STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
December 22, 2011

In the Matter of ELIZONDO, Minors.

No. 304308
Wayne Circuit Court
Family Division
LC No. 10-496789

Before: SAAD, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

MEMORANDUM.

Respondent M. Elizondo appeals as of right from a circuit court order terminating his parental rights to the minor children, ages 13 and 4, pursuant to MCL 712A.19b(3)(j). We affirm.

The trial court did not clearly err in finding that § 19b(3)(j) was established by clear and convincing legally admissible evidence. *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008); MCR 3.977(E)(3) and (K). The evidence showed that respondent had no qualms about seeking sexual gratification from an 11 year old child he viewed as his own when his wife was not available.[1] Respondent admitted to the Child Protective Services Specialist that he loved this 11 year old and "she loved him back". The term "harm" refers to emotional as well as physical harm and respondent's behavior had deprived the children of a normal home, leaving the minor

[1] Although the trial court abused its discretion to the extent that it admitted the child's and other persons' hearsay statements contained in police records under MRE 803(6), an error in the admission of evidence does not warrant reversal unless the failure to do so would be inconsistent with substantial justice or the error affects a substantial right of the opposing party. *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004). Here, the error was harmless because the substance of the hearsay statements, that respondent had engaged in sexual contact with and sexual penetration of the child, was properly established by other proper means, including respondent's wife's testimony that she found respondent in bed with the child, whose "hands were cupped on his genitals," and respondent's statements to a Protective Services worker that he and the child had touched one another's "private parts" and that he had penetrated the child's vagina with his finger. "Improper admission of evidence is harmless if it is merely cumulative to other properly admitted evidence." *Detroit/Wayne Co Stadium Auth v Drinkwater, Taylor & Merrill, Inc*, 267 Mich App 625, 652; 705 NW2d 549 (2005).

children in a situation requiring counseling. See *In re Hudson/Sword*, ___ Mich App ___; ___ NW2d ___ (Docket No. 302214, issued October 11, 2011), slip op at 3.

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); MCR 3.977(E)(4). Therefore, the trial court did not in terminating respondent's parental rights to the children.

Affirmed.

/s/ Henry William Saad
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause