

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HEIDI LYNN BREUER, TERRA
ANN BREUER and CONNIE SUE BREUER,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TAMMY LYNN BREUER,

Respondent-Appellant.

UNPUBLISHED

February 7, 2008

No. 279921
Saginaw Circuit Court
Family Division
LC No. 06-030773-NA

Before: Talbot, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii) and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that MCL 712A.19b(3)(j) was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).¹ Further, the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Respondent's conduct right after she found out that her husband, Terry Breuer, had sexually abused his daughter Victoria left her daughters and her stepdaughters vulnerable to abuse. After Jennifer, respondent's older stepdaughter, told respondent that Breuer had sexually molested Victoria, and Breuer admitted that he had done "something awful," respondent did not ask Breuer to leave their home nor did she leave the home with her daughters. Respondent even left Breuer alone with the girls right after she found out about the abuse because she felt she had

¹ Although clear and convincing evidence did not exist to support termination pursuant to MCL 712A.19b(3)(b)(ii), this error was harmless in light of the evidence supporting termination of respondent's parental rights under MCL 712A.19b(3)(j).

to give notice at work before she could quit. Respondent failed to notify any authorities, seek help for Victoria, or inquire if any of the other children had been abused. Respondent never acknowledged or appeared to even recognize that the abuse would have serious and long lasting effects on Victoria. Rather, respondent's concern was mainly for herself and how she was affected by the knowledge of the abuse. Respondent did not ask Victoria or Breuer for details because she was so "freaked out" by it and because she "would just think of awful things." Respondent never thought to call the police, nor did she consider the possibility that Breuer might also touch one of the other girls in a sexual manner. It did not occur to respondent that Breuer's behavior violated any criminal law.

Respondent continually failed to properly protect and safeguard the children. Right before the girls were removed from the home, Jennifer emailed her aunt complaining that Breuer had been tickling her and the younger girls in a way that made Jennifer uncomfortable because it involved touching in inappropriate places, especially in light of what she knew had taken place between Breuer and Victoria. Jennifer did not know where respondent was when this tickling took place but knew that respondent was not in the room. Jennifer emailed her aunt because Jennifer thought that she could protect her and respondent could not.

Respondent appeared to be unsure what she was supposed to have done with regard to the abuse and unsure of her ability to limit Breuer's access to her daughters. When questioned about Breuer tickling the girls, respondent stated that Breuer had always played that way with them. Respondent admitted that, although she may have always been in the house with the girls and Breuer, she was not always in the same room and she could not always watch everything that was going on between them. Respondent also admitted that, during these times, Breuer could probably have done anything he wanted with the girls. When asked whether, in light of the sexual abuse of Victoria, it was improper for Breuer to have any unsupervised interaction with his five daughters, respondent replied, "I guess."

Considering that respondent failed to remove her children from unsupervised interaction with Breuer, failed to appreciate her responsibility to protect her children from harm or even to recognize that her children needed her protection, the trial court did not err in concluding that the children would be harmed if returned to respondent's care.

The trial court properly concluded that the evidence from the entire record did not establish that termination was contrary to the best interests of the children. There was evidence that respondent and her children loved each other and were bonded to each other. However, the bulk of the evidence introduced established that respondent failed to protect her children and there was no reasonable likelihood that she would be able to properly protect them in the future. The psychologist testified that respondent's cognitive abilities were borderline, and as a result, she did not have the best problem solving abilities and her judgment would be poor at times. There was also evidence that respondent was not truthful in her testimony to the trial court regarding her ongoing association with Breuer. The trial court determined that respondent had lied on the witness stand about whether she had seen Breuer since he had released his parental rights. This Court gives regard "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller, supra* at 337.

Considering that respondent failed to take the proper action after she was informed that Breuer had sexually molested Victoria and failed to even understand that she was responsible for

protecting her children from future abuse, combined with respondent's dishonesty with the trial court about her continued relationship with Breuer, the trial court properly concluded that termination was not clearly contrary to the best interests of the children.

Affirmed.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra