

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NEVAEH BUCK, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

AMANDA HITCHCOCK,

Respondent-Appellant.

UNPUBLISHED

August 8, 2006

No. 268073

Clinton Circuit Court

Family Division

LC No. 05-018276-NA

Before: Cavanagh, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(g) and (j). We affirm.

In July 2003, respondent's older daughter, Christine, was sexually assaulted in Ohio, and the Ohio court took the child into its temporary custody. Although the child was originally placed with respondent, she was removed from respondent's care in October 2003 following evidence that the child was also physically abused. Respondent failed to participate in services offered by Ohio authorities. She failed to maintain suitable and stable housing. In December 2004, respondent informed her Ohio caseworker that she wanted to release her parental rights to Christine. A permanent custody petition was filed, but the termination trial was adjourned on several occasions because respondent could not be located.

In July 2005, respondent, then living in Michigan, tested positive for cocaine use while seven months pregnant with Nevaeh. At the time Nevaeh was born, respondent was living with the child's father, Alan Buck, and Alan's mother, Dawn Buck, who had a prior drug conviction and whose children had been subject to child custody proceedings because of her drug use and neglect. Based on the Ohio child custody proceedings concerning Christine, the concerns raised by respondent's drug use during her pregnancy, and her residence with Ms. Buck, petitioner filed a permanent custody petition seeking termination of respondent's parental rights to Nevaeh.

At trial, the Ohio caseworker for Christine testified regarding respondent's failure to protect Christine from sexual and physical abuse, maintain housing, comply with offered services, or visit Christine more than twice in the two years the child was in foster care.

Evidence was also presented of respondent's failure to secure stable housing while she was pregnant with Nevaeh despite receiving social security disability payments. The psychological evaluation found respondent had many disorders and recommended termination of her parental rights. Although respondent's therapist, who had counseled her for six sessions at the time of his testimony, testified that respondent had stopped using drugs, he admitted that he had not required respondent to submit drug screens to verify her drug use status. He also agreed that a person would have to be sober for a year before she would be deemed fairly stable in her sobriety and abstinence. The trial court concluded that the evidence supported termination of respondent's parental rights under §§ 19b(3)(g) and (j).

Respondent first argues on appeal that the trial court erroneously admitted into evidence two Ohio police reports presented by the Ohio caseworker under the business records exception to the hearsay rules. Under MCR 3.977, when parental rights are terminated at an initial dispositional hearing, the statutory basis for termination must be established by clear and convincing "legally admissible evidence." Hearsay is not admissible except as provided under the Michigan Rules of Evidence. MRE 801(e); MRE 802. Business records are excluded from the hearsay rules under MRE 803(6), which provides that reports or records kept in the course of a regularly conducted business activity are admissible unless the source of information or method or circumstances of preparation indicate a lack of trustworthiness. *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993). This exception requires that the declarants or informants must be acting in the regular course of *their* business when making the statements. *Hewitt v Grand Trunk Western R Co*, 123 Mich App 309, 325; 333 NW2d 264 (1983). Because the Ohio caseworker did not prepare the police reports admitted into evidence, the trial court erred when it admitted the reports under MRE 803(6). Further, because the reports were made by police officers in a setting that was adversarial to respondent, the reports were not admissible under MRE 803(8), the public records exception to the hearsay rules. See *People v McDaniel*, 469 Mich 409, 413; 670 NW2d 659 (2003). Although the trial court abused its discretion by admitting the reports into evidence, the error was harmless where there was other competent evidence, as discussed above in part, corroborating the information in the reports. See *People v Hill*, 257 Mich App 126, 140; 667 NW2d 78 (2003).

Respondent also argues that the trial court clearly erred when it terminated her parental rights under §§ 19b(3)(g) and (j). Under Michigan law, how a parent treats one child is probative, though not determinative or conclusive, of how that parent would treat another child. *In re Smebak*, 160 Mich App 122, 128; 408 NW2d 117 (1987). Thus, the court could rely on the Ohio child custody proceedings involving Christine, which showed that the child had been sexually and physically abused while in respondent's care, that respondent had failed to comply with Ohio services, and that respondent had failed to visit the child more than twice in two years. The court also relied on evidence that respondent had tested positive for cocaine use when she was seven months pregnant with Nevaeh and that she had been unable to obtain and sustain stable housing, despite the fact that she had disability income. Based on this evidence, the trial court did not clearly err in finding termination was appropriate under §§ 19b(3)(g) and (j). See MCR 3.977(G)(3); MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Further, the evidence did not show that termination of respondent's parental rights was clearly not in Nevaeh's best interests. See MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court did not clearly err in terminating respondent's parental rights to the child.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Michael J. Talbot