

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of C.M., III, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
August 16, 2005

Petitioner-Appellee,

v

CHARLES MITCHELL, II,

Respondent-Appellant.

No. 262538
Saginaw Circuit Court
Family Division
LC No. 04-029422-NA

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

MEMORANDUM.

Respondent appeals as of right from an order terminating his parental rights to his minor child pursuant to MCL 712A.19b(3)(b)(i), (j), and (k)(ii). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The resolution of this case hinged on the credibility of the testimony given by respondent and his two stepdaughters, ages twelve and sixteen. The half-sisters of respondent's five-year-old son testified that respondent had sexually abused them. While respondent's stepdaughters may not have been able to provide specific details of the time of day that the sexual abuse occurred, the trial court found their testimony regarding the specific acts that occurred between respondent and each of them to be credible. The trial court was able to observe all three witnesses during their testimony and weigh the credibility of each. It was clear that the twelve-year-old, who had some developmental disabilities, was able to describe what respondent did to her when her mother was at work. She was unable to say the words that she knew for the parts of the body involved and spelled words that would not typically be used by a twelve-year-old child. The trial court was impressed that the testimony of respondent's stepdaughters was internally consistent despite the differences in their ages, understanding of what occurred, and ability to describe the circumstances. The court did not dismiss the fact that the older girl at one time claimed that she made the story up but believed that there were reasons for her doing so, including not wanting to hurt her mother, losing her mother's love, threats, and offers of money. The court did not find respondent's testimony to be credible and did not believe his claims that the twelve-year-old made up the story to get back at respondent for making her change schools

or for “whooping” her. Respondent’s statements that he was unaware that his no-contest plea to criminal sexual conduct involving his own teenaged daughter would be considered a conviction, that his daughter and stepdaughters all lied about the sexual abuse, and that the family members of the minor child’s mother were out to get him were not considered credible by the court.

The trial court did not clearly err in finding that the statutory grounds for termination had been established by clear and convincing evidence. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). In applying the clearly erroneous standard, we recognize the special opportunity the trial court had to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We are not left with a definite and firm conviction that a mistake was made. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens