

STATE OF MICHIGAN  
COURT OF APPEALS

---

In the Matter of JOSHUA JENNEY, ALISHIA JENNEY, CALEB JENNEY, and KYLE JENNEY,  
Minors.

---

FAMILY INDEPENDENCE AGENCY,  
  
Petitioner-Appellee,

UNPUBLISHED  
July 22, 2003

v

EDWIN JENNEY,

No. 246248  
Genesee Circuit Court  
Family Division  
LC No. 02-115292-NA

Respondent-Appellant,

and

BRENDA JENNEY,

Respondent.

---

Before: Zahra, P.J., and Talbot and Owens, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor children 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 were established by clear and convincing evidence. MCR 5.974(I);<sup>1</sup> *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, the evidence did not show that termination of respondent-appellant's parental rights was not clearly in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The evidence clearly demonstrated that respondent-appellant sexually abused his daughter, the abuse involved penetration, respondent-appellant pleaded guilty to two counts of second-degree criminal sexual

---

<sup>1</sup> Effective May 1, 2003, the court rules governing proceedings regarding juveniles were amended and moved to the new subchapter 3.900. The provisions on termination of parental rights are found in MCR 3.977. In this opinion, we refer to the rules in effect at the time of the order terminating parental rights.

conduct, and respondent-appellant was sentenced to 86 to 180 months' imprisonment. Thus, the trial court did not err in terminating respondent-appellant's parental rights to the children.

Respondent-appellant also argues that the trial court's exclusion of hearsay best interests evidence requires reversal of the order terminating respondent-appellant's parental rights. Because termination was requested in the initial petition and jurisdiction had not yet been established, the trial court ruled that only legally admissible evidence would be admitted at trial and excluded the hearsay testimony of respondent-appellant's only witness. Although MCR 5.974 states that only legally admissible evidence is admissible to prove the statutory grounds for termination when termination is sought at the initial disposition, the trial court is not limited to legally admissible evidence when deciding whether termination is clearly not in the best interests of the child. MCR 5.974(D).

However, the trial court's exclusion of respondent-appellant's hearsay evidence does not require reversal because respondent-appellant has not affirmatively demonstrated that it is more probable than not that the error was outcome determinative. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999.) There was clear and convincing evidence that termination was not clearly contrary to the best interests of the children. Evidence was introduced that, not only did respondent-appellant harm his daughter with sexual abuse, but he also deprived all of the children of a normal home life and a father who was present and participating in their everyday lives with his convictions and imprisonment. In light of this evidence, respondent-appellant fails to establish that testimony regarding the children's wishes would have changed the outcome of this case.

Affirmed.

/s/ Brian K. Zahra  
/s/ Michael J. Talbot  
/s/ Donald S. Owens