

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of BRITTNEY PAYGE DILLEY  
and NATHANIEL JAMES DILLEY-WARTHAN,  
Minors.

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FAMILY INDEPENDENCE AGENCY,  
  
Petitioner-Appellee,

v

ROBERT WARTHAN,  
  
Respondent-Appellant.

UNPUBLISHED  
February 15, 2005

No. 256647  
Wayne Circuit Court  
Family Division  
LC No. 03-424730-NA

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Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to his minor children pursuant to MCL 712A.19b(3)(b)(i), (g), (i), (j), and (m). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case began with a petition alleging respondent's sexual abuse of Brittney and seeking termination of respondent's parental rights. After hearing evidence of statements made by the child to her therapist, a hospital clinical social worker, and her grandmother regarding respondent's conduct, the trial court ruled that the statements were admissible. Other evidence was thereafter introduced, including further evidence of respondent's sexually inappropriate conduct with Brittney observed by the maternal grandmother, and evidence that respondent's parental rights to other children had been voluntarily terminated as part of neglect proceedings in Wyoming. The trial court assumed jurisdiction of the children pursuant to MCL 712A.2(b) and immediately terminated respondent's parental rights.

The trial court did not err in finding that the evidence established a statutory basis for jurisdiction under MCL 712A.2(b), *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993), or in immediately proceeding to termination of respondent's parental rights. MCR 3.973; *In re CR*, 250 Mich App 185, 200-201; 646 NW2d 506 (2002). A preponderance of the evidence demonstrated that respondent had failed to provide for the children, had been sexually inappropriate with Brittney, and had voluntarily released his parental rights to other children in the context of neglect proceedings in another state. Furthermore, contrary to respondent's

argument on appeal, the trial court did distinguish its findings regarding jurisdiction from its findings regarding termination.

The trial court also did not clearly err in finding that statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Ample evidence established that Brittney had suffered sexual abuse by respondent and was likely to suffer sexual abuse if returned to respondent's care, that respondent had failed to provide proper care and custody of the children, and that the children were likely to suffer harm if returned to respondent's care. Although there was no evidence that the previous termination of respondent's parental rights to other children was because of physical or sexual abuse, there was evidence that respondent's parental rights to the other children were voluntarily terminated in the context of protective proceedings. Given this evidence, the trial court did not clearly err in determining that termination was not contrary to the best interests of the children. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000).

Respondent also contends that the trial court erred in admitting into evidence Brittney's statements regarding sexual abuse by respondent pursuant to MCR 3.972(C). However, the record supports the trial court's conclusion that the statements made by Brittney, who was under the age of ten, described sexual abuse, and the circumstances surrounding the statements provided adequate indicia of trustworthiness. We also reject respondent's contention that the trial court abused its discretion in denying his motion for rehearing and for an evidentiary hearing. The trial court was within its discretion when it determined that the matters proposed by respondent for rehearing and for evidentiary hearing would not have caused the trial court to reconsider the case or have resulted in a different outcome. MCR 3.992(A); *In re CR, supra* at 197-198.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Richard Allen Griffin  
/s/ Pat M. Donofrio