

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ROBERT GILL, JR., IESHA
GILL, and JESSICA GILL, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBERT CHARLES GILL,

Respondent-Appellant.

UNPUBLISHED

March 19, 2009

No. 288470

Oakland Circuit Court

Family Division

LC No. 2007-739617-NA

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

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

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). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *Sours, supra* at 632-633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller* 433 Mich 331, 337; 455 NW2d 161 (1989). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller, supra* at 337.

Termination of respondent's parental rights was proper under MCL 712A.19b(3)(b)(i). Both respondent's daughter and niece testified that he sexually assaulted them. The incidents they described were corroborated by their similarities. In both instances, respondent came into their rooms at night, while they were asleep, put his hand underneath their underwear, and rubbed their vaginas. Further, neither of the girls had incentive to lie about the sexual abuse perpetrated on them. Their reluctance to testify against respondent, with whom they had previously had a good relationship, further supported the finding that respondent sexually abused them. Moreover, the girls' testimony was uncontested; respondent neither denied the allegations

nor provided an alternative account of what happened. He also failed to provide an explanation as to why his daughter or niece would have made these statements against him if they were untrue. Thus, the court did not err in its findings under MCL 712A.19b(3)(b)(i).

Under MCL 712A.19b(3)(g) and (j), the court properly found that respondent was unable to provide proper care and custody of the children and they would be exposed to risk of harm if returned to his care because he had a history of domestic violence and sexual assault. One of the children witnessed and intervened when respondent perpetrated domestic violence against the children's mother. Respondent's propensity to engage in domestic violence would expose the children to risk of physical and emotional harm. In addition to the domestic violence, respondent has a history of sexually abusing his minor female relatives. This behavior also subjected the children to emotional harm and demonstrated that respondent did not have appropriate, protective paternal instincts towards his children. Respondent's daughters would be at risk of sexual assault if returned to respondent's care. Respondent's sexual abuse of the older daughter is probative of his proclivity to potentially abuse the younger daughter. *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). See also *In re Powers*, 208 Mich App 582, 592; 528 NW2d 799 (1995); *In re Dittrick Infant*, 80 Mich App 219, 222; 263 NW2d 37 (1977). Thus, the court properly found that termination of parental rights was warranted under MCL 712A.19b(3)(g) and (j).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Alton T. Davis