

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MATTHEW SCOTT
VANZANDT and VICTORIA GRACE
VANZANDT, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBERT VANZANDT,

Respondent-Appellant,

and

SHERRI ANNE VANZANDT,

Respondent.

In the Matter of MATTHEW SCOTT
VANZANDT, VICTORIA GRACE VANZANDT,
and BRITTANY ANNE COPELAND, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHERRI ANNE VANZANDT,

Respondent-Appellant,

and

ROBERT VANZANDT,

Respondent.

UNPUBLISHED

August 8, 2006

No. 267182

Oakland Circuit Court

Family Division

LC No. 05-702936-NA

No. 267183

Oakland Circuit Court

Family Division

LC No. 05-702936-NA

Before: Davis, P.J., and Cooper and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, respondent father appeals as of right from the trial court order terminating his parental rights to Matthew and Victoria VanZandt. Respondent mother appeals as of right from the same order terminating her parental rights to Matthew and Victoria VanZandt and Brittany Copeland¹. We affirm.

The basic facts here are that respondent father entered a no contest plea to two counts of assault with intent to commit criminal sexual conduct involving penetration and admitted he had molested his stepdaughter, Brittany Copeland. When he was being arrested for this conduct, respondent mother screamed at her daughter that it was her fault if he went to jail. At no time has respondent mother affirmatively stated that she believes Brittany rather than respondent father. In addition, after respondent father had been charged but before he was incarcerated, respondent mother allowed him to have contact with all three children. Based largely on these facts, respondent mother's parental rights as to Brittany were terminated, and both parents' parental rights as to Matthew and Victoria VanZandt were terminated.²

Respondent father first argues that the trial court clearly abused its discretion in denying his motion for a jury trial. Respondent father does not dispute that his request for a jury trial was untimely. MCR 3.911 provides that a trial court "may excuse a late filing in the interests of

¹ Brittany is in the custody of her father, Joseph Ferriss, and the VanZandt children are together with a foster family.

² Respondent mother's rights were terminated pursuant to:

MCL 712A.19b(3)(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

Respondent father's rights were terminated pursuant to:

MCL 712A.19b(3)(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

MCL 712A.19b(3)(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

justice.” Respondent father argued to the lower court that justice would be served by the granting of a jury trial because the judge had been prejudiced against him by hearing the prosecutor’s comment that respondent father had previously failed a polygraph examination.³ However, given that a jury in this case would be limited to the adjudicative determination of whether the child came within the court’s jurisdiction, and the court would retain responsibility for dispositional rulings⁴ such as whether the statutory grounds for termination had been established, respondent father’s issue would not be cured by a jury trial. We find that justice did not require a jury trial on these facts, and the trial court’s decision to deny respondent father’s request for a jury trial was not an abuse of discretion.

Respondent father further argues on appeal that it is evident that the trial court was biased by the polygraph statement because it found that petitioner established the statutory grounds for termination based on scant evidence. However, respondent father had pleaded nolo contendere in criminal court to two counts of assault with intent to commit criminal sexual conduct involving penetration and was sentenced to prison with an earliest possible release date of June 12, 2011. The victim is respondent father’s stepdaughter, Brittany; she was ten years old at the time of the abuse. We find ample evidence supporting the trial court’s finding that the statutory grounds for termination were established by clear and convincing evidence.

Respondent father next argues that the trial court erred in admitting testimony from Detective Glazewski regarding Brittany’s statements about the sexual abuse, which led to respondent father’s convictions. We review a trial court’s decision to admit evidence for an abuse of discretion. *Shuler v Mich Physicians Mutual Liability Co*, 260 Mich App 492, 509; 679 NW2d 106 (2004). Although a hearing was held regarding the admissibility of Brittany’s statements to Detective Glazewski, and the trial court ruled that the statements were admissible, the statements were not admitted at trial. Because the trial court did not base its finding that the statutory grounds for termination were established on this evidence, the issue is moot. We find no error in the trial court’s termination of respondent father’s parental rights. MCR 3.977(J).

Respondent mother argues that the trial court erred in finding that MCL 712A.19b(3)(b)(ii) was established by clear and convincing evidence. We agree. There was no evidence that respondent mother knew or should have known about the sexual abuse and failed to prevent it. Although there were allegations of a second sexual assault, no evidence was presented at trial to support these allegations. Therefore, the trial court clearly erred in finding that petitioner established section (b)(ii) by clear and convincing evidence.

However, that error was harmless where section (j) was established by clear and convincing evidence. *See In re Perry*, 193 Mich App 648, 651; 484 NW2d 768 (1992) (Trial court’s finding of one statutory ground for termination was clear error, but the error was harmless where trial court could have found other grounds for termination and the respondent had notice of these other grounds). Here, petitioner also sought termination of respondent

³ We agree with the trial court that a motion to disqualify would have been more appropriate, based on respondent father’s belief that the prosecutor’s comment biased the trial court.

⁴ *See In re Hubel*, 148 Mich App 696, 698-699; 384 NW2d 849 (1986)

mother's parental rights under sections (g) and (j), giving respondent mother notice of these sections. Section (j) provides for termination where "there is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Respondent mother was aware that Brittany had alleged that respondent father sexually abused her, and she had continued to allow respondent father to reside with her and the children for a period of three months, until a court ordered him to have no contact with children. When respondent father was arrested, respondent mother screamed at Brittany, in front of Detective Glazewski, that it was all Brittany's fault. Even at trial, respondent mother testified that she did not know if respondent father sexually abused Brittany, although she admitted that there was medical evidence of anal penetration. Respondent mother did not protect Brittany from sexual abuse, and there was no reasonable likelihood that she would protect any of her children from abuse in the foreseeable future. We find that section (j) was established by clear and convincing evidence.

Respondent mother also argues that the trial court clearly erred in its best interests determination. MCL 712A.19b(5). Based on the psychological evaluation and respondent mother's failure to protect her children from respondent father, we find that the trial court did not clearly err in its best interests evaluation. Therefore, we find that the trial court did not clearly err in terminating respondent mother's parental rights.

Affirmed.

/s/ Alton T. Davis
/s/ Jessica R. Cooper
/s/ Stephen L. Borrello