

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TIFFANY DAWN MARBLE and
BRYAN LEE MARBLE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

NORMAN EARL MARBLE, JR.,

Respondent-Appellant,

and

ELLA MAY MARBLE,

Respondent.

UNPUBLISHED
November 9, 2004

No. 255710
Kalamazoo Circuit Court
Family Division
LC No. 03-000383-NA

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

Respondent Norman Marble appeals as of right from the trial court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (h). We affirm.

This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.911(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, then the trial court must terminate respondent's parental rights unless it determines that to do so is clearly not in the children's best interests. *In re Trejo Minors*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

Respondent first argues that the first element of MCL 712A.19b(3)(h) was not established by clear and convincing evidence because the parental rights of the children's mother were not terminated, and thus, the children would have a normal home by remaining in their mother's care during respondent's period of incarceration. However, the fact that the children reside with a parent is an insufficient reason not to terminate the other parent's parental rights. *In re Huisman*, 230 Mich App 372, 382; 584 NW2d 349 (1998), overruled on other grounds *Trejo, supra* at 354 (This Court noted that "the Legislature envisioned and intended that the probate court could terminate the parental rights of just one parent."), quoting *In re Marin*, 198

Mich App 560, 566; 499 NW2d 400 (1993). Also, although reunification with the children's mother after respondent's incarceration was petitioner's goal, placement was uncertain given the steps the mother had to complete before the court would consider removing the children from foster care. Therefore, we find that the trial court did not clearly err in basing termination of respondent's rights on this statutory ground.

Respondent next argues that the trial court clearly erred in admitting hearsay evidence regarding alleged sexual acts committed by respondent to determine that MCL 712A.19b(3)(g) was established. This Court reviews a lower court's decision to admit evidence for an abuse of discretion and reviews underlying issues of law de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Pursuant to MCR 3.977(E), the trial court must base its findings upon "clear and convincing legally admissible evidence" when the court orders termination of parental rights at the initial dispositional hearing, as happened in this case. Petitioner's reliance on the lower evidentiary standard in MCR 3.977(G)(2) is misplaced because subrule (G) specifically recognizes that its provisions do not apply where the respondent's parental rights were "terminated pursuant to subrule (E) at the initial dispositional hearing" Therefore, the trial court abused its discretion in admitting the hearsay evidence alleging uncharged sexual misconduct committed by respondent and clearly erred in relying on this evidence to find that § 19b(3)(g) was established. However, these errors were harmless because we find that the court properly based termination of respondent's parental rights on another statutory ground. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski