

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of David and Sherry Metcalf, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DUANE ARMAS NIEMINEN,

Respondent-Appellant.

UNPUBLISHED

October 23, 2007

No. 276846

Oakland Circuit Court

Family Division

LC No. 06-725913-NA

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHERRY MARIE METCALF,

Respondent-Appellant.

No. 276847

Oakland Circuit Court

Family Division

LC No. 06-725913-NA

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

PER CURIAM.

In these consolidated appeals, respondents, Duane Armas Nieminen and Sherry Marie Metcalf, appeal as of right from the March 5, 2007, order terminating their respective parental rights to their children, David and Sherry Irene Metcalf, pursuant to MCL 712A.19b(3)(b)(ii), (b)(iii), (g) and (j). We affirm.

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one statutory ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the trial court shall terminate parental rights unless it finds that termination is clearly not in the best interests of the child. *Id.* at 353. We review the trial court's findings under the clearly erroneous standard. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

The trial court terminated respondents' parental rights pursuant to MCL 712A.19b(3)(b)(ii), (b)(iii), (g) and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

(iii) A nonparent adult's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home.

(g) The parent, without regard to intent, fails to provide proper care or custody for the child 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.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Here, evidence was presented that Sherry Marie's son, Jacob Metcalf, and respondents' friend and roommate, Bruce Carline, sexually abused the children. Respondents were both aware of prior allegations that David had made about Bruce, yet respondents allowed Bruce to live in their home and help raise the children. Respondents were further both aware that Jacob was a registered sexual offender who was convicted of criminal sexual conduct as a juvenile for molesting younger children. Despite their knowledge, and despite court orders that Jacob was not to be around the children, respondents allowed Jacob to visit and spend several nights at their residence. We therefore conclude that the evidence supported the conclusion that the children suffered sexual abuse at the hands of two non-parent adults, which could have been prevented by

respondents. Finally, although respondents stated that they would never allow Bruce or Jacob near the children again, respondents' strong familial ties with Bruce and Jacob,¹ and respondents' prior failures to prevent Bruce and Jacob from being around their children, support the conclusion that respondents would make the same mistake again. Hence, we hold that the evidence supported the trial court's finding that there is a reasonable likelihood that the children will suffer from sexual abuse by a non-parent adult in the foreseeable future if they are placed in respondents' home. Accordingly, we hold that the trial court did not commit clear error when it found clear and convincing evidence to terminate respondents' parental rights under MCL 712A.19b(3)(b)(ii) and (iii).²

We further agree with the trial court that, while the strong bond between respondents and their children and the children's expressed desire to return home suggested that termination may not be in the children's best interests, a strong bond and young children's desire to return home do not necessarily rise to the level necessary to prevent termination of respondents' parental rights. Evidence at the best interests hearing demonstrated that Nieminen could not financially support his children, that most young children express a desire to return home no matter what they have been through, and that Sherry Marie failed to learn from her previous termination case involving Jacob. Moreover, although respondents stated that they would never allow Bruce or Jacob near the children again, the trial court found that respondents were not credible witnesses, and as previously discussed, given respondents relationship and history with Bruce and Jacob, there is a definite possibility that the children could be harmed if they were returned to respondents' home. Under the circumstances, the trial court's best interests determination was not clearly erroneous, especially because "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Christopher M. Murray

¹ Sherry Marie has unconditional love for her son Jacob, and Sherry's sister Susan is married to Bruce's brother.

² Although we must affirm the trial court's order given our conclusion that the evidence supported termination under MCL 712A.19b(3)(b)(ii) and (iii), *In re Trejo*, *supra* at 354, we additionally conclude that the same evidence also established that the trial court did not commit clear error when it found clear and convincing evidence to terminate respondents' parental rights under MCL 712A.19b(3)(g) and (j).