

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 17, 2012

In the Matter of KRIGNER, Minors.

No. 307061
Sanilac Circuit Court
Family Division
LC No. 11-035463-NA

Before: O'CONNELL, P.J., and JANSEN and RIORDAN, JJ.

PER CURIAM.

Respondent appeals by right from the trial court's order terminating his parental rights to his two minor children under MCL 712A.19b(3)(n)(i). We affirm.

Respondent was convicted by nolo contendere plea of criminal sexual conduct, second degree, MCL 750.520c (CSC II), for the sexual abuse of his girlfriend's daughter. Respondent was not the father of this child, but he did have two children with his girlfriend. After his conviction, a petition was filed to terminate his parental rights to his two children. The petition cited MCL 712A.19b(3)(k)(ii) as the grounds for termination. During the termination hearing, the trial court allowed the prosecution to amend the petition to include MCL 712A.19b(3)(n)(i) as alternate grounds for termination. The trial court then determined that there was not clear and convincing evidence to establish grounds for termination based on § 19b(3)(k)(ii), but that there was clear and convincing evidence to establish grounds for termination under § 19b(3)(n)(i). The trial court also determined that termination was in the best interests of the children and accordingly terminated respondent's rights.

Respondent's only argument on appeal is that the trial court committed error requiring reversal by allowing the prosecutor to amend the petition during the hearing. He argues that this deprived him of notice and that he was unable to defend against the new grounds for termination. We disagree.

To the extent respondent's argument presents a question of law concerning due process rights, we review the preserved issue de novo. *In re CR*, 250 Mich App 185, 203; 646 NW2d 506 (2002). In general, a trial court's grant of a motion to amend pleadings is reviewed for an abuse of discretion. *Franchino v Franchino*, 263 Mich App 172, 189; 687 NW2d 620 (2004). An abuse of discretion occurs when the trial court's decision "falls outside the range of principled outcomes." *Huntington Nat'l Bank v Ristich*, 292 Mich App 376, 383; 808 NW2d 511 (2011).

When a proceeding involves the termination of parental rights, significant due process considerations arise, and a respondent must always be given “notice of the nature of the proceeding and an opportunity to be heard.” *In re Nunn*, 168 Mich App 203, 208-209; 423 NW2d 619 (1998). MCL 712A.19b(2) indicates that a parent is entitled to written notice of the parental termination hearing. See also MCR 3.921(B)(3). MCR 3.977(A)(2) indicates that the petitioner seeking to terminate parental rights may do so through an original, amended, or supplemental petition.

Also, a trial court is only required to find clear and convincing evidence on one of the statutory grounds to terminate parental rights. *In re Powers*, 244 Mich App 111, 117-118; 624 NW2d 472 (2000). A harmless error analysis is applicable when there is a deficiency in the termination petition without violating due process. *In re Perry*, 193 Mich App 648, 651; 484 NW2d 768 (1992); MCR 2.613(A). If a respondent has notice of the proofs necessary to overcome termination under another subsection, then any error is harmless. *Perry*, 193 Mich App at 651.

According to MCL 712A.19b(3)(k)(ii), there are grounds for termination of parental rights when “[t]he parent abused the child or a sibling of the child and the abuse included . . . [c]riminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.” Similarly, according to MCL 712A.19b(3)(n)(i), there are grounds for termination of parental rights if “[t]he parent is convicted of 1 or more of the following, and the court determines that termination is in the child’s best interest because continuing the parent-child relationship with the parent would be harmful to the child.” Subsection (i) then lists a number of crimes that qualify, and MCL 750.520c (CSC II) is listed as one of the offenses. MCL 712A.19b(3)(n)(i).

Respondent argues that he did not have adequate notice to defend against the § 19b(3)(n) grounds. However, the petition included detailed allegations of sexual abuse that would unquestionably give rise to a conviction under § 750.520c. Respondent knew that the basis for the petition was his criminal sexual conduct. Whether respondent was defending against § 19b(3)(k)(ii) or § 19b(3)(n), he knew that the hearing was going to revolve around his sexual abuse of his girlfriend’s daughter, and that if the petitioner presented sufficient evidence of sexual abuse, respondent would have to address petitioner’s evidence. Thus, there was no due process violation, and the trial court was within its discretion to permit the amendment of the petition.

Affirmed.

/s/ Peter D. O’Connell
/s/ Kathleen Jansen
/s/ Michael J. Riordan