

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 11, 2011

In the Matter of I. WHEELER, Minor.

No. 299090
Ingham Circuit Court
Family Division
LC No. 09-002217 NA

Before: HOEKSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to his daughter under MCL 712A.19b(3)(g) and (j). For the reasons set forth in this opinion, we affirm.

The minor child's mother, D. Wheeler, went to live with her sister and respondent when she was 14 years old and respondent was 27 years old. The sister moved out, leaving D. Wheeler with respondent. He obtained a guardianship over D. Wheeler so that she could attend school. D. Wheeler became pregnant with the minor child when she was 15 years old. Children's Protective Services ("CPS") investigated, the complaint was substantiated, and the guardianship was dissolved. D. Wheeler went to live with her mother in Tennessee and then with her father in Florida, before marrying respondent and residing in Florida with him and the minor child. The couple moved back to Michigan. D. Wheeler eventually fled to Tennessee with the minor child without giving any notice to respondent. Respondent sought an ex parte order for the child's return, which prompted CPS to investigate.

During the termination proceedings, D. Wheeler alleged that respondent had subjected her to physical and mental abuse. Respondent denied these allegations asserting that D. Wheeler physically abused him and that she suffered from psychological disorders.

Respondent argues that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence and that the trial court prematurely terminated his parental rights. In termination proceedings, this Court must defer to the trial court's factual findings if those findings do not constitute clear error. MCR 3.977(K). Both the trial court's decision that a ground for termination has been proven by clear and convincing evidence and its best interests determination are reviewed for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding 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 Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Pursuant to MCL 712A.19b(4),(5), petitioner is not required to provide services where termination of parental rights is sought at the initial dispositional hearing. The trial court found that respondent’s treatment of D. Wheeler, as her guardian, demonstrated that he lacked the capacity to provide guidance and care for the minor child and the judgment to put his daughter’s needs above his own. The trial court also found that there was no reasonable likelihood that respondent would be able to provide proper care and custody within a reasonable time based on his psychological evaluation. The evaluator had opined that people with respondent’s psychological profile generally were not responsive to therapy and were likely to terminate therapy because they did not see themselves as having any problems.

Based on the record evidence submitted, we are not “...left with the definite and firm conviction that a mistake has been made.” *In re Miller*, 433 Mich at 337. The trial court found that respondent, who was then D. Wheeler’s guardian, sexually penetrated her when she was 15 years old. Respondent told foster care workers that D. Wheeler impregnated herself with his used condom. He testified that he did not see anything wrong with his relationship with D. Wheeler or with marrying her when she was 16 years old. The trial court found credible D. Wheeler’s testimony that respondent told her to lie about how the baby was conceived and about her age. Respondent’s failure to see a problem with his actions related to the minor’s mother showed a lack of judgment that would be detrimental to the care and custody of his daughter. Based on respondent’s significant history with the minor’s mother and his psychological examination, the trial court did not clearly err in finding that respondent was not likely to change within a reasonable time.

The trial court also did not clearly err in finding that there was a reasonable likelihood, based on respondent’s conduct or capacity, that the minor child would be harmed if returned to his home. Although there was no evidence that respondent ever harmed the minor, there was ample evidence that he harmed D. Wheeler when she was 15 years old and under his care and protection. Further, respondent’s psychological evaluation questioned whether respondent would be able to put a child’s needs ahead of his own. Respondent’s extreme lack of judgment as a guardian demonstrated what kind of judgment respondent was likely to show in parenting the minor child.

Respondent next argues that the trial court clearly erred in its best interests determination because he and the child shared a strong bond. “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.” MCL 712A.19b(5). Our review of the record evidence submitted in this case reveals that the trial court found termination of respondent’s parental rights were in the minor’s best interest based on respondent’s sexual and physical abuse of D. Wheeler, and his lack of insight into his conduct as her guardian. “A finding 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 Miller*, 433 Mich at 337. Our review of the record evidence and the trial court’s opinion does not lead us to conclude “with definite and firm conviction that a mistake has been made.” *Id.*

Therefore, we conclude that the trial court did not clearly err in finding that termination of respondent's parental rights was in the minor's best interests.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello