

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 13, 2013

In the Matter of MCCORKLE, Minors.

No. 313150
Wayne Circuit Court
Family Division
LC No. 11-502661-NA

Before: RIORDAN, P.J., and TALBOT and FORT HOOD, JJ.

PER CURIAM.

M. McCorkle appeals as of right from the trial court's order terminating his parental rights to his minor children.¹ We affirm.

McCorkle argues that the trial court clearly erred in finding that clear and convincing evidence existed to establish the statutory grounds to terminate his parental rights to his minor children. We disagree. Appellate review of a trial court's decision to terminate parental rights is for clear error.² Clear error exists "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."³

Before terminating a respondent's parental rights, the trial court must first make a finding that at least one of the statutory grounds for termination⁴ has been established by clear and convincing evidence.⁵

¹ MCL 712A.19b(3)(b)(i) (a sibling of the child has suffered sexual abuse caused by the parent's act), (g) (failure to provide proper care or custody), (j) (there is a reasonable likelihood that the child will be harmed if he or she is returned to the parent's home), and (k)(ii) (the parent abused a child's sibling by engaging in criminal sexual conduct involving penetration).

² *In re Rood*, 483 Mich 73, 90-91, 126 n 1; 763 NW2d 587 (2009); MCR 3.977(K).

³ *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

⁴ MCL 712A.19b(3).

The Department of Human Services (the Department) sought immediate termination of McCorkle's parental rights after his children's 14-year-old half-sister, AC, disclosed that McCorkle had repeatedly engaged her in sexual intercourse weekly for more than a year. At the termination hearing, AC recounted the first and last sexual encounters with McCorkle. Her testimony included details such as what she and McCorkle were wearing, the location of the incidents, and the manner of the abuse. She clearly stated that the abuse involved McCorkle's penis penetrating her vagina. AC testified that McCorkle was drunk each time he molested her and that he always gave her a gift afterward. AC explained that she finally reported the abuse to her godmother because she was "tired" and "didn't want it to happen again." McCorkle chose not to directly refute AC's testimony at the termination hearing; however, the case worker testified that McCorkle had previously denied AC's sexual abuse allegations.

Witness credibility was the lynchpin of this case. Under the clearly erroneous standard of review, the reviewing court is not authorized to "substitute its judgment for that of the trial court; if the trial court's view of the evidence is plausible, the reviewing court may not reverse."⁶ This Court gives deference to the trial court's ability to discern the weight of the evidence and assess witness credibility, "giving due regard to the trial court's special opportunity to observe the witnesses."⁷

In the instant case, the trial court did not clearly err in finding that AC was a credible witness. Nothing in the record indicates any motivation for AC to be coached to falsely accuse McCorkle. There was no evidence of prior petitions from disgruntled parties and no history of custody, support, or visitation disputes involving AC, McCorkle, and AC's mother. AC lived with her mother, sister, half-siblings, and McCorkle, and thus McCorkle had liberal access to AC. AC's demeanor during the termination hearing, as specifically noted in the trial court's findings, showed that she was understandably reluctant to testify in open court and give a complete recitation of the allegations as one might expect from a child who had been repeatedly sexually abused. She had to be reminded repeatedly to speak up. The trial court had the full benefit of being able to assess AC's demeanor. The trial court found her to be childlike and "very credible," and the court concluded that she was not "out to get somebody."

At the termination hearing, McCorkle attempted to portray AC as having a manipulative or vindictive motive because either McCorkle or AC's mother took away AC's cell phone the day before she disclosed the abuse. The proofs, however, show that it was not unusual for AC's mother to take away AC's cell phone as a disciplinary measure. Further, it was undisputed that, outside of the sexual abuse, AC and McCorkle had a good relationship. AC testified that McCorkle gave her money or gifts every time there was sexual contact. When asked if she would describe her relationship with McCorkle as friendly, AC replied, "Yes, he was nice to me. If you asked him to go somewhere, he'd say yes." The trial court reasonably concluded that her testimony which placed McCorkle in a favorable light outside of the sexual abuse served to underscore her credibility.

⁵ *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

⁶ *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

⁷ *BZ*, 264 Mich App at 296-297; See also MCR 2.613(C); MCR 3.902(A).

AC's testimony that she was sexually abused was supported by additional evidence. The children's mother testified that she believed AC. During a psychological evaluation of the family, AC's sister, also an adolescent and not McCorkle's biological child, revealed that she had rebuffed McCorkle's sexual advances and that she kept a knife under her pillow to protect herself from any future advances.

Moreover, there was evidence presented that McCorkle had a problem with alcohol abuse as he drank beer daily, at times in the morning, and was regularly intoxicated. Additionally, he was unemployed. AC testified that the last sexual encounter with McCorkle occurred in the morning before she went to summer school. The children's mother testified that McCorkle routinely left the home in the morning; however, on that particular day, he left the house in the afternoon. Thus, the record supports that there was clear and convincing evidence of the statutory grounds for termination of McCorkle's parental rights.

McCorkle challenges the weight given to the medical evidence. He contends that a medical examination would have revealed physical injury or trauma if AC had been sexually abused as she had alleged. AC had a forensic medical examination on the day she disclosed the abuse. The examination revealed that AC had recently sustained a vaginal injury. The expert forensic nurse explained that, although the results were inconclusive for sexual abuse, the vaginal injury could have been the result of sexual activity or from some other trauma. The forensic nurse made it clear that there was no medical evidence that exculpated McCorkle or vitiated AC's allegations that she had been sexually abused. AC's mother testified that she did not know for certain if AC was sexually active but she had placed AC on birth control as a precautionary measure, which McCorkle was aware of. Thus, this Court is not persuaded that improper weight was given to such evidence.

McCorkle contends that the trial court should not have terminated his parental rights because there was no evidence that he had sexually abused his own biological children. This claim fails to warrant relief as termination of parental rights is allowed where a parent sexually abuses his child's siblings.⁸ For purposes of the Juvenile Code, a "sibling" includes a half-sibling, such as AC.⁹ For similar reasons, it is irrelevant that criminal charges against him, relating to his sexual abuse of AC, were dismissed as child protection proceedings have a lower standard of proof than criminal actions.¹⁰

McCorkle argues unpersuasively that the trial court's termination decision should be reversed because he did not receive any court-ordered services, such as therapy and substance abuse treatment. McCorkle contends that the trial court prematurely terminated his rights because he was not given the opportunity to address his alcohol abuse issues while the children remained in foster care or were possibly returned to their mother's care. Reunification services

⁸ MCL 712A.19b(3)(b)(i) and (k)(ii).

⁹ *In re Hudson*, 294 Mich App 261, 265-266; 817 NW2d 115 (2011).

¹⁰ *In re MU*, 264 Mich App 270, 279-280; 690 NW2d 495 (2004).

are not mandated in cases where “aggravated circumstances,” such as sexual abuse, necessitate immediate termination of parental rights.¹¹

Further, McCorkle’s claim that he would have availed himself of court-ordered services is disingenuous. It is undisputed that McCorkle chose not to fully engage in the child protection proceedings. Proceedings were adjourned several times because his whereabouts were unknown. He did not maintain regular contact with case workers or his attorney. He did not appear at the best-interest hearings. During the ten months between the statutory grounds hearing and the best-interest determination hearings, McCorkle made no attempt to seek out substance abuse help or therapy of any kind that, according to the evaluating psychologist, was readily available to him regardless of any ability to pay. Thus, McCorkle’s behavior was a strong indicator that he likely would not have complied with a treatment plan if one had been provided. Accordingly, the trial court properly determined that statutory grounds for termination of McCorkle’s parental rights existed.¹²

McCorkle also argues that the trial court clearly erred when it found by a preponderance of the evidence that terminating his parental rights was in the children’s best interests. We disagree.

To terminate parental rights, the trial court must also find by a preponderance of the evidence that termination is in the child’s best interests.¹³ “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.”¹⁴ Review of the record reveals that there was sufficient evidence to support the trial court’s best-interest determination. Contrary to McCorkle’s claim that the trial court did not properly consider the nature and quality of the evidence, that record shows that the court thoughtfully considered AC’s credibility and that this case involved multiple incidents of sexual abuse rather than an isolated occurrence. While it is true that the trial court’s decision largely rested on her testimony, the court also considered the forensic examination, the psychological evaluation, and the mother’s testimony.

McCorkle emphasizes that, aside from the sexual abuse allegations, termination was not in the children’s best interests because he acted appropriately with his own children with whom he had a parent-child bond. McCorkle contends that there was no evidence that he would harm his children in the foreseeable future. McCorkle repeatedly sexually abused a child with whom he had a fatherly relationship for more than 11 years. The evaluating psychologist testified that

¹¹ MCL 712A.19a(2)(a); MCL 722.638.

¹² MCL 712A.19b(3)(b)(i), (g), (j), and (k)(ii).

¹³ MCL 712A.19b(5); *In re Moss*, ___ Mich App ___; ___ NW2d ___ (Docket No. 311610, issued May 9, 2013), slip op, p 6.

¹⁴ MCL 712A.19b(5).

McCorkle was likely to repeat his inappropriate behavior because he had failed to acknowledge his shortcomings. Thus, there was a greater likelihood that he would also act inappropriately toward his own biological children. As the psychologist explained, the best predictor of McCorkle's future behavior was his past behavior, coupled with his absence of insight and that he had not availed himself of the available treatment. Therefore, we find that his argument lacks merit.

Additionally, the evaluating psychologist testified that McCorkle's continued presence in the children's lives could damage the children's relationships with one another. The case worker reported a high degree of family dysfunction. Further, the evidence showed that McCorkle had a tenuous bond with his children as exemplified by his limited interactions with the children during the family psychological evaluations and also by his lackluster participation in the proceedings. The evaluating psychologist recommended terminating McCorkle's parental rights because the children's delay in obtaining permanency needed to come to an end. Thus, the trial court properly concluded that McCorkle's children needed safety, stability, and permanency, which he was not reasonably likely to be able to provide in the foreseeable future.

McCorkle relies on *In re Mason*¹⁵ and *In re Olive/Metts*¹⁶ to support his assertion that the trial court's best-interest determination should be reversed. McCorkle first argues that the trial court improperly terminated his parental rights based on his past criminal conduct, which was contrary to *Mason*'s holding that terminating parental rights solely because of past violence or crime was reversible error.¹⁷ This argument is meritless. Unlike in *Mason*, there was evidence in this case that McCorkle was likely to harm his children in the foreseeable future.

McCorkle also argues that the trial court terminated his parental rights without considering his son's placement with a relative as required by *Mason*. In *Mason*, however, the court's jurisdiction was not based on "aggravated circumstances" but rather on the mother's failure to provide proper supervision and the respondent's failure to provide physical, emotional, and financial support of the children while he was incarcerated. The petitioner in *Mason* was statutorily obligated to make reasonable reunification efforts, and the trial court was not required to proceed to a termination hearing because the children were being cared for by relatives of the respondent.¹⁸ Unlike *Mason*, this case involves egregious circumstances with sufficient evidence that the children were at risk of future harm of sexual abuse that mandated that the Department file an original petition for permanent custody and not make reasonable reunification efforts.¹⁹ Additionally, McCorkle was given the opportunity to engage in the court proceedings. Thus, in this case, there was no "hole in the evidence" as McCorkle asserts.

¹⁵ *Mason*, 486 Mich at 165.

¹⁶ *In re Olive/Metts*, 297 Mich App 35; 823 NW2d 144 (2012).

¹⁷ *Mason*, 486 Mich at 165.

¹⁸ MCL 712A.19a(6)(a).

¹⁹ MCL 722.638.

Lastly, McCorkle claims that his son's placement with a relative was a factor that the trial court failed to consider in determining whether termination was in the children's best interests. Therefore, he argues, the factual record was inadequate to make a best-interest determination and this Court must reverse.²⁰ The record demonstrates that the trial court was well aware of the children's placements. There were regular placement updates and the maternal uncle who was caring for McCorkle's son testified on behalf of the mother at the best-interest hearing. After his testimony, the court specifically thanked him for taking care of the child. It is reasonable to conclude that the placement of McCorkle's son with a relative was an explicit factor that the trial court considered in its best-interest determination. The trial court's failure to specifically verbalize the relative placement does not warrant reversal. Accordingly, the trial court did not err in finding that termination of McCorkle's parental rights was in the children's best interests.

Affirmed.

/s/ Michael J. Riordan
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood

²⁰ *Olive/Metts*, 297 Mich App at 43 (“A trial court’s failure to explicitly address whether termination is appropriate in light of the children’s placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal.”)