

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRITTANY MARIE MESTER,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROGER WILLIAM MESTER II,

Respondent-Appellant.

UNPUBLISHED

May 21, 2009

No. 288230

Oakland Circuit Court

Family Division

LC No. 06-722593-NA

In the Matter of VANESSA AELISSA FIELDS,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROGER WILLIAM MESTER II,

Respondent-Appellant.

No. 288231

Oakland Circuit Court

Family Division

LC No. 06-722594-NA

Before: Bandstra, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's orders terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii) (g), (j), and (l). We affirm.

I. Facts

In June 2006, protective services took respondent's four-year-old daughter Brittany into care after Brittany alleged that respondent, with whom she was living, had sexually abused her. Respondent's other daughter, three-year-old Vanessa, was living with her mother, and was

previously observed acting out sexually during a period of time when she and her mother lived with respondent. Defendant's parental rights to an older daughter were terminated in 2000 in California after allegations of sexual abuse.

Brittany and Vanessa were separately interviewed at Care House. Brittany appeared fearful that respondent was involved in or could hear her interview at Care House; she ran out of the room several times to see who was outside. Vanessa made remarks suggesting that she and Brittany engaged in sexualized behavior. By agreement of the parties, respondent later pleaded no contest to allegations concerning his prior criminal history, domestic violence, the prior termination of his parental rights to his older daughter, and general neglect of Brittany. All allegations involving alleged sexual abuse were stricken. The Court assumed jurisdiction over the children and they were made temporary wards of the court.

Subsequently, while in therapy, Brittany and Vanessa made other statements that indicated that respondent had sexually abused them. In addition, respondent told Brittany not to "talk the crazy talk" referring to her conversations with her therapist. Both girls also reported that they engaged in sexual behavior with one another and that Brittany digitally penetrated Vanessa's "private" while respondent told Vanessa that if she didn't "like it", she would have to "fight her off". Brittany also disclosed that she engaged in sexual play with a little boy.

Brittany remained in foster care for nearly two years, while Vanessa resided with her mother. Respondent did comply with the terms of his parent agency agreement; however, he did not benefit from the services. He continued to deny any responsibility for his behavior or for the events that lead to Brittany's removal from his care. He did not address the inappropriate boundaries with his children or their sexual acting out behaviors.

After a lengthy hearing, the trial court found clear and convincing evidence to terminate respondent's parental rights. Additionally, after a hearing on the best interests of the children, the trial court found that "it is in the best interest of Brittany and Vanessa to terminate [respondent's] parental rights at this time." Respondent now appeals as of right.

II. Statutory Grounds for Termination

The trial court did not clearly err in finding that statutory grounds for termination under MCL 712A.19b(3)(c)(i),(g),(j) and (l) were established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). Respondent's parental rights to another child were previously terminated in similar proceedings in California. Like respondent's previous child, the young children involved in these cases engaged in inappropriate sexual behavior, which was suggestive of sexual abuse. Respondent showed little concern for the children's situation and behavior, and instead blamed the respective mothers for each child's problems. Several witnesses testified that although respondent participated in services for more than two years, he failed to benefit from those services, and a sexual abuse assessment indicated that the children would be at risk if returned to respondent's custody.

We find that the trial court erred in terminating under MCL 712A.19b(3)(c)(ii).¹ The supplemental petition did not identify what “other conditions” existed in support of the request for termination under §19b(3)(c)(ii) and the trial court did not specify in its decision what “other conditions” it believed existed and had not been rectified. Nonetheless, because only one statutory ground need exist to warrant termination of parental rights, this error was not outcome determinative. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

III. Best Interests

Further, the trial court did not clearly err in finding that termination of respondent’s parental rights was in the children’s best interests. MCL 712A.19b(5); *In re Trejo*, *supra* at 356-357. There was no significant bond between respondent and the younger child, who had only lived with respondent for approximately one month of her life. Although a strong bond clearly existed between respondent and the older child, that child had expressed concern about respondent’s ability to provide appropriate care, and she adjusted well to her placement away from respondent. Both children² needed permanence and emotional stability that respondent could not provide. Thus, the trial court did not err in terminating respondent’s parental rights to the children.

Affirmed.

/s/ Richard A. Bandstra

/s/ Donald S. Owens

/s/ Pat M. Donofrio

¹ Termination is appropriate under § 19b(3)(c)(ii) when “[t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds * * * [that] [o]ther conditions exist that cause the child to come within the court’s jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.”

²