reasonable likelihood that the child will be harmed), and (k)(ii) (providing for termination where the parent engaged in sexual penetration with the child or a sibling of the child).¹ On appeal, respondent argues that the trial court clearly erred when it found that he sexually abused MR; specifically, he argues that MR's testimony was so incredible that the trial court could not rely on it.

These proceedings plainly hinged on witness credibility and the trial court resolved the credibility dispute in MR's favor. The trial court found her to be straightforward and consistent when recalling the abuse. The trial court specifically noted that her testimony showed no indicia of being programmed, coached, or manipulated. Moreover, MR's testimony was consistent with her prior statements and expert testimony. Although respondent argued that MR falsely accused him, there was nothing substantive in the record that demonstrated that MR or her mother had a motive to falsely accuse him. There was no evidence of prior accusations and no history of custody, support, or visitation disputes. Respondent had liberal access to his child. Respondent attempted to portray MR's mother as having a pecuniary motive to coach her daughter to fabricate a claim, but that evidence was not compelling and the timing of the motive relative to MR's revelations suggested that MR's mother would not have had time to coach her.

The trial court also found that respondent was evasive with a detective in 2011 and with the court during the termination hearing. Despite initially denying that MR could ever have seen him naked, at the termination hearing, respondent tried to explain how MR could have obtained knowledge about sexual activities. He stated that MR might have seen him engage in similar activities with her mother. The trial court could reasonably have concluded that respondent's statements were inconsistent and evasive because he was not being truthful. Because the trial court was in the best position to address witness credibility, we must defer to the trial court's decision to discount respondent's testimony in favor of MR's testimony. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent also places great emphasis on the notion that MR's allegations were outlandish and came "out of the blue." The record shows that MR was consistent when providing details of respondent's abuse. And, although there was some discrepancy about the timing of the child's revelations, she candidly admitted that it was difficult for her to remember every instance of sexual abuse and was unable to recall the order of events. A therapist testified that MR's statements could have been misconstrued because of her limited understanding of time spans and sequencing of events, which were typical for a young child. The therapist emphasized that, when questioning children, it is important that adults be very specific and concrete. She further explained that a child could easily become confused during questioning. Thus, the timing alone did not significantly undermine the MR's credibility.

¹ The trial court also found that petitioner had established grounds for termination under MCL 712A.19(b)(3)(g), but we conclude that it is unnecessary to address that ground. See *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Respondent further argues that it is “wildly unlikely” that he would have sexually assaulted MR in a crowded camper or in a van full of people as she described. He contends that these allegations put all other allegations against him fatally into doubt. This argument rings hollow in light of MR’s credible testimony. Respondent admitted that he was with MR in each of the places: the family pool, a camper, and in a van (that had a towel as carefully described by MR). Thus, MR’s descriptions were consistent with undisputed facts. Moreover, these details could not have come from her mother; as such, the details bolster MR’s credibility.

Given the record evidence, we cannot conclude that the trial court clearly erred when it found that grounds for termination under MCL 712A.19b(3)(b)(i), (j), and (k)(ii) had been established by clear and convincing evidence. *In re BZ*, 264 Mich App at 296-297.

We also reject respondent’s claim that the trial court erred when it failed to order him to undergo a penile plethysmography test to see if was sexually aroused by children. This claim is disingenuous; respondent refused to take a polygraph and yet now faults the trial court for failing to order him to take an even more invasive test. In any event, even if we were to conclude that the trial court should have ordered such a test, respondent has not established that this unpreserved error prejudiced him. Therefore, it does not warrant relief. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

The court also did not clearly err when it found that termination was in the child’s best interests. See MCL 712A.19b(5). Respondent argues that, aside from the sexual abuse allegations by the minor child’s half-sister, there was no evidence that termination was in the minor child’s best interests. He contends that the evidence that he was an attentive and financially supportive father and that all the children loved him showed that it was in the minor child’s best interests that he continue to have a relationship with the child. The evidence clearly showed that MR and the minor child loved respondent. Notwithstanding that evidence, the trial court reasonably conclude that respondent’s willingness to take advantage of the minor child’s half-sister to satisfy his sexual desires was not an isolated occurrence and that she too was at risk of abuse. And, contrary to respondent’s claim that the trial court engaged in a perfunctory analysis, the record shows that the court thoughtfully considered the minor child’s young age and the potential that she too might become a victim when it found that termination was in her best interests. For that reason, we cannot conclude that the trial court clearly erred in that finding.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Christopher M. Murray