

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of B.S. FLORES, Minor.

UNPUBLISHED
June 12, 2014

No. 319652
Saginaw Circuit Court
Family Division
LC No. 13-033810-NA

In the Matter of GARZA, Minors.

No. 319653
Saginaw Circuit Court
Family Division
LC No. 13-033884-NA

In the Matter of K.A. MAXEY, Minor.

No. 319654
Saginaw Circuit Court
Family Division
LC No. 13-033885-NA

In the Matter of GONZALES, Minors.

No. 319655
Saginaw Circuit Court
Family Division
LC No. 13-033886-NA

In the Matter of A.G. BETHEA, Minor.

No. 319656
Saginaw Circuit Court
Family Division
LC No. 13-033887-NA

Before: WILDER, P.J., and SAAD and K. F. KELLY, JJ.

PER CURIAM.

In these consolidated appeals, respondent appeals the trial court's order that terminated her parental rights to B.F., A.G., L.G., K.M., A.A., A.R., and A.B. under MCL 712A.19b(3)(b)(i) (parent's act caused sexual abuse to child or child's sibling and there is a reasonable likelihood of sexual abuse if placed in parent's home), (j) (reasonable likelihood of harm if returned to parent's home), and (k)(ii) (parent abused child or child's sibling under circumstances that included criminal sexual conduct involving penetration). For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

In May 2013, petitioner requested that the trial court take jurisdiction over B.F. because of an incident where, while intoxicated and with B.F. in the vehicle, respondent drove in a reckless and dangerous manner. Respondent pleaded no contest to these allegations. In August 2013, petitioner sought to terminate respondent's parental rights to B.F., and filed separate original petitions to terminate respondent's parental rights to her remaining children.

At the hearing on the five petitions, K.M. testified¹ that for about two or three years before June 2013, respondent sexually assaulted her during visitation, and that several of respondent's unidentified boyfriends sexually assaulted her with respondent's knowledge and approval. The court also admitted medical records for respondent's July and August 2013 alcohol-related hospitalizations into evidence.

The trial court credited K.M.'s allegations of sexual assault, and also found that respondent had a serious problem with alcohol that negatively affected her ability to parent. It accordingly terminated respondent's parental rights under MCL 712A.19b(3)(b)(i), (j), and (k)(ii). Further, the trial court found that termination of respondent's parental rights was in each child's best interests. Though it recognized each child was in the care of his or her legal father or a relative guardian, the trial court nevertheless determined that respondent's history of alcohol abuse and sexual assaults against K.M. warranted termination of her parental rights to all her children.

On appeal, respondent argues that the trial court: (1) erred when it held that termination of her parental rights was in the children's best interests; and (2) should have allowed supervised visitations with the children.

II. ANALYSIS²

¹ K.M. testified in the trial court's chambers in accordance with *In re Brock*, 442 Mich 101, 115; 499 NW2d 752 (1993).

² We review for clear error a trial court's finding that termination of parental rights is in a child's best interests. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

To terminate parental rights, the trial court must first find that at least one statutory ground for termination has been proven by clear and convincing evidence. *In re Olive/Metts*, 297 Mich App 35, 41; 823 NW2d 144 (2012). When at least one statutory ground for termination is proven, the trial court may then terminate parental rights if it finds that termination is in the child's best interests by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). "[T]he trial court has a duty to decide the best interests of each child individually." *In re Olive/Metts*, 297 Mich App at 42. In addition, a child's placement with a relative is a fact that the trial court must consider in its best-interest determination. *Id.* at 43.

After it found grounds for termination of parental rights under three subsections of MCL 712A.19b(3), the trial court properly held that termination of respondent's parental rights was in the children's best interests. It explicitly recognized that the children's placement with relatives was a possible factor that weighed against termination. It also heard K.M.'s testimony on the repeated sexual assaults that were perpetrated against her by respondent and several unidentified boyfriends, and found her testimony to be credible. The trial court reasoned that these sexual assaults supported termination of parental rights not only with respect to K.M., but with respect to the remaining siblings as well because of the ongoing threat of sexual assault.³ These sexual assaults were particularly troubling not only because they were perpetrated by respondent, but because they were perpetrated by several unidentified boyfriends over a period of years with respondent's knowledge and approval. Thus, while it is true that some of the siblings were significantly older or younger than K.M., respondent's willingness to allow others to sexually assault her child indicated that no child would be safe in her care, regardless of the child's age or gender.

The trial court also based its best-interests determination on respondent's alcohol abuse, which required her repeated hospitalization, and placed B.F. in great danger when respondent attempted to flee from the police while driving intoxicated. Continued alcohol abuse is a fact that indicates that termination of parental rights is in the children's best interests. See *In re JS & SM*, 231 Mich App 92, 103; 585 NW2d 326 (1998), overruled in part on other grounds by *In re Trejo*, 462 Mich 341; 612 NW2d 407 (2000).

Respondent's argument that the trial court should have allowed supervised visitations with the children is without merit. This argument is inapplicable to K.M., who personally suffered serious emotional harm as a result of respondent's sexual assaults. See *In re Hudson*, 294 Mich App at 268-269. And it is not the duty of the trial court to remain in a supervisory role for an indefinite period of time, as it would not provide the children involved in the proceedings with stability and permanency. See *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011). In any event, respondent has not shown that she even sought visitation with her children

³ See *In re Jenks*, 281 Mich App 514, 518-519; 760 NW2d 297 (2008) (when a respondent commits criminal sexual conduct against his or her child that warrants termination of parental rights under MCL 712A.19b(3)(k)(ii), the trial court does not clearly err in accordingly finding that termination of parental rights to the child's siblings is in each sibling's best interests).

before or during the instant proceedings, so there is nothing to suggest that respondent would visit her children if allowed to do so in the future.

In sum, the trial court correctly held that termination of parental rights was in the children's best interests because: (1) respondent was both directly and indirectly responsible for repeated sexual assaults against one of her children; and (2) respondent continued to abuse alcohol in a manner that placed her children at risk of harm. It also properly rejected respondent's argument that she was entitled to supervised visitations.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Henry William Saad
/s/ Kirsten Frank Kelly