

STATE OF MICHIGAN  
COURT OF APPEALS

UNPUBLISHED

January 4, 2011

In the Matter of Z. PHILLIPS, Minor.

No. 298368

Genesee Circuit Court

Family Division

LC No. 09-124943-NA

Before: M. J. KELLY, P.J., and K. F. KELLY and BORRELLO, JJ.

PER CURIAM.

Respondent C. Phillips appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (h), and (j).<sup>1</sup> For the reasons set forth in this opinion, we affirm the termination of respondent's parental rights.

In February 2009, the Department of Human Services ("DHS") filed a petition for permanent custody of the minor who is the subject matter of this proceeding. It is alleged that respondent, a scout master, was a pedophile who was incarcerated on multiple criminal charges for sexually abusing three neighborhood boys who were friends of the minor. Respondent had abused at least one boy in the minor's presence. Respondent admitted that he engaged in sexual acts with minors as well as watching while minors performed sexual acts "on each other while at his home. Following disposition of respondent's criminal cases, the trial court conducted a hearing regarding the request for termination of respondent's parental rights."<sup>2</sup>

The petition requested termination pursuant to §§ 19b(3)(g) and (j). It was amended to include a request for termination under § 19b(3)(h) as well. At the termination hearing, petitioner presented two judgments of sentence as exhibits. The first showed that respondent was convicted of two counts of first-degree CSC (sexual penetration of person under 13), three counts of second-degree CSC (sexual contact with person under 13), child sexually abusive

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<sup>1</sup> We reject respondent's argument that the trial court failed to identify the statutory basis for termination as required by MCR 3.977(I)(3). The trial court indicated that termination had been requested pursuant to §§ 19b(3)(g), (h), and (j), and stated that petitioner had met its burden of proof with respect to "each of the statutorily pled bases."

<sup>2</sup> The trial court had assumed jurisdiction of the matter based on the admissions of the minor's mother.

activity, and accosting a child for immoral purposes. He was sentenced to prison terms of life and 50 to 75 years for the first-degree CSC convictions and to lesser terms for the other convictions. The second showed that respondent was convicted of four counts of first-degree CSC (sexual penetration of person under 13) and two counts of second-degree CSC (sexual contact with person under 13). He was sentenced to consecutive prison terms of life and 480 to 800 months for the first-degree CSC convictions and to lesser terms for the other convictions.

MCL 712.19b(3)(j) states:

There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court did not clearly err in finding that § 19b(3)(j) was established by clear and convincing legally admissible evidence. MCR 3.977(E)(3) and (K); *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008). The evidence showed that respondent had been convicted of molesting several children who were friends of his own child, based in part on his own confession. Some acts of abuse were committed in the home where the minor child resided.<sup>3</sup> This evidence justified the trial court's reliance on § 19b(3)(j) as a statutory basis for termination. Because termination was proper under § 19b(3)(j), any error in relying on §§ 19b(3)(g) and (h) as additional grounds for termination was harmless. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Considering the nature and extent of respondent's crimes, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 346, 356-357; 612 NW2d 407 (2000).

Affirmed.

/s/ Michael J. Kelly  
/s/ Kirsten Frank Kelly  
/s/ Stephen L. Borrello

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<sup>3</sup> We may take judicial notice of certain facts underlying respondent's criminal convictions from the records presented to this Court in connection with respondent's appeal of those convictions. See *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009) ("a court may take judicial notice of its own files and records").