

STATE OF MICHIGAN
COURT OF APPEALS

In re ROGERS/SMITH/BUTLER/FOSTER-
THOMAS, Minors.

UNPUBLISHED
May 26, 2016

No. 329105
Wayne Circuit Court
Family Division
LC No. 14-518073-NA

Before: MURPHY, P.J., and CAVANAGH and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent-mother appeals as of right the August 10, 2015 order terminating her parental rights to her nine minor children under MCL 712A.19b(3)(b)(i) (injury to child or sibling), (b)(ii) (failure to prevent physical injury or sexual abuse), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood that child will be harmed if returned to the parent). We affirm.

Respondent is the mother of nine children by four fathers. All nine children resided in respondent's care and custody prior to October 2014. While in respondent's care, respondent's children have been the subject of several referrals to Child Protective Services (CPS). Pertinent to this case, on August 19, 2014, CPS received a complaint alleging that respondent's children were begging neighbors for food, drugs were being sold out of respondent's home, and fights were occurring within the home. After the children indicated to CPS investigators that the allegations were not true, the complaint was deemed unsubstantiated and the case was set for closure.

Before the case was officially closed, a second complaint was filed with CPS on September 23, 2014, alleging that Donnie Foster-Thompson (Mr. Thompson) broke into respondent's home and attacked her in front of her children while carrying a firearm. Mr. Thompson is the father of four of respondent's children. During the relevant time period in this case, and for the seven years immediately preceding this case, respondent was involved in an on-again-off-again relationship with Mr. Thompson. Throughout this relationship, Mr. Thompson would verbally and physically assault respondent in front of her children, occasionally causing severe physical injury. Mr. Thompson often cheated on respondent and, when respondent would kick him out of her home, he would break back into the home through a window. On at least one occasion, one of the women with whom Mr. Thompson was involved smashed the windows of respondent's home and vehicle. Respondent testified that Mr. Thompson has an extensive history of drug offenses and home invasion and that Mr. Thompson was incarcerated for portions

of their relationship. Despite this conduct, respondent moved with her children into a home located next door to Mr. Thompson's parents' home in August 2014.

When initially interviewed about the break-in by CPS investigators, respondent's children denied that the event occurred. However, when interviewed in connection with a third CPS complaint in October, respondent's children indicated that respondent had instructed them to lie about the break-in to prevent the children from being put in a foster home. The children told interviewers that Mr. Thompson was drunk and was trying to get into the house through the front door. When three children attempted to prevent Mr. Thompson from entering the home through the front door, Mr. Thompson kicked down the side door. Mr. Thompson then jumped on respondent, started hitting her, and choked her with a curtain rod. Mr. Thompson's father fixed the broken door sometime after the incident. Respondent's children indicated that they feared Mr. Thompson and prior CPS complaints indicate that Mr. Thompson was also violent towards respondent's children.

That Mr. Thompson terrorized respondent's family is without question. Unfortunately, Mr. Thompson's conduct is not the only behavior at question in this case. On October 8, 2014, CPS received a third complaint, this time from the children's school nurse, alleging respondent physically abused her oldest daughter, AR. AR testified that, on the evening of October 7, 2014, respondent chased her to the basement of respondent's home where AR cowered behind a toilet and covered her face with her hands while respondent hit her multiple times with a steel stick on her back, legs, and hands. By the next morning, AR's wrist had become severely swollen. AR asked to have her wrist inspected by the school nurse and told the nurse that her mother had hit her. After the school nurse called CPS to report the incident, AR was taken from school to the hospital by ambulance to treat the injury to her hand. At the hospital, AR told medical personnel that respondent hit her with a metal stick. When questioned by CPS investigators, respondent indicated that AR had been "smart" with her so she hit her with a plastic curtain rod. At the hearing, respondent offered unprompted testimony elaborating upon the incident. Respondent testified that AR had been caught eavesdropping on an adult conversation and, when told to leave the room, AR began "talking back" to respondent. Respondent answered this behavior by mocking AR for her smart mouth while punching AR six times in the shoulder, eventually causing AR to "ball up," covering her face with her hands to prevent the attack.

AR testified that respondent would hit her "two or three times out of a month." Respondent's mother testified that respondent would "whoop" the children with a belt or hand and that the children would call her after. Respondent testified that she hit some of the children with her hand or a belt as a form of discipline and admitted to causing some injury.

While being treated for her swollen wrist, hospital personnel performed a standard pre-x-ray urine test to determine if AR was pregnant. The test indicated that AR was pregnant. After receiving these results, AR informed her aunt that she had been sexually assaulted by Mr. Thompson. AR testified that on the night the sexual assault occurred respondent was out with friends leaving AR home to babysit all nine children without another adult present. AR was

upstairs sleeping when Mr. Thompson “somehow got into the house¹,” shook her by the leg, and took her by her arm into respondent’s bedroom. Mr. Thompson laid her down on the bed, took her shorts off, and then raped her before exiting the home through a window. When interviewed by a CPS investigator, AR indicated that the sexual assault occurred during the first week in September but that she had not told respondent because she knew respondent “was going to defend” Mr. Thompson and she “didn’t want to start anything.” At some point subsequent to the alleged rape it appears that Mr. Thompson returned to living, or at least frequently visiting, in respondent’s home. Mr. Thompson was arrested on unrelated charges on October 7, 2014.

Respondent, during an October 8th interview, told CPS investigators that AR had a history of lying and that she wanted an amniocentesis test to find out if Mr. Thompson was the father. She further stated that, if Mr. Thompson did assault her daughter, she wanted him punished. AR testified that on the night of October 8th, 2014 AR spoke with respondent on the telephone and respondent told AR, “My n---- didn’t touch you and if he go to jail because of you, I’m gone kill you.”

The children were placed in a temporary safety plan in the physical custody of their maternal grandmother on October 9, 2014. DHHS then filed the instant petition seeking, inter alia, termination of respondent and Mr. Thompson’s parental rights. At the preliminary hearing, three of the children were placed in the care of their legal fathers. DHHS alleged no wrongdoing on the part of those fathers and did not seek termination of their parental rights. The children not in the care of their legal fathers were placed in the care of a maternal relative.

At the adjudication hearing, beginning January 27, 2015, testimony revealed that respondent’s oldest daughters were kept home from school “three or four times a week” to babysit and that at least one of respondent’s younger children was regularly kept home from school because respondent was unable to clean him after frequent bedwetting incidents. Additional testimony indicated that respondent would sell the family’s food stamps and that there were periods of a couple days when the children were not fed. Respondent’s children testified that respondent would smoke marijuana in front of the children, that Mr. Thompson sold marijuana out of, or in the vicinity of, respondent’s home, and that customers would frequent the home seeking Mr. Thompson. Unprompted, respondent testified that, on at least one occasion, she sold narcotics. Respondent further testified that she and Mr. Thompson had only worked sporadically throughout their relationship, although respondent was currently employed. Respondent indicated that she was willing to undergo services to retain her parental rights and that she was attempting to purchase a house but that she had made no offer on the house and the house needed lights and gas installed before it would be a suitable living environment.

The referee found, by clear and convincing evidence, that the children came within the court’s jurisdiction under MCL 712A.2(b)(1) (juvenile is abandoned or is without proper care and custody) and (2) (unfit home). Mr. Thompson did not appear before the court at any point in these proceedings. The referee found that the children would be at extreme risk of physical and sexual harm in the care of Mr. Thompson and that it was in the best interest of the children to

¹ Mr. Thompson had been kicked out of the home for cheating on respondent.

terminate Mr. Thompson's parental rights under MCL 712A.19b(3)(a)(ii) (desertion for 91 days without seeking custody), MCL 712A.19b(3)(b)(i) (injury to child or sibling), MCL 712.19b(3)(g) (failure to provide proper care and custody), MCL 712.19b(3)(j) (reasonable likelihood children will be harmed if returned to party's care), and MCL 712.19b(3)(k)(ii) (sexual abuse of a child). Mr. Thompson did not appeal this recommendation to the trial court and has not appealed the termination of his parental rights to this Court.

The referee found grounds to terminate respondent's parental rights under MCL 712A.19b(3)(b)(i) (injury to child or sibling), (b)(ii) (failure to prevent physical injury or sexual abuse), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood that child will be harmed if returned to the parent). However, given that respondent was a domestic violence victim and "recognized her shortcomings," the referee did not recommend termination of respondent's parental rights, finding the children's best interests would be served by providing respondent an "opportunity to . . . change." Rather, respondent was recommended for weekly drug screening, parenting classes, individual counseling, domestic violence counseling, and family counseling.

The Lawyer Guardian ad Litem representing the children appealed this recommendation to the trial court arguing the referee improperly applied the best interests standard to respondent rather than to respondent's children. On May 22, 2015, before the trial court had an opportunity to hear the appeal, a dispositional review was held before the referee. During that review, the referee was informed of allegations that one of respondent's younger children was sexually assaulted by Mr. Thompson's brother while in the care of respondent. The prosecutor investigating these claims indicated that the child was cooperative in the investigation until respondent became involved. Respondent testified that she had known about these allegations since November 2014 but had not informed the court or her attorney.

On review, the trial court reversed the referee's recommendation via MCR 3.991(E)(1) (judge would have reached a different result), finding that:

These children have been traumatized, victimized and intimidated to lie to CPS by the mother regarding the conditions and chaos in the home and given this history this Court believes that it is in the best interests to terminate the parental rights of [respondent]. So [sic] that these children can be afforded the opportunity to be placed and raised in a safe and stable home without having to revisit the chaos they knew when they resided with their mother.

Respondent appeals, by right, this order terminating her parental rights.

I. STANDARD OF REVIEW

Before ordering the termination of a parent's parental rights, the trial court must first find that clear and convincing evidence of a statutory ground for termination exists under MCL 712A.19(b)(3). *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182, 185 (2013), citing to *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000); MCR 3.977(E)(3)(b); MCL712A.19(b)(3). "[T]he petitioner for the termination of parental rights bears the burden of proving at least one ground for termination." *In re Trejo Minors*, 462 Mich at 350, citing to *In re*

Sours Minors, 459 Mich. 624; 593 NW2d 520 (1999). The trial court need only find a single statutory ground exists to terminate a parent's parental rights. *Matter of McIntyre*, 192 Mich App 47, 50; 480 NW2d 293, 295 (1991). If the trial court finds a statutory ground for termination of parental rights exists, the trial court shall order termination of parental rights unless the trial court determines by a preponderance of the evidence that termination is not in the child's best interests. *In re Moss*, 301 Mich App at 90, MCL 712A.19b(5). The respondent parent holds the burden of proving termination is not in the child's best interests. *In re BZ*, 264 Mich App at 301.

This court reviews for clear error "both the [trial] court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286, 296 (2009), quoting *In re Trejo*, 462 Mich. at 356–357 (quotation omitted). Our review of a trial court's decision to terminate parental rights is based on the entire evidence. *In re JK*, 468 Mich. 202, 209-10; 661 NW2d 216, 221 (2003), citing to *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Clear error signifies a decision that strikes this court as more than just maybe or probably wrong. *In re Williams*, 286 Mich App at 271. "A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich. at 209-10 citing to *In re Miller*, 433 Mich at 337.

II. STATUTORY GROUNDS TO TERMINATE RESPONDENT'S PARENTAL RIGHTS

Respondent claims that the trial court clearly erred by finding statutory grounds existed to terminate respondent's parental rights under MCL 712A.19b(3)(b)(i) (injury to child or sibling), (b)(ii) (failure to prevent physical injury or sexual abuse), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood that child will be harmed if returned to the parent). We disagree.

Under MCL 712a.19b(3)(b)(i), the trial court

"may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence [that the] parent's act caused the physical injury or physical or sexual abuse [of a child or a sibling of the child] 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."

In this case, respondent's daughter was sexually assaulted. Respondent is correct that, since this sexual assault was not perpetrated by respondent, but rather by Mr. Thompson, this sexual assault cannot justify the trial court's finding that a statutory ground for terminating respondent's parental rights existed under MCL 712a.19b(3)(b)(i).

Nonetheless, the sexual assault was not the only evidence of abuse in this case. In a particularly extreme incident, respondent disciplined AR for having a "smart mouth" by chasing after her with a curtain rod. When AR "balled up," placing her hands over her face in defense, respondent struck her daughter multiple times with the curtain rod, causing a severely swollen wrist requiring medical treatment. Respondent testified that she would "whoop" the children to

discipline them and that she bruised one of the younger children as a result. Respondent provided additional, unsolicited, testimony that she punched her eldest daughter in the shoulder six times while mocking her for talking back to respondent. Accordingly, the evidence was sufficient to find that respondent caused the physical injury of her children or a sibling of her children. MCL 712A.19b(3)(b)(i).

Respondent did indicate that she should not have hit her children and was willing to learn how to discipline correctly, without physical abuse. However, given the severity of respondent's past conduct, respondent's witness stand *mea culpa* does not render the trial court's determination that, if the children were returned to respondent's care, there is "a reasonable likelihood that the [children] will suffer from injury or abuse in the foreseeable future" clear error. *Id.* Accordingly, this court concludes that the trial court did not clearly err in finding statutory grounds existed to terminate respondent's parental rights.

As the trial court need only find one statutory ground existed to terminate respondent's parental rights, this court need not discuss the remaining grounds upon which the trial court based its termination decision. *Matter of McIntyre*, 192 Mich App at 50. Nonetheless, this court finds that the trial court did not clearly err in finding statutory grounds to terminate respondent's parental rights also existed under MCL 712a.19b(3)(b)(ii), (g), and (j).

Under MCL 712a.19b(3)(b)(ii), the court may terminate a parent's parental rights when the court finds by clear and convincing evidence that a "parent who had the opportunity to prevent the physical injury or physical or sexual abuse [of a child or a sibling of the child] failed to do so and . . . there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home." Under MCL 712a.19b(3)(g), the court may terminate a parent's parental rights when the court finds that 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." Finally, under MCL 712a.19b(3)(j), the court may terminate parental rights if there "is a reasonable likelihood . . . that the child will be harmed if he or she is returned to the home of the parent."

The evidence in this case indicated that respondent (1) physically and verbally abused the children, (2) sold the family's food stamps, leaving the children without proper nourishment, (3) used and sold drugs at the children's home, (4) frequently left all of the children home alone without parental supervision, (5) had difficulty keeping a steady job, (6) has been unable to obtain suitable housing away from the home of a family that has sexually abused her family, and (7) regularly focused on her own emotional needs to the detriment of all her minor children. Upon this record, this court is unable to find that the trial court clearly erred in finding statutory grounds existed to terminate respondent's parental rights under MCL 712a.19b(3)(b)(ii), (g), and (j).

III. BEST INTERESTS OF RESPONDENT'S CHILDREN

Respondent's final argument is that the trial court erred by reversing the referee's recommendation and determining that termination of respondent's parental rights was in the best interest of respondent's children. Specifically, respondent claims that the trial court erred by not

making an individual determination that respondent's parental rights to each child should be terminated, by terminating respondent's parental rights despite the children being placed with relatives, and by terminating respondent's parental rights without affording respondent a meaningful opportunity to engage in reunification services. We disagree.

Respondent argues that the trial court erred by not making an individual determination that respondent's parental rights to each child should be terminated. However, the trial court is only required to make an explicit individual finding where the "best interests of the individual children significantly differ." *In re White*, 303 Mich App 701, 715-16; 846 NW2d 61 (2014). Where the children's interests do not significantly differ the trial court is not required to make explicit "individual – and in many cases – redundant factual findings concerning each child's best interests." *Id.* at 716. Respondent has presented no argument on appeal indicating that the interests of her nine children significantly differ. In fact, the majority of the testimony at trial treated the interests of the children in the aggregate. Substantial testimony was given regarding the physical abuse and sexual assault of respondent's eldest daughter; however, there was also evidence that respondent used physical force as the primary form of discipline for most of the children, frequently left all of the children home alone without parental supervision, and sold the entire family's food stamps, leaving all the children without food. Respondent's home, in which all the children resided, was frequented by drug customers and repeatedly assailed by Mr. Thompson and his paramour. Respondent instructed all the children to lie to CPS and has been unable to provide suitable alternative housing for the children. If returned to respondent's care, each child faces a severe risk of harm. As this court has been presented with no information to conclude that the best interests of respondents nine children significantly differ, this Court cannot conclude that the trial court clearly erred by rendering its best interests findings in the aggregate with respect to respondent's nine children.

Respondent additionally argues that the trial court clearly erred in terminating her parental rights because the children's placement with relatives weighs against termination. Respondent is correct that the children's placement with relatives may weigh against a decision to terminate parental rights. See *In re Mason*, 486 Mich 142, 164; 782 NW2d 747, 758 (2010); MCL 712A.19a(6)(a) ("The court is not required to order the agency to initiate proceedings to terminate parental rights if . . . [t]he child is being cared for by relatives"). However, placement with relatives is not an automatic bar to termination; rather, "the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *In re Olive/Metts Minors*, 297 Mich App 35, 43, 823 NW2d 144, 149 (2012). The trial court must explicitly consider a child's placement with relatives in the best interests analysis. *In re Mason*, 486 Mich at 164. However, "the trial court may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests." *In re Olive/Metts*, 297 Mich App at 43.

Despite respondent's argument, the trial court's order explicitly recognized that the children were placed with relatives and considered placement with relatives as a factor in its best interests decision. The trial court found that termination was in the children's best interests despite the placement with relatives in order to "eliminate the destructive and harmful influence that the mother has been in their lives." Accordingly, the trial court did not clearly err by failing to explicitly address the children's placement with relatives when determining the best interests of the children.

Respondent's final argument on appeal is that the trial court clearly erred in terminating her parental rights because she was not given a meaningful opportunity to participate in reunification services. Respondent's argument that termination is not in the children's best interests focuses on respondent's young age, respondent's own lack of parental guidance, and the benefit that respondent will receive from services. However, respondent's focus is misplaced. MCL 712A.19b "mandates termination once a petitioner establishes at least one statutory ground for termination . . . unless the court finds that termination is clearly not in the [children's] best interest." *In re Trejo*, 462 Mich at 364-65. The best interests analysis "provides an opportunity to avoid termination, despite the establishment of one or more grounds for termination." *Id.* at 356. Nonetheless, "[t]he primary beneficiary of this opportunity is intended to be the child," not the parent. *Id.* The children's "bond to the parent, the parent's parenting ability, the [children's] need for permanency, stability, and finality, and the advantages of a foster home over the parent's home are all factors for the court to consider when deciding whether termination is in the best interests of the child." *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868, 873 (2015) (quotation omitted). Yet, the children are not required "to await the mere possibility of a radical change" in the parent's behavior, *In re Williams*, 286 Mich App at 273, and where the trial court determines that the children's needs will not be served by awaiting a parent's completion of services, the trial court may properly terminate the parent's parental rights.

The trial court found the children had been "traumatized, victimized and intimidated to lie to CPS by the mother regarding the conditions and chaos in the home" such that the children's best interests were served by termination rather than reunification services. At the adjudication hearing, respondent enthusiastically testified to the physical and verbal abuse she perpetrated upon her children. Respondent admitted to selling drugs and to bringing a known-drug dealer with a criminal history around her children. Respondent regularly left the children home alone without parental supervision and her children regularly missed school. There is evidence that respondent sold her food stamps and failed to provide the children with proper nourishment. Despite acknowledging most, if not all, of these shortcomings, respondent indicated that she believed the proceedings against her were "unfair." Given the severity of respondent's parental shortcomings, respondent's failure to appreciate the seriousness of her actions, and the evidence that respondent had instructed her children to lie to CPS investigators, the trial judge reasonably found that the children's need for permanency, safety, and stability outweighed the possibility that services would render respondent a fit parent within a reasonable time.

On a final note, this court gives credit to the referee's concern that termination of respondent's parental rights was not appropriate given that respondent was a victim of severe domestic violence. This court recognizes that "it would be impermissible for a parent's parental rights to be terminated solely because he or she was a victim of domestic violence." *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119, 121 (2011). "However, this termination was

properly based on the fact that respondent's own behaviors were directly harming the children or exposing them to harm.” *Id.* Accordingly, this court cannot conclude that the trial court’s determination that termination of respondent’s parental rights was clear error.

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Amy Ronayne Krause