

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

March 8, 2011

In the Matter of HUNT, Minors.

No. 298495

Jackson Circuit Court

Family Division

LC No. 04-001726-NA

Before: FITZGERALD, P.J., and O'CONNELL and METER, JJ.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating his parental rights to the minor children under MCL 712A.19b(3)(b)(i),¹ (j), and (k)(ii). We affirm.

We review for clear error a trial court's decision whether a basis for termination under MCL 712A.19b(3) has been proven by clear and convincing evidence. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). We also review for clear error the trial court's determination under MCL 712A.19b(5) whether termination of parental rights is in a child's best interests. *Id.*

The trial court did not clearly err in determining that termination was proper under §§ 19b(3)(b)(i), (j), and (k)(ii). Respondent's stepdaughter testified that respondent began sexually abusing her in 2006 and that his conduct initially involved digital penetration and progressed to penile penetration. Although there were some inconsistencies regarding whether respondent ever wore a condom or ejaculated, the stepdaughter's description of the sexual acts to the police, to Child Protective Services ("CPS"), and during her testimony, remained consistent. Following the adjudication hearing, the trial court determined that the stepdaughter's testimony was credible, but that petitioner had not met its burden of proof to terminate respondent's parental rights.

¹ Although the trial court did not specify the subsection of § 19b(3)(b) on which it relied, it is apparent from the substance of its statements that it relied on § 19b(3)(b)(i), and that §§ 19b(3)(b)(ii) and (iii) are not applicable to respondent.

At the subsequent permanent custody hearing, the trial court heard testimony from Kurt Tyler and determined that the burden of proof for termination had been satisfied. Tyler testified that he heard respondent threaten to kill his stepdaughter and state that he intended to have sexual intercourse with her “again” before he did so. Tyler further testified that when respondent was asked about his use of the word “again,” he smirked and insinuated that his predicament would prevent him from having sexual relations with the stepdaughter’s sister. The trial court found Tyler’s testimony credible because Tyler did not approach CPS or the police with his information. Rather, CPS and the police approached him. The court also noted that the stepdaughter did not know Tyler very well and that it was unlikely that Tyler and the stepdaughter would fabricate the same story. Although respondent argues that neither the stepdaughter nor Tyler were credible, this Court gives deference to the trial court’s assessment of witness credibility. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

Unlike §§ 19b(3)(b)(i) and (j), § 19b(3)(k)(ii) does not require a finding that there exists a reasonable likelihood of injury or harm if the child is returned to the parent. Thus, respondent’s sexual penetration of his stepdaughter, a sibling of his children, was itself sufficient to terminate his parental rights under § 19b(3)(k)(ii), because only one statutory basis need be proven. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). Nevertheless, petitioner presented sufficient evidence regarding the likelihood of harm to the children such that §§ 19b(3)(b)(i) and (j) were also satisfied. Respondent’s threats regarding his stepdaughter, and his statement suggesting that he would have engaged in sexual conduct with her sister, show that he is a danger to children in his home. The manner in which a parent treats one child is probative of how he will treat other children. *In re AH*, 245 Mich App 77, 84-85; 627 NW2d 33 (2001). Accordingly, the trial court did not clearly err in determining that the children were reasonably likely to be harmed if returned to respondent.

Further, the trial court did not clearly err in finding that termination of respondent’s parental rights was in the children’s best interests. Respondent sexually abused his stepdaughter over at least a two-year period and threatened to do so again and then kill and bury her. He also suggested that the disclosure of the abuse prevented him from sexually assaulting his stepdaughter’s sister. According to therapist Ruth Genyk, respondent had been abusive and posed a risk to the adolescent girls. The trial court did not err in finding that termination was in the children’s best interests.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Peter D. O’Connell
/s/ Patrick M. Meter