

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 17, 2012

In the Matter of S. F. ALLEN, Minor.

Nos. 307752; 307753
Monroe Circuit Court
Family Division
LC No. 11-022137-NA

Before: O'CONNELL, P.J., and JANSEN and RIORDAN, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother, S. Allen, and respondent-father, J. Allen, appeal as of right the trial court's order terminating their parental rights. Respondent-mother's rights were terminated pursuant to MCL 712A.19b(3)(g) and (j), and respondent-father's rights were terminated pursuant to MCL 712A.19b(3)(b)(i), (g), (j), and (k)(ii). We affirm.

I. FAILURE TO PROVIDE REUNIFICATION SERVICES

Respondent-mother argues that the trial court erred by terminating her parental rights where petitioner failed to provide a case service plan for reunification or reunification services. We disagree.

"In general, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan."¹ However, the petitioner "is not required to provide reunification services when termination of parental rights is the agency's goal."² As this Court has explained:

MCL 722.638(1)(a)(ii) mandates that petitioner seek termination of parental rights when the parents are suspected of perpetuating sexual abuse upon the minor children or their siblings and when a parent fails to intervene to eliminate that risk. Accordingly, when petitioner filed its first petition to

¹ *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). See also MCL 712A.18f(1), (2), and (4).

² *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009).

terminate respondent's parental rights on June 11, 2008, it was not required to provide respondents with any reunification services or to provide parenting time consistent with MCL 712A.18f.³

Similarly, when petitioner sought to terminate respondents' parental rights on June 22, 2011, in its Petition for Termination at Initial Disposition, "it was not required to provide respondents with any reunification services."⁴ Therefore, the trial court did not err in terminating respondent-mother's parental rights without making a reasonable effort to reunite the family.

II. BEST EVIDENCE RULE

Detective Joseph Hammond was the police detective assigned to investigate allegations of physical and sexual abuse against respondents. Respondents argue that the trial court erred in allowing Detective Hammond to testify regarding their statements made during their interviews with him. We disagree.

"A trial court's evidentiary rulings in a child protection proceeding are reviewed for an abuse of discretion. An abuse of discretion occurs when the trial court chooses an outcome that falls outside the range of principled outcomes."⁵

MRE 1002 provides: "To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute." MRE 1004 provides circumstances under which other evidence of the contents of a writing, recording, or photograph is admissible.

In *People v Lueth*,⁶ the defendant argued that evidentiary error occurred when the prosecution had a witness summarize statements made by the defendant during his pretrial deposition, rather than submit a transcript of the deposition, the best evidence. This Court found that the best evidence rule was inapplicable because the content of the documentary evidence was not in dispute.⁷

Rather, the transcript of the deposition was presented to [the witness] to assist in refreshing his memory; [the witness's] recollections of defendant's statements were admissible as party admissions. MRE 801(d)(2). Defense counsel also specifically referenced the deposition in his cross-examination of [the witness].

³ *Id.* (citations omitted).

⁴ *Id.*

⁵ *In re Jones*, 286 Mich App 126, 130; 777 NW2d 728 (2009) (citations and quotations omitted).

⁶ 253 Mich App 670, 686; 660 NW2d 322 (2002).

⁷ *Id.*

Thus, defense counsel had both the means and the opportunity to fully pursue any discrepancies between [the witness's] testimony and the transcribed statements.⁸

The trial court allowed Detective Hammond to testify regarding respondents' statements made during their interviews. Detective Hammond's testimony was not offered to prove the content of the recording, a DVD. Rather, Detective Hammond was testifying to his recollection of respondents' statements made during their interviews, based on his personal knowledge. Detective Hammond's testimony regarding respondents' statements was admissible as party admissions.⁹ Because petitioner was not trying to prove the content of the recording, the recording was not required. Accordingly, the trial court did not abuse its discretion in allowing Detective Hammond to testify.

Respondent-father also contends that the trial court erred in admitting a police report containing a synopsis of the statements. Respondents objected to the admission of the police report based, in part, on the best evidence rule. The trial court apparently concluded that the report was a synopsis, but admitted it because the DVD was not available. The trial court found that the DVD was not available because it could not be admitted as it was not listed on petitioner's exhibit list.

Although the trial court did not engage in a proper analysis of the issue, the admission of the police report did not violate the best evidence rule. If the police report was a summary of the DVD, then it was only admissible under MRE 1006 if (1) the summary was of voluminous writings, recordings, or photographs that could not be conveniently examined in court, (2) the underlying writings, recordings, or photographs were admissible, (3) the originals or duplicates were made available for examination or copying by the other parties, at a reasonable time and place, and (4) the summary was an accurate summarization of the underlying material.¹⁰ It is not clear whether any of these requirements were met. However, similar to Detective Hammond's testimony, it does not appear that petitioner was attempting to prove the content of the DVD, even if the report was a summary of the DVD. Rather, the police report was made by Detective Hammond based on his personal knowledge of the interviews after the interviews had taken place. Because petitioner was not trying to prove the content of the recording, the recording was not required. Accordingly, the trial court did not abuse its discretion in admitting the police report.

III. STATUTORY GROUNDS FOR TERMINATION

Respondents next contend that the trial court erred in finding by clear and convincing evidence that their parental rights should be terminated. We disagree.

⁸ *Id.* at 686-687.

⁹ See *Lueth*, 253 Mich App at 686.

¹⁰ See *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 100; 535 NW2d 529 (1995) (citations and quotations omitted).

This Court reviews the trial court's findings under the clearly-erroneous standard. 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. To be clearly erroneous, a decision must be more than maybe or probably wrong. Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.¹¹

As this Court has explained:

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erred in finding sufficient evidence under other statutory grounds.¹²

The trial court concluded that petitioner established its burden of clear and convincing evidence that termination of respondent-father's parental rights was warranted under MCL 712A.19b(3)(b)(i), (g), (j), and (k)(ii), and that termination of respondent-mother's parental rights was warranted under MCL 712A.19b(3)(g) and (j). Those provisions provide for termination if:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that 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.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for 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.

* * *

(j) There 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.

* * *

¹¹ *In re Ellis*, 294 Mich App 30, 33; ___ NW2d ___ (2011) (citations omitted).

¹² *Id.* at 32 (citations omitted).

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

A. RESPONDENT-FATHER

The trial court did not err in finding at least one statutory ground for termination of respondent-father's parental rights was proved by clear and convincing evidence. The trial court properly found that statutory grounds for termination of respondent-father's rights existed under MCL 712A.19b(3)(b)(i). The testimony of S. F. Allen's half-sister, P. Davis, established that respondent-father physically and sexually abused P. Davis. The trial court believed P. Davis's testimony that respondent-father physically and sexually abused her. Respondent-father corroborated P. Davis's testimony regarding the physical and sexual abuse: Respondent-father also admitted to engaging in sexual intercourse with P. Davis, P. Davis performing oral sex on him, taking nude photographs of P. Davis, and hitting P. Davis with a two-by-four. As discussed, Detective Hammond's testimony regarding respondent-father's admissions was properly admitted. However, even if this testimony was not properly admitted, the trial court could still have chosen to believe P. Davis's testimony. Although P. Davis admitted to having a habit of lying, she affirmed that she was not lying to the court. "It is not for this Court to displace the trial court's credibility determination,"¹³ and we decline to do so here.

Respondent-father's treatment of P. Davis "is probative of how he will treat [her] other siblings."¹⁴ Although respondent-father is the step-parent and not the biological parent of P. Davis, the child he abused, and respondent-father told P. Davis that he would not engage in the same conduct with S. F. Allen because she was his biological daughter, this Court has stated:

[A]s amended, MCL 712A.19b(3)(b)(i) sets forth a ground for termination in circumstances such as those presented here, in which respondent sexually abused a half-sister of the minor children who are the subject of the termination proceedings, regardless of the fact that respondent was not also a parent of that abused half-sister. MCL 712A.19b(3)(b)(i).¹⁵

There is a reasonable likelihood that S. F. Allen would also suffer from abuse if placed in respondent-father's home. Accordingly, the trial court's finding with regard to this ground was not clearly erroneous. "Having concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision."¹⁶

¹³ *In re HRC*, 286 Mich App at 460.

¹⁴ *Id.* at 461.

¹⁵ *In re Jenks*, 281 Mich App 514, 517 n 2; 760 NW2d 297 (2008)

¹⁶ *In re HRC*, 286 Mich App at 461.

B. RESPONDENT-MOTHER

The trial court did not err in finding at least one statutory ground for termination of respondent-mother's rights was proved by clear and convincing evidence. The trial court properly found that statutory grounds for termination of respondent-mother's rights existed under MCL 712A.19b(3)(g). The trial court found that it was not proper care and custody for respondent-mother to ignore the allegations of abuse of P. Davis and that respondent-mother's lack of judgment led to the conclusion that there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time given S. F. Allen's age. The evidence established that respondent-mother was aware of the physical and sexual abuse of P. Davis and did not do anything to stop the abuse. Respondent-mother failed to provide proper care and custody by failing to protect S. F. Allen's sibling and potentially putting S. F. Allen at risk of abuse. Given respondent-mother's failure to do anything about the abuse, there is no reasonable expectation that she would be able to provide proper care and custody within a reasonable time. Accordingly, the trial court's finding with regard to this ground was not clearly erroneous. "Having concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision."¹⁷

IV. BEST INTEREST OF THE CHILD

Finally, respondents contend that the trial court erred in finding that termination of their parental rights was in S. F. Allen's best interest. We disagree.

This Court reviews the trial court's findings under the clearly-erroneous standard. 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. To be clearly erroneous, a decision must be more than maybe or probably wrong. Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.¹⁸

"If a statutory ground for termination is established, and the trial court finds '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.'"¹⁹

The trial court concluded that termination was in S. F. Allen's best interest because it could not imagine that it would be a healthy situation for her to return to a home where she would eventually learn that respondent-mother allowed respondent-father to repeatedly rape her sister and did not do anything about it. Although it found "holes in the best interest testimony," and evidence that S. F. Allen was upset with her placement, it found that any problems at the maternal grandmother's home are not "nearly as what will be present if she is returned to her

¹⁷ *Id.*

¹⁸ *In re Ellis*, 294 Mich App at 33 (citations omitted).

¹⁹ *Id.* at 32-33, quoting MCL 712A.19b(5).

mother's home, or for that matter, her father's." It concluded that there was clear and convincing evidence that termination of respondents' parental rights was in S. F. Allen's best interest.

The trial court's finding that termination of respondents' parental rights was in S. F. Allen's best interest was not clearly erroneous. The evidence established that respondent-father sexually abused P. Davis for several years, beginning when P. Davis was in approximately the ninth grade. This treatment was probative of how he would treat S. F. Allen.²⁰ Thus, there was a risk of similar abuse. The evidence also established that respondent-mother had knowledge of the abuse and failed to do anything. Given that respondent-mother failed to protect P. Davis, there is a reasonable likelihood that she would similarly fail to protect S. F. Allen.

Based on S. F. Allen's testimony, there was evidence of a good relationship between both respondents and S. F. Allen and no allegations of abuse of S. F. Allen. Moreover, S. F. Allen testified that she wanted to live with respondents. However, S. F. Allen had no knowledge of the abuse or allegations and did not even know why respondents were incarcerated. Although other witnesses also testified to a good relationship between respondents and S. F. Allen and that they believed respondent-father's home was safe for S. F. Allen, the trial court did not give much credibility to these witnesses, and "it is not for this Court to displace the trial court's credibility determination."²¹ Additionally, because petitioner was not required to offer reunification services, as discussed above, the trial court's decision to terminate respondent-mother's rights was not erroneous. Accordingly, the trial court's finding that termination of respondents' parental rights was in S. F. Allen's best interest was not clearly erroneous.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Michael J. Riordan

²⁰ See *In re HRC*, 286 Mich App at 461.

²¹ *Id.* at 460.