

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* S. L. WOOD, Minor.

UNPUBLISHED  
October 23, 2014

No. 320669  
Washtenaw Circuit Court  
Family Division  
LC No. 2013-000013-NA

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Before: SAAD, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(m). We affirm.

Respondent raises a series of challenges to the trial court's factual findings. A trial court's factual findings in terminating parental rights, including that a statutory ground existed for termination, that petitioner made reasonable reunification efforts, and that termination is in a child's best interests, are reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

Petitioner requested termination of respondent's parental rights at the initial dispositional hearing. Thus, termination was required if the trial court found on the basis of clear and convincing, legally admissible evidence, a ground for termination of parental rights under MCL 712A.19b(3) and also found that termination of respondent's parental rights was in the minor child's best interests. *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013); MCR 3.977(E).

Respondent argues that the trial court erred because it never actually made a finding that clear and convincing evidence existed to find a statutory ground for termination pursuant to MCL 712A.19b(3). However, while the trial court never explicitly stated the statutory ground it relied upon for termination, the context provided by the record clearly indicates that the trial court found clear and convincing evidence that grounds for termination existed under MCL 712A.19b(3)(m). There was evidence in the record that respondent voluntarily terminated her parental rights to another child in a proceeding based on an abusive head trauma that child suffered, which was evidence of severe physical abuse, a serious impairment of an organ, and a life-threatening injury. The trial court's finding of a statutory ground for termination under MCL 712A.19b(3)(m) was not clearly erroneous. MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357.

Respondent also challenges the trial court's finding that petitioner made reasonable efforts to reunify the minor child with respondent in this case. MCL 712A.19a(2) provides that "[r]easonable efforts to reunify the child and family must be made in all cases except" in certain circumstances. One such circumstance is when petitioner requests termination in the initial petition and termination of parental rights is petitioner's goal. In that situation—which is what we have here—petitioner is not required to provide reunification services. *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Nevertheless, respondent was provided with a service plan that focused on parenting skills, mental health, and utilizing community resources. Respondent also received parenting classes, a psychological evaluation, parenting times, and a referral to a Dollar Works program that included a budgeting class. The trial court did not clearly err in finding that reasonable reunification efforts were made in this case. MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357.

Regarding the trial court's best-interest determination, respondent argues that the trial court erred when it did not apply the 12 best-interest factors defined in MCL 722.23. However, the Child Custody Act, MCL 722.21 *et seq.*, which includes the best-interest factors under MCL 722.23, "governs child custody disputes between parents, agencies or third parties." *Mauro v Mauro*, 196 Mich App 1, 4; 492 NW2d 758 (1992). Because this case was filed under the juvenile code, MCL 712A.1 *et seq.*,<sup>1</sup> it was not a child custody dispute and the trial court was under no obligation to address the best-interest factors found in MCL 722.23. Respondent also asserts that MCL 722.25 required that the trial court presume that it was in the minor child's best interests to remain with her because this case was in essence a custody dispute between respondent and petitioner as a third party. However, MCL 722.25 likewise falls within the Child Custody Act, and the presumption found in MCL 722.25 was inapplicable to this juvenile code case.

Respondent additionally argues that when the trial court addressed the minor child's best interests, it did not properly consider testimony that was favorable to her, including evidence that tended to show that at the time of the adjudication trial respondent was in a non-abusive relationship, that respondent and her boyfriend were employed and drug-free, that respondent had financial support from her mother, and that respondent was capable of properly parenting a child. However, a trial court must determine the best interests of the child using evidence from the whole record. *Trejo Minors*, 462 Mich at 353.

Here, the trial court found that termination of respondent's parental rights was in the minor child's best interests based on its findings that the minor child's foster home gave the minor child advantages over placement with respondent and that respondent's history of failing to protect a child from severe abuse indicated that the minor child would be placed in danger if she was placed with respondent. When determining a child's best interests, a trial court may consider a child's well-being in foster care, *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004), and a parent's history, *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009). The evidence before the trial court supported the trial court's findings. The trial court did not clearly

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<sup>1</sup> See generally, *In re Toler Minors*, 193 Mich App 474, 477; 484 NW2d 672 (1992).

err in finding that termination of respondent's parental rights was in the minor child's best interests. MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357.

Respondent also raises several constitutional arguments related to the due process she received in this case. Respondent fails to show plain error. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). Neither respondent's procedural nor substantive due process rights were violated. Respondent was afforded procedural due process because the trial court followed the appropriate statutory provisions in conducting the termination hearing. Additionally, respondent's liberty interests were not violated by application of MCL 712A.19b(3)(m), as the trial court was required to find that the statutory provision was satisfied by clear and convincing evidence. Had there been evidence to rebut petitioner's assertion that it was established, respondent would have been able to present it to the court. How a parent treats one child is probative of how she may treat another, *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973), and for the trial court to rely on that modified doctrine as contained in MCL 712A.19b(3)(m) did not violate respondent's liberty interest as a parent.

Affirmed.

/s/ Henry William Saad  
/s/ Peter D. O'Connell  
/s/ Christopher M. Murray