

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WAGNER/STEANHOUSE,
Minors.

UNPUBLISHED
July 15, 2014

No. 319419
Wayne Circuit Court
Family Division
LC No. 13-513861-NA

Before: BECKERING, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

The circuit court terminated respondent-mother's parental rights to her two minor children based on her failure to protect her young daughter from sexual abuse. The record evidence supports at least one statutory ground for termination and the court's conclusion that termination was in the children's best interests. We affirm.

I. BACKGROUND

Respondent and her children lived with respondent's father. When her daughter, KW, was only three years old, respondent began to suspect that her father was hurting the child in some way. Respondent's father took KW into his bed every night to sleep and locked his bedroom door. Respondent could hear the child crying within, but her father denied her access. Respondent began to more specifically suspect sexual abuse when KW attempted to kiss her little brother, GS, in an inappropriate manner. Despite her concerns, respondent remained in the home with her children for nearly two more years. Respondent admitted that she took no actions to protect KW from her father and made no investigation to confirm or alleviate her suspicions.¹ Respondent later admitted that she had always suspected that her father had sexually abused her older brother.

¹ Despite admitting when offering her plea at the jurisdictional trial that she had expressed her concerns to the caseworker, and to GS's foster mother, respondent inexplicably told a case evaluator just before the termination hearing that she had harbored no suspicions that her father sexually abused her child. This statement was not placed into evidence, but was raised by the petitioner during closing argument at the termination hearing.

In June 2013, KW travelled to Georgia to visit her paternal grandmother. Then five-year-old KW told her grandmother about the sexual abuse perpetrated by her maternal grandfather. The grandmother reported the abuse to Georgia authorities, who in turn contacted Child Protective Services (CPS) in Michigan. CPS took KW into immediate care and placed the child with her father. GS was initially continued in respondent's care and she was instructed not to allow the child to have contact with the maternal grandfather. Respondent moved briefly to a motel but then returned to her father's home with GS in violation of the safety plan. Respondent believed GS would be safe as long as she did not leave him alone with her father. GS was then placed into care with a paternal great-aunt.

Respondent pleaded to the allegations supporting jurisdiction. The court moved toward termination without allowing respondent time to comply with a reunification plan. The court thereafter terminated respondent's parental rights based on the failure to protect KW

II. GROUNDS FOR TERMINATION

The circuit court terminated respondent's parental rights under MCL 712A.19b(3)(b)(ii), (g), and (j). Respondent challenges the factual support for all three grounds.

Pursuant to MCL 712A.19b(3), a trial court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous 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 Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "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). Furthermore, the "clear and convincing standard is the most demanding standard applied in civil cases[.]" *Id.* (citations omitted).

The circuit court did not clearly err in finding that termination was supported by clear and convincing evidence under factors (b)(ii) and (j). Under factor (b)(ii), termination is warranted if the child or the child's sibling suffers sexual abuse and "[t]he parent who had the opportunity to prevent the . . . sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home." Factor (j) similarly provides for termination when "[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."

Contrary to respondent's appellate claim, petitioner's failure to prove actual sexual abuse is not outcome determinative. Strong circumstantial evidence supported that respondent's father sexually abused KW over an extended period of time while respondent and the children were living in his home. Respondent admitted her suspicion that for a two year period, her father sexually abused her daughter. Yet, respondent did absolutely nothing to protect her child. Respondent continued to allow her father to take KW into his bedroom and to be alone with her.

Even after KW was removed from her care and CPS instructed respondent not to allow her father to have contact with GS, respondent remained in her father's home with the child.

Moreover, the evidence supported that respondent lacked the emotional maturity and stability to protect her children in the future. Her comments to the caseworker about her attempt to conduct a "mystery squad" investigation examining whether her father was abusing her child reveal her incapacity to appreciate the serious nature of the harm to her child. Respondent's remarks to GS's foster mother that the allegations against her were "BS" and that she did not have the power to report her father to the authorities for child abuse evidence that respondent had no real concept of how to protect her children from danger.

Based on this clear and convincing evidence, the court did not clearly err in finding that respondent had not protected KW from abuse at her father's hands and that respondent lacked an ability to protect her children from danger in the future.

It is a closer question whether adequate evidence supports termination under factor (g), the failure to provide proper care and custody. However, only one statutory ground is required to support termination, MCL 712A.19b(3), and the court found clear and convincing evidence to support two alternate grounds. Accordingly, any potential error in supporting termination based on factor (g) would be harmless. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

III. BEST INTERESTS

Pursuant to MCL 712A.19b(5), "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." A circuit court must determine by a preponderance of the evidence that termination is in the child's best interest. *Moss*, 301 Mich App at 83. "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, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App 701, 714; ___ NW2d ___ (2014).

The circuit court acknowledged the caseworker's testimony that respondent shared a strong bond with her children and acted appropriately during supervised parenting time sessions. KW also reported her preference to remain with her mother and her sadness at leaving her mother after visits. Despite this bond, however, respondent did not protect KW from her maternal grandfather and retained her child in a dangerous home environment for nearly two years after her suspicions were aroused.

Respondent contends that the court was required to consider the best interests of her children separately under *Olive/Metts*, 297 Mich App at 43. As KW was placed with her father, respondent argues that KW will be adequately protected and there is no need to "permanently sever the strong bonds between her and her mother." As long as respondent retains her parental

rights, however, she could be allowed visitation and unsupervised parenting time. Respondent has clearly demonstrated that she cannot protect her children when in her custody. Accordingly, keeping the door open for such visitation would not be in the children's best interests.

Respondent finally contends that the court should have considered a guardianship, rather than termination and adoption, for GS. As a result of the court's actions, respondent asserts, the relationship between the siblings has been severed. See *Foskett v Foskett*, 247 Mich App 1, 11; 634 NW2d 363 (2001) (noting that the best interests of the children will usually be served by keeping siblings together). However, there was no evidence that GS's caregiver would consider guardianship over adoption or that she would not allow the siblings to see each other.²

We affirm.

/s/ Jane M. Beckering
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher

² Although respondent's best interest challenges on appeal center on the children's relative placements, she does not actually argue that the placement with relatives factored against termination. See *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010); *In re Olive/Metts*, 297 Mich App at 43. We decline to inject that issue without invitation.