

STATE OF MICHIGAN
COURT OF APPEALS

In re A. CARDONA, Minor.

UNPUBLISHED
September 22, 2015

No. 326344
Berrien Circuit Court
Family Division
LC No. 2014-000082-NA

Before: BOONSTRA, P.J., and MURPHY and MARKEY, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(j) (reasonable likelihood of harm if child returned to parent) and (k)(ii) (parent abused child's sibling by perpetrating criminal sexual conduct involving penetration). We affirm.

At a trial encompassing both adjudication and termination, evidence was presented showing that respondent regularly raped the minor child's older sister during bouts of intoxication, leaving the sibling terrified of respondent. There was also evidence that the mother of the minor child and sibling would lock herself and the children in the mother's bedroom when respondent was drunk, fearing physical harm. Respondent pled no contest to two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b, in relationship to the sexual assaults against the minor child's sister, and he is serving 15 to 50 years' imprisonment for those convictions. The trial court found that there was sufficient evidence to exercise jurisdiction over the minor child under MCL 712A.2(b) and that there was clear and convincing evidence supporting termination of respondent's parental rights under MCL 712A.19b(3)(j) and (k)(ii).

On appeal, respondent argues that the trial court committed clear error in finding that the statutory grounds for termination were proven by clear and convincing evidence. If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). A decision is clearly erroneous if, despite some evidence to support it, we are left with a definite and firm conviction

that a mistake has been made. *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012). In applying the clear error standard in parental termination cases, “regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

With respect to § 19b(3)(j), the trial court did not clearly err in concluding that there is a reasonable likelihood, based on respondent’s conduct or capacity, that the minor child would be harmed if she were returned to respondent’s care.¹ The thrust of respondent’s argument on appeal is that there was no evidence that he had neglected or abused the minor child herself and that the doctrine of anticipatory neglect should not be applied in this case given the complete absence of abuse being directed at the minor child. The doctrine of anticipatory neglect, or more aptly coined anticipatory “abuse” for purposes of this case, provides that the manner in which a parent treats one child is probative of how that parent may treat other children. *In re LaFrance Minors*, 306 Mich App 713, 730; 858 NW2d 143 (2014). We conclude that the doctrine was soundly applied in this case, considering respondent’s predilection for heavy drinking and intoxication and concomitant engagement in acts of forced, brutal sexual penetration and violence in general. Given that he regularly sexually abused a female child in his household while intoxicated, we see no reason to believe that in a drunken stupor he would somehow be able to restrain himself from sexually attacking another female child living in the home, i.e., the minor child at issue in this case. The facts in *LaFrance* are easily distinguishable, where the focus there was on a child that had cerebral palsy and the respondents’ ability to care for that child, where the respondents’ other three children “did not share their infant sister’s medical vulnerabilities or inability to articulate personal needs or discomforts.” *Id.* at 731. The *LaFrance* panel found that the doctrine of anticipatory neglect had little bearing, but only because of “the unusual circumstances of th[e] case.” *Id.* Such unusual circumstances do not exist here; we are simply addressing a person – respondent – who becomes a danger to children in his presence when consuming alcohol.

With respect to § 19b(3)(k)(ii), the trial court did not clearly err in concluding that respondent abused the minor child’s sibling through acts of criminal sexual conduct involving penetration. Respondent’s lone argument in regard to § 19b(3)(k)(ii) is that he did not understand that a collateral consequence of his no-contest plea to the two counts of CSC I was that his parental rights could be terminated. Respondent complains that the trial court, in taking notice of the judgment of sentence, failed to determine whether respondent entered the plea knowingly, voluntarily, and with the understanding that his parental rights could be terminated on the basis of the plea. First, the trial court had no obligation to determine whether respondent had made a valid plea in the criminal court prosecution before taking into consideration the judgment of sentence for purposes of adjudication and termination, where there is no indication or argument that respondent pursued withdrawal of his plea or otherwise challenged the plea in the criminal proceedings. Second, respondent does not provide or cite any evidentiary support with respect to his claims regarding the plea and his level of knowledge of the plea’s impact, nor

¹ We appreciate that respondent will be imprisoned for at least the next 15 years, but that does not change the analysis under § 19b(3)(j).

did he preserve this argument below, and plain error has not been shown. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). Finally, there was evidence presented at trial of respondent's acts of CSC I committed against the minor child's sister independent of the judgment of sentence and underlying plea, which evidence sufficiently supported the trial court's ruling under § 19b(3)(k)(ii). In sum, reversal is unwarranted.²

Affirmed.

/s/ Mark T. Boonstra
/s/ William B. Murphy
/s/ Jane E. Markey

² Although respondent does not appear to raise an appellate issue regarding the child's best interests, we conclude, on the basis of the facts alluded to above, that the trial court did not clearly err in finding that a preponderance of the evidence showed that termination of respondent's parental rights was in the minor child's best interests.