

STATE OF MICHIGAN
COURT OF APPEALS

In re LAROSA/RUSSELL, Minors.

UNPUBLISHED
March 15, 2016

No. 326789
St. Clair Circuit Court
Family Division
LC No. 15-000012-NA

Before: STEPHENS, P.J., and CAVANAGH and MURRAY, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii), (g), and (j). Because of the standards of review that we must apply, we affirm.

In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). The trial court's determination is reviewed on appeal for clear error. *Id.* 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 HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

Termination of respondent's parental rights was not clearly erroneous under MCL 712A.19b(3)(b)(ii), (g), and (j). The facts as found by the trial court showed that respondent's daughter was sexually abused by respondent's stepfather, Hernandez, over the course of four years. Hernandez had access to the girl because respondent sent her children to the home respondent's mother and Hernandez shared at least one weekend per month. As a result of the abuse he perpetrated on respondent's daughter, Hernandez was convicted of distributing obscene matter to a minor, four counts of second-degree criminal sexual conduct of a minor less than 13 years of age, and one count of first-degree criminal sexual conduct of a minor less than 13 years of age.

Based on the evidence the trial court found that respondent had the opportunity to prevent the child's sexual abuse because she knew Hernandez had a history of sexually assaulting minors and was herself a victim of Hernandez's untoward sexual advances when she was eight years old. Hernandez was placed on the sex offender's registry because he assaulted respondent when she was a child and remained on the registry at the time respondent's daughter was sent to his house. On these facts, the trial court did not clearly err in finding that respondent failed to provide proper care of her daughter under MCL 712A.19b(3)(g) by allowing her to stay in the

house of a man who had a history of criminal sexual conduct against young girls. Respondent permitted an environment in which the child would likely be abused. *In re Parshall*, 159 Mich App 683, 690; 406 NW2d 913 (1987). Although respondent argues that there was no testimony she knew of the abuse, there was no dispute that she knew yet disregarded the risk of abuse. Further, the trial court properly rejected as not persuasive her assertion that she believed Hernandez had reformed his ways, as respondent clearly knew there remained a risk to the children because she asked her mother not to leave the children unsupervised around Hernandez. Despite the apparent risk, she regularly sent the children for weekend visits with their grandmother in the house she shared with Hernandez.

The trial court also did not clearly err in concluding that respondent lacked understanding and had poor judgment which would continue to put her children at risk of harm under MCL 712A.19b(3)(j). Respondent initially blamed her mother for failing to adequately supervise the child even though it was respondent's responsibility to protect her children. Respondent's claim that the children would not be at risk of harm because Hernandez will be in prison for the next 25 years misses the point. Hernandez's incarceration is not enough to ensure the children's safety because respondent's actions in this case demonstrated that she lacked the ability to protect them from other dangerous individuals.

"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*, 297 Mich App 35, 40; 823 NW2d 144 (2012). Although the issue of the children's best interests is only briefly referenced in respondent's brief on appeal, the trial court did not clearly err in concluding that termination of parental rights was in the minor children's best interests. It is in the children's best interests to be raised in an environment that is free from sexual abuse. It is in the children's best interests to be raised by a caregiver who has appropriate parental judgment and who can protect them. Respondent has demonstrated that she cannot provide a safe environment for the children. Respondent's claim that she never harmed her daughter is beside the point given that respondent sent her daughter to an environment where there was a significant risk of sexual abuse. Her failure to exercise sound judgment or protective parental instincts led directly to the abuse of her daughter. Thus, the trial court did not clearly err in its best-interest determination

Affirmed.

/s/ Mark J. Cavanagh

/s/ Christopher M. Murray