

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
November 15, 2012

In the Matter of MIERKA, Minors.

No. 310498  
Wayne Circuit Court  
Family Division  
LC No. 11-504735-NA

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Before: JANSEN, P.J., and STEPHENS and RIORDAN, JJ.

MEMORANDUM.

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

The trial court did not clearly err in finding that the grounds for termination found in MCL 712A.9b(3)(b)(i) and (k)(ii) were each established by clear and convincing legally admissible evidence.<sup>1</sup> Those grounds are supported by the evidence that respondent admitted that he was sexually attracted to his oldest daughter, with whom he had engaged in repeated acts of sexual penetration while she resided in his home, and that respondent was convicted of first-degree criminal sexual conduct,<sup>2</sup> for one of his acts and was serving a prison sentence of 5 to 20 years.<sup>3</sup>

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<sup>1</sup> *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008); MCR 3.977(E)(3) and (K).

<sup>2</sup> MCL 750.520b(1)(b).

<sup>3</sup> With respect to MCL 712A.19b(3)(n)(i), although the evidence clearly established that respondent had been convicted of first-degree CSC, MCL 750.520b(1)(b), and the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests, the trial court never specifically found that termination was in the children's best interests "because continuing the parent-child relationship with the parent would be harmful to the child," as required by MCL 712A.19b(3)(n)(i). However, because grounds for termination were properly established under MCL 712A.19b(3)(b)(i) and (k)(ii), any error with respect to MCL 712A.19b(3)(n)(i) was harmless. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Further, considering the nature of respondent's conduct toward his daughter, the fact that the other children were close to that child's age when she was molested, and the fact that respondent is serving a prison sentence of at least five years, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.<sup>4</sup>

Affirmed.

/s/ Kathleen Jansen  
/s/ Cynthia Diane Stephens  
/s/ Michael J. Riordan

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<sup>4</sup> MCL 712A.19b(5); *In re Hudson*, 294 Mich App 261, 268-269; 817 NW2d 115 (2011).