STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of HALL, Minors.

UNPUBLISHED
October 10, 2013

No. 315300
Genesee Circuit Court
Family Division
LC No. 12-128457-NA

Before: BECKERING, P.J., and O'CONNELL and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to C.H. and L.H. (collectively, "the minor children"), pursuant to MCL 712A.19b(3)(b) (child or child's sibling has suffered sexual abuse by parent), (g) (failure to provide proper care or custody), (h) (parent is imprisoned and there is no reasonable expectation parent will be able to provide care and custody within a reasonable time), (j) (reasonable likelihood that child will be harmed if returned to parent), (k)(*ii*) (parent abused child or child's sibling and abuse included criminal sexual conduct involving penetration), and (n)(*i*) (parent was convicted of an enumerated crime and continuing the parent-child relationship would be harmful to the child). We affirm.

Respondent does not contest the termination of his parental rights. Rather, he asserts that the trial court erred by failing to properly consider possible relative placements when deciding if termination was in the minor children's best interest. We disagree.

This Court reviews for clear error the trial court's decision that termination of parental rights is in the child's best interests. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011), citing *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

To terminate parental rights, the Department of Human Services (DHS) must first prove a statutory ground for termination by clear and convincing evidence. *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012). If a statutory ground is proven, the DHS must prove that termination is in the child's best interests by a preponderance of the evidence. *In re Moss*, 301 Mich App 76; ___ NW2d ___ (Docket No. 311610, issued May 9, 2013) (slip op at 6). Respondent does not dispute that there were statutory grounds for termination. However, he contends that the trial court erred by not properly considering possible relative placements for the

minor children and by not requiring the DHS to conduct a thorough investigation into possible relative placements.

"'[A] child's placement with relatives weighs against termination under MCL 712A.19a(6)(a).'" *Olive/Metts*, 297 Mich App at 43, quoting *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). If a child is living with relatives when the termination hearing occurs, then the trial court should consider that as an "explicit factor" in determining if termination is in the child's best interests. *Id*. "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." *Id*. However, the trial court is not required to place a child with relatives in lieu of terminating parental rights. *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999), overruled on other grounds *In re Morris*, 491 Mich 81, 121; 815 NW2d 62 (2012). "If it is in the best interests of the child, the probate court may properly terminate parental rights instead of placing the child with relatives." *Id*.

First, the minor children *were not* placed with relatives when the termination hearing occurred, unlike the children in *Olive/Metts*, 297 Mich App at 43, and *Mason*, 486 Mich at 163-164. C.H. was initially placed with the paternal grandmother for approximately one month when she was removed from her parents' home. At the time of the termination hearing, C.H. had been removed from the paternal grandmother's care for more than a year, and L.H. had never been in her care. Second, the paternal grandmother asked for C.H. to be removed from her care in February of 2012. At the termination hearing, respondent did not present any evidence, or call the maternal grandmother as a witness, to establish that she was then willing and able to care for the minor children.

The trial court properly considered relative placement before terminating respondent's parental rights. The court considered respondent's argument that the possibility of a relative placement is one of the best interest factors and disagreed, concluding that a trial court must consider a child's *actual* relative placement, not the *possibility* of a relative placement. The court went on to conclude that, regardless, termination was in the minor children's best interest. There was sufficient evidence in the lower court record of the DHS's ongoing efforts to place the minor children with suitable relatives. Both the minor children were bonded with their foster parents. The minor children were thriving in their foster home, and their needs were being addressed. The court reasoned that the minor children were better off severing all ties with respondent, especially given the media attention that had surrounded respondent's case and his father's case. The court concluded that it was in the minor children's best interest to "grow up and live their lives separate from all of that."

The court's decision to terminate respondent's parental rights without giving more consideration to a relative placement was not clearly erroneous. Reasonable efforts were made to find suitable relative placement. Further, the foster care case manager testified that the minor children were doing well in their foster care placement. They were with the same family and were both bonded with the foster parents. The foster care case manager also testified that the minor children needed permanency, stability, love, and care, which respondent could not provide because he was serving a life sentence in prison for sexually abusing C.H. The foster parents were willing to adopt both children. Furthermore, the evidence supported the trial court's finding that it was in the minor children's best interest to sever all ties with respondent.

Respondent admitted to sexually abusing C.H. when she was only five or six months old. Her biological mother took photographs of the abuse and it appeared that respondent was preparing to distribute the photographs online. The abuse occurred in the paternal grandmother's home. Given the heinousness of those actions and the media attention that had surrounded the events of this case and respondent's criminal case, it was reasonable to conclude that the minor children would be better off living in a family that was not associated in any way with respondent.

Affirmed.

/s/ Jane M. Beckering
/s/ Peter D. O'Connell
/s/ Douglas B. Shapiro