

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SHALYN KOON, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RANDALL KOON,

Respondent-Appellant.

UNPUBLISHED

March 30, 2006

No. 264775

Allegan Circuit Court

Family Division

LC No. 04-036046-NA

Before: Murphy, P.J., and White and Meter, JJ.

PER CURIAM.

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

A petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). We review for clear error both the trial court's decision that a ground for termination was proven by clear and convincing evidence and the court's decision regarding the child's best interests. *Id.* at 209. Respondent challenges the lower court's finding that he physically and sexually abused his daughter. Respondent does not explain why he believes the court could not consider hearsay evidence introduced at a pre-adjudicatory motion hearing. Evidence from earlier hearings is admissible in a termination proceeding. *In re King*, 186 Mich App 458, 465; 465 NW2d 1 (1990). Further, a child's statement to another regarding abuse is admissible if the circumstances created a sufficient indicia of trustworthiness. MCR 3.972(C)(2); *In re Brimer*, 191 Mich App 401, 404-405; 478 NW2d 689 (1991). Although it is a close evidentiary call, we cannot conclude that the court committed clear error in finding that there was clear and convincing evidence of physical abuse. Giving the court the required deference, including consideration of the court's unique ability to judge the credibility of the witnesses before it, MCR 2.613(C), we decline to reverse on this particular statutory ground, MCL 712A.19b(3)(b)(i). Moreover, assuming error, termination is still proper if there was clear and convincing evidence of any other statutory ground. MCL 712A.19b(3).

Under MCL 712A.19b(3)(c)(i), the conditions leading to adjudication must still exist 182 days after the initial disposition and respondent must not be reasonably likely to rectify them in a reasonable time. In the present case, the court took jurisdiction when respondent admitted that his daughter reported abuse and that this demonstrated problems in their relationship requiring services. Additionally, there had been evidence of other inappropriate conduct by respondent relative to the child, including soliciting an undercover police officer for sex while respondent's daughter was asleep in his car. These problems were the conditions leading to adjudication.

The child's therapist testified that respondent interacted inappropriately with his daughter until supervised visits were suspended. Respondent admitted that he intentionally upset his young child to test her tolerance level and questioned her about the abuse allegation. He did not deny sharing his anger, blame, and self-pity with his child rather than focusing on her needs. Respondent's testimony demonstrated how entrenched his narcissistic personality traits were regardless of the progress his therapist believed he made. He continued blaming others for every setback, failed to take responsibility and described himself as a victim, and believed he was correct while others were wrong, even regarding appropriate use of an illegal drug. The trial court did not clearly err when it found clear and convincing evidence that respondent was not reasonably likely to rectify the problem within a reasonable time under MCL 712A.19b(3)(c)(i).

The court also did not err when it found a statutory ground for termination under MCL 712A.19b(3)(c)(ii), which applies when the respondent was notified of additional conditions, did not rectify them despite a reasonable opportunity, and was not likely to do so within a reasonable time. In the present case, the additional conditions were marijuana use, inadequate housing, and income. Respondent admitted that he used marijuana within 30 days before the termination hearing and testified regarding the benefits of marijuana, after he agreed with his therapist that the drug was illegal for a reason. Respondent continued to work sporadically, making \$100 a week at best and living temporarily with a friend at the time of termination. He admitted that he was financially unable to meet his daughter's physical needs, and he could not explain when he might obtain sufficient employment. Therefore, the trial court correctly found clear and convincing evidence under MCL 712A.19b(3)(c)(ii). In light of our ruling, it is unnecessary to address MCL 712A.19b(3)(g), and respondent himself does not present an argument challenging the court's determination that MCL 712A.19b(3)(j) provided a ground for termination, which alone would defeat respondent's attempt to obtain a reversal.

Respondent also argues on appeal that the trial court erred when it held that termination was not against the child's best interests. When a trial court finds a statutory ground for termination, it must terminate parental rights unless termination is clearly against the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 352-353; 612 NW2d 407 (2000). There is no specific burden on either party to present evidence of the child's best interests; rather, the trial court should weigh all the evidence available. *Id.* at 354.

The primary evidence in the present case dealt with the relationship between respondent and his daughter and reflected respondent's inability to provide immediate permanence and a healthy, nurturing environment with a focus on the child's needs. The problems in respondent's visits demonstrated that even supervised visits were emotionally harmful to the child's self-

esteem and her view of the world and those trying to help her. Therefore, the trial court did not clearly err when it held that termination was not clearly against the child's best interests.

Affirmed.

/s/ William B. Murphy

/s/ Helene N. White

/s/ Patrick M. Meter