

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 12, 2013

In the Matter of A. BREINING, Minor.

No. 312821
Jackson Circuit Court
Family Division
LC No. 10-003542-NA

Before: MURRAY, P.J., and MARKEY and WHITBECK, JJ.

PER CURIAM.

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

The trial court did not clearly err in finding that the statutory grounds for termination, MCL 712A.19b(3)(b)(i), (j), and (k)(ii) were established by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 354, 356-357; 612 NW2d 407 (2000). With respect to MCL 712A.19b(3)(b)(i), there was testimony from the child's half-sibling, S.H., that respondent sexually abused her on multiple occasions over three years. S.H. described that respondent put her hand on his penis over his pants; he put his hands on her breasts over her clothes; he put his hand down her pants; he asked her to take her bra off; and he put his hand on her vaginal area over her clothes. The trial court found S.H. credible and determined sexual abuse occurred. The trial court had the best opportunity to determine the credibility of the witness, and we cannot override that finding. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Additionally, there was testimony that the only way to protect the child was to terminate parental rights because the pattern of ongoing and repeated sexual abuse against S.H. supported a reasonable likelihood of future abuse against this child if placed with respondent because the treatment of one child by a parent is probative of how that parent may treat other children in the future. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). The trial court did not clearly err when it terminated respondent's parental rights on the basis of MCL 712A.19b(3)(b)(i).¹

¹ For these same reasons, the trial court also did not err when it terminated parental rights pursuant to MCL 712A.19b(3)(j). The evidence supported the trial court's ruling that there was a reasonable likelihood of harm to the child if she was returned home based on the conduct of respondent with the child's half sibling. MCL 712A.19b(3)(j).

Though only one ground need exist to terminate parental rights, *In re Powers Minors*, 244 Mich App 111, 117; 624 NW2d 472 (2000), we nevertheless conclude that the trial court also did not clearly err when it terminated respondent's parental rights pursuant to MCL 712A.19b(3)(k)(ii), which requires clear and convincing evidence that respondent sexually abused a sibling of the child and the abuse involved penetration, attempted penetration, or assault with intent to penetrate. "Sexual penetration" is defined by statute as "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required." MCL 750.520a(r). S.H.'s testimony included that respondent put his hand down her pants, far enough to feel her underwear but not to her vagina. She then pulled his hand out of her pants. It was only S.H. pulling respondent's hand out of her pants that ended that incident of abuse. On the record, we cannot conclude that the trial court clearly erred in finding this incident alone constituted an attempted sexual penetration, or that there was clear and convincing evidence for termination of parental rights on the basis of MCL 712A.19b(3)(k)(ii).²

Respondent also argues that his rights should not have been terminated because he was not offered services. Respondent, however, does not offer a legal basis for his entitlement to services and MCL 712A.19a(2), which requires reunification efforts when the child is in foster care, does not apply to respondent because the child was placed with her mother. Further, respondent's rights were terminated at the initial dispositional hearing pursuant to MCR 3.977(E), and the court rule allows for termination without providing services. MCR 3.977(E) provides "[t]he court shall order termination of the parental rights of a respondent at the initial dispositional hearing . . . and shall order that additional efforts for reunification . . . shall not be made, if" sufficient grounds are established for termination under MCL 712A.19b(3). The trial court did not clearly err when it terminated respondent's parental rights at the initial dispositional hearing without first offering services.

Finally, evidence supported the trial court's finding that termination of respondent's parental rights was in the minor child's best interests. *In re Trejo Minors*, 462 Mich at 356-357; MCL 712A.19b(5). The trial court noted that when there was ongoing and repeated sexual abuse of S.H., termination was the only way to protect the child from future harm. To the extent that respondent asserts termination was not in the child's best interests because the child was placed with her mother throughout the proceedings, the trial court acknowledged the placement and still determined termination was in the child's best interests. This finding was not clear error. *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012); MCL 712A.19b(5).

² The trial court also terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g). There was no evidence that respondent failed to provide proper care and custody of the child at issue in this proceeding. Regardless, the trial court properly found termination was appropriate under MCL 712A.19b(3)(b)(i), (j), and (k)(ii). Thus, any error with respect to MCL 712A.19b(3)(g) is harmless because clear and convincing evidence of only one statutory ground is needed to terminate parental rights. *In re Powers Minors*, 244 Mich App at 117.

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ William C. Whitbeck