

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ISABELLE SAWYER and
RACHELLE SAWYER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JAMES SAWYER,

Respondent-Appellant.

UNPUBLISHED

January 31, 2008

No. 280382

Cheboygan Circuit Court

Family Division

LC No. 07-004204-NA

Before: Beckering, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(h). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On March 20, 2007, respondent was found guilty of three counts of second-degree criminal sexual conduct, MCL 750.520c(1)(a) (victim under thirteen years old), for sexually abusing the victim beginning when she was five years old and ending when she disclosed the abuse at age thirteen. For those convictions, respondent was sentenced to concurrent terms of eight years and four months to fifteen years' imprisonment.

At an adjudication hearing in the instant case, respondent entered a plea of admission, acknowledging the convictions and sentences in the criminal CSC case. The trial court accepted respondent's plea and found that Isabelle and Rachelle came within the jurisdiction of the court. At a dispositional hearing on August 6, 2007, the trial court terminated respondent's parental rights to Isabelle and Rachelle pursuant to MCL 712A.19b(3)(h).

On appeal, respondent argues that termination of his parental rights was not in the best interests of Isabelle and Rachelle. We disagree.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear

evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *Trejo, supra* at 355-357; *Sours, supra* at 632-633.

The trial court did not clearly err in its best interests determination. No evidence was put forth on the record by any party that it was not in Isabelle and Rachelle's best interests to terminate respondent's parental rights. Given the nature of respondent's offenses against the minor victim, his continued care and custody of Isabelle and Rachelle would be harmful to them. Further, because of respondent's lengthy prison sentences, he would not be part of Isabelle's and Rachelle's lives for an extended period of time. Since respondent would not be present for many years to support the children, financially or otherwise, it would not be in their best interest to wait until he is released from prison and returned to his care and custody.

Despite respondent's assertions to the contrary, whether termination is in the best interests of the children can be based upon the same facts that establish the statutory grounds for termination. Pursuant to MCR 3.977(E), there need not be a separate hearing regarding the statutory grounds for termination and the best interest determination. Under MCR 3.977(G)(2), the admissible evidence for both issues includes all relevant and material evidence, including oral reports. The trial court appropriately considered all evidence, including the fact of respondent's lengthy incarceration, the reasons for his incarceration, and his unavailability to Isabelle and Rachelle during his incarceration.

Further, the doctrine of anticipatory neglect should apply to protect Isabelle and Rachelle even though respondent had sexually abused only the minor victim who was not his biological child. *In re Powers*, 208 Mich App 582, 589; 528 NW2d 799 (1995); *In re Dittrick Infant*, 80 Mich App 219, 222; 263 NW2d 37 (1977). Based on the doctrine of anticipatory neglect, respondent's abusive treatment of the minor victim indicates that he might also sexually abuse Isabelle and Rachelle. Thus, he could pose a serious risk of harm to them.

The evidence did not clearly show that termination of respondent's parental rights was contrary to the children's best interests. MCL 712A.19b(5); *Trejo, supra*, 356-357.

Affirmed.

/s/ Jane M. Beckering
/s/ David H. Sawyer
/s/ Karen M. Fort Hood