

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ELIZABETH YOUNT, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BYRON PALMORE,

Respondent-Appellant,

and

ALICIA B. YOUNT,

Respondent.

UNPUBLISHED

August 30, 2005

No. 260299

Wayne Circuit Court

Family Division

LC No. 04-426799-NA

Before: Zahra, P.J., and Gage and Murray, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(b)(i), (g), and (j). We affirm.

The trial court did not clearly err in determining that statutory grounds for termination had been established. MCR 3.977(J); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005). The evidence showed that the minor child pointed to a picture of respondent-appellant and stated his name. In her explicit statements of sexual activity, she named respondent-appellant as the perpetrator. Her sexual acting-out behavior demonstrated clear imitations of sexual intercourse and other sexual activity inappropriate for her age. The actual observable behavior and language were sufficient evidence of sexual abuse by respondent-appellant. Further, when the minor child was living with respondent-appellant, he took her to live with his girlfriend and her daughter and, while living there, engaged in acts of domestic violence against the girlfriend that resulted in his incarceration. He then gave the minor child to an underage brother who lived in an inappropriate home. At the time of trial, respondent-appellant did not have sufficient employment to support a child, and was living in a home that was inappropriate for the minor child.

Furthermore, the evidence plainly does not establish that termination of respondent-appellant's parental rights was contrary to the best interests of the minor child. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). In addition to the evidence establishing the statutory grounds for termination, there was testimony that the minor child started screaming and would not go to respondent-appellant when she saw him, which belies his claim that there was a strong bond between them.

Finally, respondent-appellant contends that he was denied the effective assistance of counsel. We review this unpreserved constitutional question for plain error affecting respondent's substantial rights, i.e., error that is outcome determinative. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999). None of the errors alleged by respondent-appellant would have changed the outcome of the proceedings. First, the trial court did not rely on the speculative testimony during the tender years hearing in its decision to proceed to trial on the petition. Second, there was sufficient independent corroborating testimony concerning the minor child's use of profanity and sexual acting-out behaviors that any error in failing to sequester the witnesses did not affect the outcome of the trial. Finally, petitioner-appellee also had a certified copy of respondent-appellant's domestic violence conviction that it could have entered into evidence had respondent-appellant's attorney chosen to do so.

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray