STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of NM, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WILLIAM MARTIN,

Respondent-Appellant.

UNPUBLISHED
May 29, 2001

No. 230074
Genesee Circuit Court
Family Division
LC No. 99-112138-NA

Before: K. F. Kelly, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Respondent, who pleaded guilty to sexually molesting his eleven-year-old daughter, appeals as of right from the termination of his parental rights to the victim. We affirm.

A petition seeking to terminate respondent's parental rights was filed on May 5, 2000, alleging that respondent exposed his penis to his daughter, showed pornography to his daughter, rubbed his daughter's buttocks, and inserted an object into his daughter's vagina. The asserted statutory ground for termination was MCL 712A.19b(3)(k)(ii); MSA 27.3178(598.19b)(3)(k)(ii), which allows for termination of parental rights where the parent abused the child or a sibling of the child and the abuse included criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

An amended petition was filed on July 7, 2000, asserting MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h), as an additional statutory basis for termination. That subsection allows for termination of parental rights under the following circumstances:

> [t]he parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

At the termination proceeding, petitioner submitted a judgment of conviction that showed that respondent pleaded guilty to second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). Respondent testified that he only pleaded guilty to that charge to avoid a trial on first-degree criminal sexual conduct. He claimed that he did not actually molest his daughter, and he attempted to call her as a witness to challenge the allegations. The family court held that respondent would not be allowed to re-litigate the issue of his guilt on the CSC II charge. The court also denied respondent's request for an adjournment to secure the attendance of other witnesses. Respondent's request for a jury trial was also denied. The court terminated respondent's parental rights, holding that petitioner proved the statutory bases asserted and that another basis for termination existed; namely, MCL 712A.19b(3)(n)(i); MSA 27.3178(598.19b)(3)(n)(i), which allows for termination of parental rights where the parent has been convicted of certain crimes, including CSC II, and where continuing the parent-child relationship would be harmful to the child.

On appeal, respondent argues that he was denied due process when the family court denied his request for a jury trial. Under MCR 5.972, respondent was entitled to a jury trial for the adjudicative phase of the termination proceedings. However, under MCR 5.911(B), a party who is entitled to a jury trial, in order to timely assert that right, must file a written demand no later than seven days before trial. Here, respondent's request for a jury trial, made on the day of the termination proceedings, was untimely. Although the court may excuse a late filing in the interest of justice, the court did not err by excusing the late request in this case. Justice did not require excusing the late request, where the evidence irrefutably established that respondent pleaded guilty to sexually molesting his daughter. The family court clearly had jurisdiction over the matter under MCL 712A.2(b)(1); MSA 27.3178(598.2)(b)(1), because the child was subject to a substantial risk of harm to her mental well-being from being sexually molested at the hands of her father.

Respondent also asserts that there was insufficient evidence to terminate his parental rights. In order to terminate parental rights, the family court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). Once the family court finds that a statutory ground has been proved, the court must terminate the parental rights unless it finds that termination is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). We review the family court's findings, as well as the court's ultimate decision, for clear error. *Id*., 356-357. We find no clear error in this case.

Under MCL 712A.19b(3)(n)(i); MSA 27.3178(598.19b)(3)(n)(i), termination of parental rights is allowed where the parent has been convicted of CSC II. Here, conclusive evidence was admitted that respondent was convicted of CSC II upon a plea of guilty. Moreover, where the conviction stemmed from molestation of the child in question, it is clear that continuing the parent-child relationship would be harmful to the child. Thus, the statutory basis was proved by clear and convincing evidence. Because only one statutory ground is required, we need not address respondent's challenges to the sufficiency of the evidence of the other two statutory grounds relied on by the trial court. Respondent asserts that, because § 19b(3)(n)(i) was not listed in the petition for termination, the trial court could not rely on that statutory ground.

However, reliance on a statutory ground for termination different from that cited in the petition does not violate due process, so long as "the respondent was given adequate notice of the proofs that he would have to present to overcome termination . . . ." *In re Perry*, 193 Mich App 648, 651; 484 NW2d 768 (1992). Here, the petition contained detailed allegations of sexual abuse. Respondent was given adequate notice of the allegations and of the proofs that he would need to present in order to avoid termination of his parental rights.

Respondent also argues that there was no evidence that termination of his parental rights was in the best interests of his daughter. However, no such evidence was required. Neither party has the burden of producing evidence on the best interests of the child or proving whether termination is in the child's best interests. *Trejo, supra* at 352. In fact, the trial court is not even required to make any findings regarding the child's best interests. *Id*. at 357. Rather, MCL 712A.19b(5); MSA 27.3178(598.19b)(5) simply provides a mechanism for the trial court to avoid termination where it finds, from the evidence on the whole record, that termination is clearly not in the child's best interests. *Id*. at 353-354. Thus, respondent's argument is without merit.

Respondent also argues that he was denied the right to present a defense when the family court refused his request to call his daughter to testify and his request for an adjournment to secure additional witnesses. However, any possible error in this regard would be harmless, in light of the admission into evidence of respondent's judgment of sentence for CSC II. Respondent's assertion that his conviction did not rest on an adequate factual basis did not negate the fact that he had indeed been convicted of CSC II. Thus, the statutory basis for termination was clearly established. Section 19b(3)(n)(i) relies on the conviction itself, not on the underlying abuse, as the basis for termination. Although respondent could argue that the sexual abuse never occurred, he was unable to show that the conviction itself did not occur. Because at least one statutory ground was proved by clear and convincing evidence, the trial court did not clearly err by terminating respondent's parental rights.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper