

STATE OF MICHIGAN
COURT OF APPEALS

In re ADKINS/WATKINS, Minors.

UNPUBLISHED
October 7, 2014

No. 319420
Wayne Circuit Court
Family Division
LC No. 13-513659-NA

In re WATKINS, Minors.

No. 319421
Wayne Circuit Court
Family Division
LC No. 13-513659-NA

Before: RIORDAN, P.J., and CAVANAGH and TALBOT, JJ.

PER CURIAM.

In Docket No. 319420, respondent mother appeals as of right the order terminating her parental rights to her five minor children under MCL 712A.19b(3)(b)(ii) (failure to prevent physical harm), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood child will be harmed). In Docket No. 319421, respondent father appeals as of right the order terminating his parental rights to the two youngest children under MCL 712A.19b(3)(b)(i) (parent caused sexual abuse), (g) (failure to provide proper care or custody), (j) (reasonable likelihood child will be harmed), and (k)(ii) (criminal sexual conduct involving penetration).¹ The appeals were consolidated for review. We affirm in both dockets.

I. FACTUAL BACKGROUND

Respondent mother came to the Department of Human Service's (DHS's) attention in 2001 regarding an allegation concerning TA. Then in 2007, respondent mother gave birth to HA, who tested positive for marijuana at birth. In April 2013, another referral was submitted

¹ The three older children at issue in this case—TA, HA, and LA—are not biologically related to respondent father. Their biological father died in 2007.

based on domestic violence, improper supervision, and threatened harm.² The Children's Protective Services (CPS) worker testified that the allegations were substantiated based on failure to protect, threatened harm, abuse, improper supervision, and domestic violence. The children reported that they witnessed respondent father punch and abuse respondent mother, and that respondent father was physically abusing them as well.

TA witnessed respondent father punch respondent mother, slap her, and hit her with a gun. According to TA, HA and LA were present during some of these occasions, and they cried and hid. TA was afraid that respondent father would kill respondent mother. TA also testified that respondent father hit her and kicked her to the floor, while respondent mother was present. Respondent father also hit TA with a belt, and TA testified that respondent mother did not intervene. TA witnessed respondent father hit HA on the back of the head so hard that the child "lifted out of [his] chair." According to TA, respondent mother also slapped the children, but not hard enough to leave a mark.

Respondent mother admitted that the domestic violence against her occurred, and that the children probably witnessed it. She also admitted to seeing respondent father hit the three older children, and one time excessively hit TA with a belt to the point that she was bleeding. Respondent mother testified that she called the police several times, but that she continued her relationship with respondent father. TA also saw respondent father with crack cocaine, which he planned to sell, and the police had raided their house. TA testified that respondent mother was in the house when respondent father had the drugs.

According to the CPS worker, respondent mother initially downplayed the domestic violence. Respondent mother was "very angry and hostile and aggressive" toward CPS. However, respondent mother agreed to participate in services in May of 2013. A safety plan was put in place, wherein respondent mother agreed that respondent father would not reside in the home or visit the children during the investigation and during her participation in services. CPS also recommended a personal protection order (PPO). While they offered assistance in obtaining one, respondent mother declined CPS assistance. Respondent mother testified that while she obtained a PPO, she never served it on respondent father. She claimed that she did not know how to serve it, she could not afford to pay someone to serve it, and she was unaware it could extend to her children. However, she also admitted that she really did not want to obtain the PPO, but only did so because CPS threatened to remove her children otherwise.

In July of 2013, TA testified that respondent father sexually assaulted her on two occasions.³ Although the safety plan—which respondent mother agreed to—was for respondent mother to avoid contact between herself, her kids, and respondent father, respondent mother ignored the instructions. She later informed the CPS worker that she had been evicted due to bed

² Respondent mother had sent a letter to TA's principal regarding domestic violence, and inquired about the availability of services.

³ Respondent father was not TA's biological father.

bugs, and contacted respondent father for financial assistance. The CPS worker testified that respondent mother did not seek help from her family because she was not close with them. Respondent mother did not call the CPS worker, a CPS supervisor, or the Department of Human Services (DHS) for assistance with housing. Instead, respondent mother and the children lived in her car, a hotel, and with respondent father.

The family was sleeping in a van located near respondent father's friend's house. TA and her younger sister were sleeping alone in the van when respondent father entered and drove the van away. He then woke TA up, removed her pants, and inserted his penis into her vagina. TA said there was blood on her pants that her mom eventually washed. Two nights later, again at the same house, TA was in the van while the adults were "partying" inside. TA was in the van with her mom, who was asleep, and with her siblings. Respondent father ordered TA to exit the van and go into the basement of the house, which she did. Respondent father again inserted his penis into TA's vagina.

The next day, when TA was at her uncle's house and finally felt safe, she told her mother about the sexual assaults. Respondent mother called the police. As a result of respondent father's actions, TA became pregnant, and the children were removed from respondents' care. The CPS worker testified that respondent mother failed to protect and supervise her children and ensure that they were safe from domestic and sexual abuse. She also testified that the children would be at risk if returned to either parent.

The court found sufficient evidence to take jurisdiction over the minors and of the statutory grounds for termination. At the best interest hearing, the foster care case manager testified that respondent mother was appropriate during supervised visiting times and was bonded with the children. She also testified that she "would be concerned about the children returning or [TA] returning to" respondent mother. TA testified that she did not want her mother's rights terminated and explained that she wished to have visits with her mother "[m]aybe like two hours, twice a week" The court found that termination was in the children's best interests. Both respondents now appeal.

II. REASONABLE EFFORTS

A. STANDARD OF REVIEW

Respondents first argue that their due process rights were violated when the trial court terminated their parental rights without affording them a case service plan (CSP) or a parent agency agreement (PAA) with appropriate services. We review a trial court's factual findings for clear error, and questions of law *de novo*. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

B. ANALYSIS

Generally, reasonable efforts to reunify parents and children must be made. MCR 3.976(B). However, petitioner "is not required to provide reunification services when termination of parental rights is the agency's goal." *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). When aggravated circumstances are present, reasonable efforts toward

reunification are not required. MCL 712A.19a(2)(a); MCL 722.638; MCR 3.976(B); *In re Mason*, 486 Mich at 152. Aggravated circumstances exist in the following circumstances:

(a) The department determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has 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.

(iii) Battering, torture, or other severe physical abuse.

(2) In a petition submitted as required by subsection (1), if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the department shall include a request for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIIA of 1939 PA 288, MCL 712A.19b. [MCL 722.638.]

Thus, "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." *In re HRC*, 286 Mich App at 463.

In the present case, aggravated circumstances were present with respect to respondent father. Respondent father committed criminal sexual conduct involving penetration against TA, who was a sibling of his children and a child in his household. According to the plain language of the statute, DHS was not required to make reasonable efforts to reunite respondent father with his children.

Furthermore, aggravated circumstances were present with regard to respondent mother. Respondent father engaged in numerous acts of domestic violence. Respondent mother admitted to seeing respondent father hit the children with a belt, although she claimed that she called the police when he hit TA so hard that she bled. Respondent mother maintained her relationship with respondent father after that incident. CPS intervened and instructed respondent mother to avoid all contact with respondent father. Despite voicing her agreement, respondent mother ignored the safety plan. She contacted respondent father for financial and living assistance, ignoring other options such as contacting CPS. Although respondent mother told the CPS worker that she was moving in with her "cousin," that was a lie. The address she provided belonged to a friend of respondent father, where respondent father was staying.

As a result of respondent mother's decision, TA was placed in a vulnerable environment, namely, sleeping in a van where she was periodically unsupervised at night. Respondent father preyed on TA's vulnerability, and sexually assaulted her, which resulted in TA becoming pregnant. Respondent mother blatantly ignored the safety plan and placed her children at risk

when exposing them to respondent father. Because she failed to take reasonable steps to intervene to eliminate the risk of harm, she placed her children at an unreasonable risk of harm pursuant to MCL 722.638(2). Accordingly, the trial court was not in error.

III. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

Respondents next argue that the evidence was not clear and convincing to terminate parental rights. We review for clear error a trial court's finding that a statutory ground for termination was proven by clear and convincing evidence. *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). "A decision is clearly erroneous when, 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." *Id.* at 17-18 (quotation marks and citation omitted).

B. RESPONDENT FATHER

Respondent father's parental rights were terminated pursuant to MCL 712A.19b(3)(b)(i), (g), (j), and (k)(ii), which provide:

(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.

(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.

The trial court did not clearly err in determining that clear and convincing evidence supported termination of respondent father's parental rights. Respondent father committed criminal sexual conduct involving penetration against a 14-year-old child, who was the sibling of his children and a vulnerable girl who resided in his home. It was not merely "alleged abuse" against an unrelated individual, as the father contends, but a crime that the court found occurred. Such evidence justified termination of respondent father's parental rights to his children, particularly under subsection (k)(ii). Other evidence supporting termination under subsections (g) and (j) is that respondent father physically abused respondent mother and her children, and was selling crack cocaine, the preparation of which TA witnessed. We find no error in the trial court's ruling.

C. RESPONDENT MOTHER

Respondent mother's rights were terminated under subsections (b)(ii),⁴ (g), and (j).

Particularly under subsection (g) (failure to provide proper care or custody), we find no error in the trial court's ruling terminating her parental rights.⁵ Respondent mother's failure to provide proper care or custody resulted in both physical and sexual abuse. The record was replete with evidence of respondent father's violence against respondent mother and the children.⁶ Despite such recurring violence, respondent mother continued her relationship and association with respondent father. Even after respondent father left the home, respondent mother sought him out when she needed financial and living assistance, in spite of the danger he posed to both her and the children.⁷ Further, the PPO she obtained against respondent father did not cover the children (who were not biologically related to him), and she never served it on him. See *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119 (2011) (while "it would be impermissible for a parent's parental rights to be terminated solely because he or she was a victim of domestic violence . . . this termination was properly based on the fact that respondent's own behaviors were directly harming the children or exposing them to harm.").

Respondent mother's failure to provide proper care or custody of her children culminated in the sexual assault of TA. Respondent mother and her children were homeless for a time, as she failed to obtain suitable housing. Respondent mother then decided, at least for a period of time, that she and the children would live in a van and possibly in a crowded bedroom in

⁴ MCL 712A.19b(ii) states: "The parent who had the opportunity to prevent the physical injury or physical or 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."

⁵ Clear and convincing evidence of only one statutory ground for termination is necessary. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

⁶ TA testified that respondent mother also "slapped" the children.

⁷ This was after respondent father hit TA so violently with a belt that she bled and "the police were called. . . ."

respondent father's friend's house. While TA was in this van, respondent father preyed on her vulnerability and the apparent lack of supervision, and sexually assaulted her.

Nor is there a reasonable likelihood that respondent mother would be able to provide proper care and custody within a reasonable time considering the children's ages. Despite the significant physical abuse that respondent mother suffered, and the fact that respondent father directed the physical abuse at the children, respondent mother persisted in her relationship with him. Of even greater significance is that even after a safety plan was developed by CPS, respondent mother continued to expose herself and children to the danger of defendant. As the CPS worker verified, there had been no appreciable benefit that respondent mother achieved from the services in which she participated. The trial court did not err in finding a lack of reasonable expectation that respondent mother would provide proper care and custody of the children within a reasonable time.

IV. BEST INTERESTS

A. STANDARD OF REVIEW

Respondents also challenge the court's best-interest ruling. We review the trial court's decision for clear error. *In re Trejo*, 462 Mich 341, 357; 612 NW2d 407 (2000).

B. ANALYSIS

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). A court may consider evidence that the children were not safe with respondents, were thriving in foster care, the need for permanency, stability, and finality, and the bond between respondents and the children. *Id.* at 41-42; *In re VanDalen*, 293 Mich App at 141; *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004).

Contrary to respondent father's arguments, the trial court recognized the necessity of addressing the best interests of each child separately. Further, respondent father violently beat respondent mother and his children's siblings in the home they shared. See *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014) ("a parent's history of domestic violence" is a relevant best interest consideration). Respondent father also callously raped his children's 14-year-old sibling. The violent and abusive nature of respondent father's conduct made it unlikely that he could provide his children with an environment that was both physically and emotionally safe.⁸ Respondent father also brought drugs into the home, which he was cutting and packaging.

⁸ While respondent father repeatedly argues that he never physically harmed his own children, as this Court recognized in *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011), the concept of "harm" does not merely apply to "the potential of *physical* harm or abuse" as it may

We find no error in the court’s ruling that termination of respondent father’s parental rights was in the best interests of his children.

Nor did the trial court err in finding that termination of respondent mother’s parental rights was in the children’s best interests. As the trial court summarized: “The mother’s actions have been focused totally on her satisfaction, her needs and her desires, her lack of prioritizing the needs of the children, and, by all means, failing to protect them.” The court concluded that it was not “appropriate to play Russian Roulette . . . in terms of taking a gamble as to whether or not the mother is going to be able” to provide for the children, protect them, give them a sense of permanency, and make sure they are safe.

This case does not involve an isolated instance of respondent mother’s poor judgment. Rather, respondent mother displayed a pattern of troubling and dangerous choices. Not only did she expose herself and her children to continual physical abuse, she was unable to provide her children with safe, clean, and suitable housing. The unsuitability of respondent mother’s home perhaps is epitomized in the fact that respondent father had drugs in the home that he was preparing to sell. Respondent mother’s continual association with respondent father—despite his overwhelming abuse and CPS instructions to avoid him—displays either her inability or unwillingness to place her children’s health and safety first. It also contributed to the tragic sexual assault of her 14-year-old daughter, and the resulting pregnancy. In light of the foregoing, we find no error in the trial court’s findings.

V. CONCLUSION

Because there were aggravated circumstances, the trial court did not err in declining to order further services aimed at reunification. We find no error in the trial court’s ruling that the statutory grounds for termination existed, and that termination was in the children’s best interest. We affirm.

/s/ Michael J. Riordan
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot

apply in instances where “the children had been, and continued to be, at risk of *emotional* harm.” (Emphasis in original).