# STATE OF MICHIGAN

# COURT OF APPEALS

UNPUBLISHED
April 16, 2013

In the Matter of WILSON Minors.

No. 312447
Wayne Circuit Court
Family Division
LC No. 11-504728-NA

Before: BORRELLO, P.J., and K. F. KELLY and GLEICHER, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the minor children, J. Wilson and N. Wilson, pursuant to MCL 712A.19b(3)(b)(*i*), MCL 712A.19b(3)(j), and MCL 712A.19b(3)(k)(*ii*).[1] For the reasons set forth in this opinion, we affirm.

This appeal arises out of the termination of respondent's parental rights. The facts leading to termination involved the allegations of a minor that respondent had engaged in sexual abusive conduct with the minor victim. Respondent pleaded no contest to the allegations in the petition under MCL 712A.2(b)(1) (failure to provide proper or necessary support, education, medical, surgical, or other care) and (b)(2) (unfit home or environment by reason of neglect, cruelty, drunkenness, criminality, or depravity). The factual basis for the plea was a Sheriff's report, admitted without objection.

On July 9, 2012, respondent plead no contest with respect to the statutory grounds for termination of his parental rights over the minor children. Here, too, the police report was the factual basis for the plea. The trial court found, by clear and convincing evidence, that three statutory bases for termination had been met: MCL 712A.19b(3)(b)(*i*) (parent caused sexual abuse of sibling), (3)(j) (reasonable likelihood that child would be harmed if returned to parent's home), and (3)(k)(*ii*) (criminal sexual conduct involving penetration). The trial court then continued to the best-interests stage. At the best-interests hearing, a services specialist with

[1] The Order Terminating Parental Rights erroneously listed the statutory bases for termination as "MCL 712A.19b(c)(e)(i), (j), (k)(ii) as [stated] on [the record]." One of the correct citations, (3)(b)(*i*), may have been mistranscribed as "(c)(e)(i)," and the trial court referred on the record to (3)(b)(*i*), (3)(j), and (3)(k)(*ii*).

Children's Protective Services (CPS) testified that she authored the petition for termination after speaking with respondent's ex-wife and attending an interview with the minor who respondent had sexually assaulted. The CPS worker opined that it was in the children's best interests because respondent posed a threat to the minors to be "sexually abused in the future . . . ."

Respondent's ex-wife similarly testified that she was concerned that "if [respondent] hurt one child . . . I'm just so afraid that he's going to hurt another." Dr. Ralph Hutchinson, respondent's clinical psychologist, testified that respondent "rarely showed the symptoms that [he is] used to seeing with sex offenders. There wasn't the typical pattern of denial that [he] would see in a sex offender." Hutchison did not review the petition, nor any other evidence, and based his opinions solely on his interviews with respondent.

After hearing the testimony, the trial court read into the record a portion of the Sheriff's Office report used as the factual basis for respondent's no contest plea. The trial court then stated that it found Hutchison's report and testimony "worthless" in light of the fact that he had reviewed no objective evidence, and said that it did not "think any children are safe with" respondent. The trial court went on to find that respondent "cannot give [the minor children] permanency, or stability . . . based upon his actions." It found that "additional efforts for reunification of [the minor children] . . . is [sic] not to be made," and there was "clear and convincing evidence that termination of [respondent's] parental right[s] is in the children's best interest." This appeal ensued.

On appeal, respondent argues only that the evidence did not justify a finding that termination of parental rights was in the minor children's best interests.

This Court reviews the trial court's finding regarding the best interests of the children for clear error. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). A finding is clearly erroneous if, despite evidence to support the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made. *Id.* at 91.

If the court finds that one or more statutory grounds exist for termination of parental rights and that termination of parental rights is in the children's best interests, the court must order that the respondent's parental rights be terminated and that additional efforts for reunification of the children and parent not be made. MCL 712A.19b(5); MCR 3.977(E); *In re Beck*, 488 Mich 6, 11; 793 NW2d 562 (2010). The statutory bases for termination of parental rights must be substantiated by clear and convincing evidence. MCR 3.977(E)(3); *In re LE*, 278 Mich App 1, 22; 747 NW2d 883 (2008). The allegations may be established by a plea of no contest. MCR 3.971(A), (C)(2); *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008). Respondent plead no contest with respect to the statutory grounds for termination of his parental rights over the minor children, and the trial court found, by clear and convincing evidence, that three statutory bases for termination had been met: MCL 712A.19b(3)(b)(*i*) (parent caused sexual abuse of sibling), (3)(j) (reasonable likelihood that child would be harmed if returned to parent's home), and (3)(k)(*ii*) (criminal sexual conduct involving penetration). Respondent does not contest any of the statutory grounds on appeal.

The trial court must determine each child's best interests individually. *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012). To make that determination, "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." *Id.* at 41-42 (internal citations omitted). The court found that both of the minor children ". . . would not be safe in this household" with respondent. The trial court continued:

> [Respondent] cannot give them permanency, or stability, first of all, for [minor child] that he cannot provide stability for them based upon . . . what he's done to [minor child]. And that applies also to [minor child], and that he will not be able to provide them with permanency either, for either [minor child]. And for all those reasons . . . the Court considers MCL 712A.19b(5), and finds that additional efforts for reunification of the children, that being [minor children] with [respondent,] is [sic] not to be made. There is clear and convincing evidence that termination of his parental right[s] is in the children's best interest.

Respondent's argument that termination of his parental rights was not in the minor children's best interests "because there was no compelling evidence indicating that the children would be unsafe" in his care, misstates this Court's standard of review, which is clear error. A finding is clearly erroneous if the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made. *In re Rood*, 483 Mich at 91. Given the magnitude of virtually unrebutted record evidence that respondent fondled the penis and anally penetrated another minor child when he was seven years old, and the trial court's finding that the unconvincing opinion testimony of respondent's psychologist expert witness was not grounded in any objective evidence, this Court cannot definitely and firmly conclude that the trial court erred when it found that termination of respondent's parental rights over the minor children was in their best interests. "This Court gives special deference to the trial court's findings when they are based on its assessment of the witnesses' credibility." *HJ Tucker and Assocs, Inc v Allied Chucker and Engineering Co*, 234 Mich App 550, 563; 595 NW2d 176 (1999).

Respondent also argues that "the evidence adduced at trial established that neither [of the minor children] suffered any neglect, injuries, or mistreatment." Respondent's argument fails. We agree that no evidence established that respondent abused either of the minor children; however, the basis of the trial court's decision was not that respondent *had* abused the minor children; rather the basis of its conclusion was that there was a high likelihood that the minor children ". . . would not be safe in this household." Further, just because there is lack of evidence that the minor children were abused, doesn't mean that respondent would not re-engage in the conduct which formed the basis for termination of his parental rights. Faced with respondent's threats of denial and that respondent would lie about him, the minor victim to the sexual assault told no one about respondent's behavior for over seven years after the two incidents. How a parent treats one child "is certainly probative of how that parent may treat other children." See MCL 712A.19b(3)(b)(*i*); *In re Powers*, 208 Mich App 582, 588-589; 528 NW2d 799 (1995). (Portion of holding superseded on other grounds, *In Re Jenks*, 281 Mich App 514, 518, n.2; 760 NW2d 514 (2008)). Further, respondent's parental rights were not terminated punitively, but for the future protection and stability of the minor children. See *In re Brock*, 442 Mich 101, 107-108; 499 NW2d 752 (1993).

Affirmed.

/s/ Stephen L. Borrello
/s/ Kristen Frank Kelly
/s/ Elizabeth L. Gleicher