

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ADW, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

WALTER WATT,

Respondent-Appellant,

and

DANIELLE STUBBS,

Respondent.

UNPUBLISHED
September 4, 2001

No. 225644
Wayne Circuit Court
Family Division
LC No. 99-380402

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

PER CURIAM.

Respondent-father¹ appeals as of right the family court's order terminating his parental rights to ADW under MCL 712A.19b(3)(b)(i), (j) and (k)(ii). We vacate the order of termination and remand for further proceedings, including psychological evaluations.

I

To terminate parental rights, the court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once a statutory ground for termination has been established, termination of parental rights is mandatory unless the court finds that termination clearly is not in the child's best interests. *Id.* at 356-357; MCL 712A.19b(5). This Court reviews for clear error both the lower court's decision that a ground for termination has been proven by clear and

¹ The family court denied the petition for permanent custody as to respondent-mother, terminated its jurisdiction over the minor child, dismissed the case and released ADW to her mother.

convincing evidence and, where appropriate, the court's decision regarding the child's best interest. *Trejo, supra* at 356-357.

The family court concluded that clear and convincing evidence existed to terminate respondent-father's parental rights under the following provisions:

Sec. 19b.(3)(b) The child . . . has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(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.

(k) The parent abused 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.

A

ADW was born on May 27, 1994, to respondents, who never married. A custody action was instituted in Ingham Circuit Court thereafter, causing great acrimony between respondents. At pertinent times, respondent-father's parenting time included picking up ADW from day care on Monday evenings.

Testimony adduced at the tender years hearing and trial in the instant case included that on September 14, 1998, respondent-father picked ADW up from day care. There is no dispute that respondent-father had not seen ADW for the previous two weeks, August 31 to September 14. Although it is clear that ADW spent considerable time during those two weeks at her maternal grandmother's, where respondent-mother's twin brother lived, respondent-mother's testimony was contradictory on that issue. The grandmother worked during the day on weekdays, and her son, who apparently had a criminal record involving CSC, worked varied hours in construction.

When respondent-father picked ADW up from day care on September 14, 1998, he drove to his house to pick up ADW's bathing suit, and then they went to the home of family friends, Elgin and Jill Tyus, who also had small children. The children played and swam, and when Jill Tyus gave them a bath, she noticed ADW's underwear had a dark brown stain. Jill Tyus and respondent-father believed the stain was fecal, ADW being four years old at the time, and did not worry about it. Respondent-father returned ADW to day care the next morning.

The discharge continued for the next few days, while ADW was with respondent-mother. On September 18, 1998, respondent-mother took ADW to her pediatrician, Dr. Lopez, who

administered tests, the results of which came back on September 24, 1998, as positive for gonorrhea. Respondent-mother called Oakland County Protective Services [OCPS] on the evening of September 24, 1998. Several days later respondent-father learned, through a letter respondent-mother had written his attorney, that respondent-mother would not allow him parenting time with ADW. Respondent-father called Elmer Misch, an OCPS worker referred to in respondent-mother's letter, on September 28, 1998. Misch returned his call on September 29, 1998, and advised him to go to a lab for blood testing. Respondent-father did so on September 30, 1998, and tested negative for gonorrhea and negative for other sexually transmitted diseases.

OCPS interviewed ADW on October 13, 1998, ADW did not identify her abuser at that time, and Oakland County concluded that neither parent was a possible perpetrator. An OCPS investigation summary dated December 21, 1998, read into the record in part at the termination hearing, stated:

It appears at this time that the child continues to be safe under the care of the natural mother [.]. [D]uring their interview with protective services offices and during the Care House interview the child denied at any time that anybody had touched her improperly. After the Care House interview conducted on 10-13-98 a second complaint dated 10-28-98 was received stating that the child is now stating that her father did it. It should be noted that the referring party on the second complaint is the natural mother, it should also be noted for the record that both natural parents are in a very heated and hostile visitation slash [sic /] custody battle.

OCPS worker Elmer Misch testified that he took part in the interview of ADW on October 13, 1998, met both of her parents, and his report stated that "father presented himself professionally and cooperated with Protective Services completely." On cross-examination, Misch testified that he dismissed respondent-father as a perpetrator based on the lab test results being negative. He testified that he had no knowledge of the symptoms or treatment of gonorrhea. Misch received a second complaint on October 28, 1998, alleging that ADW had told an aunt and the Detroit police that "daddy did it." Misch immediately contacted the Southfield police and they said they would address the new complaint right away. He later heard that the Southfield police had dropped the investigation on the basis that no crime had been committed in Southfield.

Heidi Hietala testified telephonically that she was part of a multi-disciplinary team that interviewed ADW on October 13, 1998 at Care House. She testified that her notes stated that respondent-mother told her that ADW was "visiting at maternal grandmother for 2 weeks prior to the father's visit on 9-14." She did not recall whether that meant overnights.

Mary Neumann, a social worker with the Oakland County Prosecutor's office testified telephonically that she was part of the team mentioned above, and regarding ADW's interview:

Q During the course of that interview can you tell us what went on?

A. Yes. [ADW] is an only 4-year old and she was verbal for 4-years old.

However, she did not know what it meant to tell the truth and tell a lie.

And giving her examples of using like the terminology right and wrong she couldn't distinguish between the two.

* * *

Q. What exactly was it that [ADW] said to you about this incident if anything?

A. The only thing [ADW] spontaneously said was I bleed when I pee. But she could not—when I asked her what that meant, she couldn't give any details of the how or when or why or anything. She just made the statement.

There wasn't any other surrounding details [sic] given to her—or she couldn't—she did not provide any surrounding details about what she was talking about.

* * *

Q. Okay. Did you conduct an interview with either of the parents.

A. The parents were talked to in the very beginning when they came in and met the team of professionals and shared some information. We provide them time for sharing information they would like to share.

Q. Did you find both parties cooperative?

A. Yes.

Q. Did you or were you aware of the fact that Mr. Watt had brought some blood tests results with him?

A. Yes.

Q. **And were you also aware that those test results have proven negative for any sexually transmitted disease.**

A. **Yes.** [Emphasis added.]

Wayne County's child and family abuse bureau interviewed ADW in December 1998 and in January 1999 at respondent-mother's request, and denied warrants both times.

Respondent-father got custody of ADW on June 4, 1999. ADW was with respondent-father until June 18, 1999, when she returned to her mother. On June 20, 1999, respondent-mother took ADW to St. John's Hospital on a new complaint of sexual abuse. On June 24, 1999, the FIA filed a petition in Wayne Circuit Court seeking permanent custody and requesting termination of both respondents' parental rights. The petition was authorized.

On respondent-mother's request, ADW was again interviewed by Wayne County in August 1999, and a warrant issued. However, at the preliminary examination ADW refused to identify who had done anything to her and the case was dismissed.

B

A tender years hearing began on February 1, 2000. Wayne County protective services [WCPS] worker Jennifer Van Brunt testified that she spoke to ADW for about twenty minutes while ADW was in the hospital in June 1999, that ADW's mother was not in the room, that ADW was fidgety and restless during the interview and "didn't want to have a whole lot of conversation," that ADW told her that her daddy pulled her pants down, pulled her panties down and touched her privates" when she was in her bedroom watching a movie. Van Brunt testified that ADW grabbed her genital area when she said it. ADW, who had had her fifth birthday on May 27, 1999, told her that she was four years old when her daddy touched her. Van Brunt did not ask ADW whether her father touched her for purposes of cleaning her or in the process of changing her clothes. Van Brunt was testifying from memory; she testified that she took some notes, but only takes notes as to what children say about the allegations, and she did not have those notes with her.

Van Brunt testified that when she picked ADW up from the hospital and transported her to the foster home around June 23, 1999, ADW also told her that her daddy touched her. Van Brunt testified that she had an extended conversation with respondent-father at a home visit on June 25, 1999, and that he categorically denied the allegations. Regarding whether she spoke with ADW about other family members, Van Brunt testified on cross-examination:

Q. Did you talk to her about other members of Mr. Watt's family, cousins[,] friends, did you engage in any of those subjects?

A. Not that I remember.

Q. Did you talk to her about the Stubbs family; aunts, uncles, cousins?

A. Somewhat.

Q. Did you talk to her about an uncle Darryl?

A. Her uncle came up when I asked her who took care of her when her mom wasn't around and she said her grandma. And I said who lives there, she said her uncle.

Q. Did she say her uncle also took care of her?

A. No, she said her mom took care of her.

Q. When mom wasn't there?

A. Sometimes grandma took care of her, yes.

Q. But Uncle Darryl also lived where grandma took care of her?

A. Yes.

Q. Did you ask whether or not grandma had a job?

A. No.

Q. So when – are you aware now, let me ask you this question, of Miss Stubbs['] brother Darryl having had some kind of sexual conviction in his family?

A. Yes.

Q. Were you aware of it on June 20th on 21st [sic]?

A. I believe the mother told me that he had a history of—

Q. And I am asking you when did she tell you, did she tell you on June 21st?

A. On June 21st I believe.

* * *

Q. Again, the mother informed you of her brother's prior sexual conviction on the 21st?

A. I believe so.

Q. Did that impact your assessment at all of the child's safety?

A. Yes.

Q. How so?

A. It was a factor in my investigation.

Q. And did you conclude that the child may have been talking about sexual abuse that occurred not necessarily from the father?

A. No, that wasn't my conclusion.

* * *

Q. Just so that I am clear on this, because [ADW] didn't really want to engage you in the subject matter, you didn't talk for any extended period of time about the allegations of sexual abuse, correct?

A. Correct.

Q. So you really did not make any attempt to put the touching that may have occurred in any context of whether it was to the natural order of changing, bathing or anything that may have required touching of the child by the father in that area?

A. The way she described it, it didn't appear to be part of the bathing.

Dr. Muthayipalayam Thirumoorthi, a pediatrician specializing in infectious diseases on staff at St. John Hospital, testified that he examined ADW in June 1999. He testified that ADW was "in no acute distress and stable," that he did a general body examination that "did not show any signs of injury" and the genitals "did not show any obvious inflammation, but there was some irregularity of the hymen opening." He testified that "[i]nstead of being smooth and narrow opening, the opening was slightly larger than what you expect in a child her age and instead of having a smooth edge it had a slightly ragged edge." Dr. Thirumoorthi testified that that was the only abnormality he noted. Dr. Thirumoorthi did not examine ADW pertinent to gonorrhea in September 1998, but was asked by the FIA regarding ADW's history of gonorrhea:

Q. And could you tell us, doctor, how is it possible that a 5-year old could contract gonorrhea?

A. Almost always it is a sexual abuse circumstance. Because the organism needs to be introduced into that area to produce an infection.

So generally in a child that age there is [inaudible] sexual abuse.

Q. Is it possible for a child to contract that disease by fondling with the fingers?

A. The theoretical possibility exists. For example, depending on the specific circumstances, if an individual with active infection touches his genital area, and then immediately fondles a child, the organism can be carried and transmitted.

That possibility does exist, but that's not the usual mode of transmission.

Q. What is the usual mode of transmission?

A. Usual mode of transmission is introduction of the organism directly into the genital area usually genital-genital contact. Much less commonly oral genital contact.

Q. And when you say genital contact, is penetration required?

A. Penetration is not necessary because if one has active drainage, without actually penetrating it is possible to deposit organisms into that area.

Q. Okay. So one could actually just rub his penis --

A. Yes, sir.

Q. --against a child's vaginal area and the child could contract the disease?

A. Yes, sir. The likelihood of infection would be lower, because it is outside skin area, and it is not very susceptible to infection. It is the lining cells of the vaginal [sic] that is more susceptible.

Dr. Thirumoorthi testified:

BY MR. LEWIS [*Asst Atty General for FIA*]:

Q. The information regarding the child's enlarged hymen, what is your medical opinion with regard to that?

A. That need not come from abuse, because many other kinds of trauma can produce it, it was not an extensive tear. The hymen was still intact. The injury was somewhat irregular.

That type of appearance come from other types of minor injuries, occasionally even normal radiation [sic?] can fit that.

So, what I stated and restated, what I stated on the record and I'll restate, my examination did not suggest that there had been recent injury. But my examination did not exclude the possibility that there was remote injury. Taken in conjunction with evidence of a sexually transmitted disease I concluded that there had been some time in the past sexual abuse but not recently.

* * *

Q. Okay. Now, doctor, is it possible to sexually abuse a child without tearing the hymen?

A. Yes, sir.

Q. And how would that occur?

A. It depends on the degree of penetration. If 1 uses a smaller object, a finger or other types of device, for want of better word, then the hymen need not be torn open. The stretching of the hymen results in its tear.

So the object introduced, if it is not large it is possible to abuse a child without actually producing visible evidence of injury.

Q. And that would explain an irregularity in the hymen itself?

A. Yes, that type of irregularity can come from anything that tears it even slightly.

Q. That would be including a group of things that could possibly cause that irregularity in the hymen?

A. Yes, sir.

On cross-examination by respondent-father's counsel, Dr. Thirumoorthi testified that although it happens very rarely, it is possible that one female could be infected by the fingers of another female. He further testified:

Q. Is there an incubation period for this disease?

A. Yes, sir. Usually short **between two days and a week**. It can be asymptomatic as well, but it has a **short incubation period**.

Q. Two days and a week?

A. Yes, sir.

Q. Is the incubation period different in children as opposed to adults?

A. No, it's mostly influenced by the quantity of organism that is introduced. Age itself has very little impact.

Q. Okay. And so, after someone has been infected you can expect that infection to be diagnosible [sic] within a 2 day to one week period?

A. Yes. It would be diagnosible [sic] but it can also remain without symptoms.

Q. Could that incubation period be long?

A. Under those circumstances one does not define that as an incubation period. Incubation period is defined as the interval between exposure to the organism and symptomatic illness.

So an asymptomatic person, it could be there – one could have been infected 6 months or even longer ago and in looking for some evidence of whatever of the reasons you are looking for that and you find it, so under those circumstances there is truly no incubation period.

Q. Are there any controlable [sic] variables to be asymptomatic?

A. No asymptomatic infections [sic]? tend to occur more often in woman [sic] than in men. But even in men occasionally it would be asymptomatic.

But otherwise there aren't any predictors of who will be symptomatic and who be [sic] asymptomatic. [Emphasis added.]

Tammy Jackson, a medical social worker at St. John Hospital, testified that she interviewed ADW at the hospital in June 1999 while respondent-mother was present; that ADW told her her father touched her in her genital area while she was watching TV, and that ADW was able to identify her private areas.

Medical records admitted at trial of ADW's June 1999 hospital stay stated that ADW's parents were unable to be in the same room together, that respondent-father had his fiancée with him, and that respondent-father asked that ADW's maternal grandmother be removed and that hospital security asked that she leave.

Jerry Dorsey, IV, assistant prosecuting attorney for Wayne County assigned to the child and family abuse bureau, testified regarding interviewing ADW several times:

Q. And at whose request that you interview her?

A. The [ADW] case apparently came in at some point prior to originally being assigned to me. I guess [ADW] was interviewed by another assistant prosecuting attorney, Lora Weingarden. And Lora Weingarden at that time apparently denied a warrant at that time.

Subsequently I believe Mrs. Watt (sic) [Danielle Stubbs] contacted Nancy and requested that she be re-interviewed, and at that time Nancy assigned the case to me.

Q. And when did you interview her?

A. If I can refer to a few little notes here.

Q. Would that help you to refresh your memory?

A. It certainly would. The first interview I had with [ADW] was on January 25th, 1999 at approximately 11 a.m.

Q. So you had more than 1 interview with her?

A. Yes.

Q. And when was the second interview?

A. The second interview with [ADW] would have been August 30th, 1999.

Regarding the January 25, 1999 interview, Dorsey testified:

So [ADW] was separated from her mom and came into the office with myself and the child advocate. I am not sure who the advocate was at that point.

But anyway [ADW] was brought in, I introduced myself. I explained to [ADW] that I worked with children and that I wanted to ask her some questions.

I asked her if you [sic] understood why she was there and [ADW] immediately began to say that her daddy hurt her private part.

BY MR. LEWIS:

Q. Based on that information what else did you do?

A. I attempted to get [ADW] to explain to me what she meant by her daddy hurting her private parts.

I had read the police file and was aware that [ADW] had a sexually transmitted disease and that there was a very, very virulent custody battle going on.

Whenever I see a custody battle between mother father and child being alleged victim I tend to be more sensitive to what is going on. Cognizant of the fact that sometimes parents in an effort to gain some kind of advantage over the other might use the child.

So again I wanted [ADW] to give me more than daddy hurt me. She wasn't prepared to do that at this time.

Q. Okay.

And during the time you said that—what was her demeanor.

A. She appeared to be fairly relaxed . . . She just did not appear to be inclined to tell me what it is her daddy had done to her.

Q. So you were asked to interview her again in August of 1999, is that correct?

A. That's correct.

Q. Approximately what, 6 or 7 months later?

A. What was that? What happened was after I interviewed [ADW] that first time, I denied the warrant. I denied the warrant because I did not believe that I had sufficient information to go forward with a criminal warrant.

I explained that to mom and I explained the ramifications of it. I also explained the law says that [ADW] can come back and tell the story in the future if she wanted to, but for now, I wasn't prepared to sign a warrant.

At that time I got the impression that mom appreciated what I was talking about. She wasn't very happy, because she believed that something had happened, but I told her I couldn't go forward.

Then about August, I believe of 1999, apparently I guess there was a new warrant request presented wherein [ADW] was alleged to have been assaulted by her father a separate time. And [ADW] was brought in and I interviewed her.

Q. Okay.

Now during this interview, could you describe what the surroundings and the circumstances were like?

A. Very similar to the first time. [ADW] was isolated from whomever brought her in, I am not sure if it was her mom and social workers or whatever, but [ADW] was isolated, myself, [ADW] and the child advocate.

And I began to talk to [ADW], again introducing myself, to asking if she remembered me, and she did, and asking her to tell me why she was there today, that day.

And she said she was there because her daddy had hurt her private parts. She then went to explain that this happened in her bedroom while she was watching television he pulled her pants, her panties down, and did something with his tail to her private part.

And I asked her to explain what that meant. And she indicated that he had put his tail in her private part and she did that by pointing to her private part and indicating that that's why he hurt her.

After interviewing [ADW] on that occasion, this would have been the third interview of [ADW], I signed a warrant charging Mr. Watt with criminal sexual conduct.

Q. Now when you says [sic] it would have been the third interview that would be the 2 interviews that you had with her and the other one--

A. [inaudible].

Q. And [inaudible]?

A. Yes.

Q. Okay. You signed a warrant for what?

A. Criminal sexual conduct first degree.

Q. Against whom?

A. Mr. Watt.

Q. And whatever happened to those criminal charges?

A. Well, we had I think two dates. The dates I think scheduled for exam the first two dates the case was adjourned for various reasons, I am not real sure . . .

At the third hearing date [ADW] came to court, again she was isolated from her daughter [sic mother], however in the courtroom there were numerous people in the courtroom, I think some were family of Mr. Watt, some were family of Mrs. Watt [sic Danielle Stubbs].

* * *

So they were all in the courtroom together. [ADW] was brought in, she sat in the witness chair and I began to ask her some questions about what brought us here that day, brought us to court that day.

* * *

[ADW] was very candid in saying that she was hurt in her vagina, that someone had hurt her private part, that she had gone to the hospital, but she would not tell us who had done this to her. She flat out refused to say that anybody at that point had done anything to her.

Q. Did you observe her behavior and demeanor at that time?

A. You need to understand that when we started talking to [ADW], it became obvious that she either was not going to or didn't want to testify.

The judge, we had to take a break at some point, [ADW] began to cry while on the witness stand it was obvious she was very emotional about having to come into court and talk about whatever had happened to her.

Of course the judge took myself [sic] and counsel in the back talked to us about what we were doing, how we were going to proceed, the child didn't want to testify [,] et cetera.

It became clear to me that [ADW] was not prepared to testify. And I indicated to the court that I was not prepared to continue to examine [ADW] and make her more uncomfortable about why we were there that day.

We excused [ADW], I believe counsel made a motion to dismiss and the court eventually dismissed the case.

Q. What were your thoughts about her performance on the witness stand as opposed to the observation you made of her during the times that you interviewed her?

A. My impression was that [ADW] was afraid to talk about whatever had happened to her. I wasn't sure if it was out of fear of somebody in court or embarrassment to talk about it.

Typically kids her age don't respond to embarrassment, but again I just didn't know. It was clear to me, however that she was not going to tell the judge what she had told me.

On cross-examination by respondent-father's counsel, Dorsey testified:

Q. You also indicated that Ms. Weingarden denied the warrant request in this case?

A. That's correct.

* * *

Q. Obviously that was before your interview with the child?

A. That's correct. Excuse me it may have been December 4th, 1998.

* * *

Q. And she was able to identify her private parts [in January 1999]?

A. Yes, yes, she was.

Q. Okay. At this time were you also aware of the maternal uncle?

A. At this time, you are talking about the first interview?

Q. The January of '99 interview.

A. Yes. Yes, I was.

Q. You were aware that the maternal uncle was also the mother's twin?

A. I didn't know that he was her twin brother, I knew that he was her brother. I didn't know twin or anything of that nature at least I don't remember that.

Q. And [ADW] would not elaborate at that time on what she meant by her father had hurt her?

A. That's right.

Q. Did you bring up the question of whether or not it could have been someone other than her father?

A. I asked her did anyone else hurt your privacy or anyone else touch you in your privacy or things of that nature, and she said no.

Q. Now was the language that [ADW] was using was it touching or hurting?

A. I think at the first interview it may have been hurting. I am not sure if she had said touching, but it may have been hurting.

Q. And at that time you also aware [sic] that there had been some investigation done by Oakland County authorities along the same lines?

A. I was aware there was an investigation by Oakland County. I was aware that the mom and dad were fighting over custody.

I – I am not sure if at the subsequent interview that I was aware that mom had been locked up over custody issues with the father.

But yes, I was aware of all that, which for me is important information because it helps me to understand that there may be something else going on in the relationship other than the alleged assault.

Q. Did you have occasion to talk to any of the Oakland County authorities about their work on the case?

A. No, sir, I did not.

Dorsey testified that the Detroit Police Department had done a LEIN check and that he understood that respondent-father had no criminal history. Dorsey also testified that the DPD investigated ADW's maternal uncle "and ultimately they determined that he was not a suspect." Dorsey reviewed the information from the DPD investigation of the uncle and, after talking to ADW, determined the uncle was not a suspect. Dorsey testified that he had information that ADW's maternal uncle had a criminal record, he thought in Wayne County, having been convicted of criminal sexual conduct, he thought CSC 1, but could not specifically remember, and he thought it may have involved a child, but could not remember.

The trial court admitted ADW's statements regarding sexual abuse under MCR 5.972(C)(2), over respondent-father's objection.

Respondent-father called respondent-mother, who testified that her mother never left ADW in the care of her twin brother or any other person. She gave contradictory and unclear testimony regarding whose care ADW was in during the two weeks preceding September 14, 1998. She also testified that ADW stayed with her mother while she was jailed for contempt in November 1998. She was also impeached regarding a variety of other matters.

There was testimony regarding respondent-father's character and good relationship with ADW, as well as affidavits, which were admitted at trial in lieu of the testimony of the affiants.

II

Respondent-father argues at length that there was insufficient evidence to support the court's finding that termination was warranted under Section 19b(3)(b). Respondent-father also argues that the family court improperly denied his request for psychological exams.

MCR 5.972(C)(2) provides that a statement made by a child under ten years of age describing child abuse may be admitted at trial if the court finds the nature and circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness and that there is sufficient corroborative evidence of the act. In the instant case, the State's own expert witness testified that if not for the diagnosis of a sexually transmitted, ADW showed no signs of abuse. The only corroboration of the child's statements was the diagnosis itself.

This is a very difficult case for a number of reasons. First, although the minor child's credibility was the major determining factor, the child did not appear before the family court, so the family court's decision was not based on a firsthand assessment of the child's credibility. Second, the record below is less than adequate on the issue of gonorrhea and the treatment of gonorrhea. The medical expert testified that the incubation period is two to seven days, and respondent-father did not see the child for fourteen days before the discharge was discovered. The FIA did not elicit from its medical expert testimony that a person who had not seen ADW from August 31, 1998 until the evening of September 14, 1998 could have infected ADW with gonorrhea such that she would show symptoms on the evening of September 14, 1998, and the

evidence that was elicited supported the opposite conclusion. Nor did the FIA elicit from its medical expert testimony that respondent-father could have sought treatment such that if he had infected ADW, he could test negative for gonorrhea on September 30, 1998. There was no testimony regarding the length of treatment of gonorrhea in an adult male. Third, the testimony and affidavits submitted on respondent-father's behalf depict a stable, educated, orderly, career-oriented man who deeply loves ADW.² In contrast, other than respondent-mother's testimony, there was little testimony at trial that shed light on her relationship with ADW, or her lifestyle. Respondent-mother's credibility was impeached regarding her own and ADW's whereabouts during the August 31, 1998 to September 14, 1998 two-week period. Fourth, although there was testimony that ultimately it was determined that respondent-mother's brother was not a suspect, the specifics of the investigation conducted and the reasons for that conclusion were never provided.³

On the other hand, it cannot be said that the family court's findings were not grounded in the record. The child did make statements to others accusing her father, and the gonorrhea

² We also note that although the record of the Ingham Circuit custody case is not before this Court, from the testimony in the instant case it can be gathered that respondent-father fared well in that proceeding. Apparently the Ingham County FOC facilitated a parenting time schedule between ADW's parents and an FOC investigator made recommendations in respondent-father's favor in that case.

³ The family court took a different view, finding that respondent-father's testimony broke down with his testimony that he did not take ADW to the doctor in June 1999, and that his defense that someone else abused ADW failed. Regarding the latter, the court noted that "the child consistently identified the father and the other identification lacks credibility because the individuals that testified, although I believe their testimony, every time they indicated to Mr. Watt the identification of another person, nothing was done."

Regarding the former, respondent-father testified that he saw ADW in February 1999 and did not see her again until June 4, 1999, when he was awarded custody of ADW. He testified that on that date he took ADW to her pediatrician, Dr. Lopez, a woman, but that Dr. Lopez no longer worked at that office and he did not want a male pediatrician examining Alexis. Respondent-father testified that he made an appointment for June 7, 1999 for ADW to see a different female doctor but decided not to go because Dr. Lopez was familiar with ADW's case history and he wanted Dr. Lopez to examine ADW. Jill Tyus, whose testimony the family court credited, testified that she mentioned to respondent-father on June 5, 1999 that ADW told her that somebody had hurt her "down there," and that respondent-father took ADW to the doctor. The family court found that Jill Tyus told respondent-father that ADW told her that somebody had hurt her down there and that she, Jill Tyus, "recommended that respondent-father take the child to a doctor. Mr. Watt, instead of taking the child to a doctor, following through on his scheduled examination, canceled the examination altogether."

The implication of the court's reasoning was that respondent-father did not follow up with a medical examination because he was the perpetrator, but that would require a finding that respondent-father intentionally scheduled a doctor's appointment with the intent of not going through with it. Further, the family court never addressed the problems raised by the testimony regarding the incubation period of gonorrhea, and asserted based on information not in the record that respondent-father could have self-medicated within that time frame such that the laboratory tests would read negative.

infection provides objective evidence of sexual abuse. However, the standard is one of clear and convincing evidence.

It appears that the extent of acrimony on respondent-mother's part for respondent-father may have escaped the family court. Respondent-father fared well in the custody proceeding and his child support had been reduced several times. These circumstances, coupled with ADW's inability to identify a perpetrator at the outset and at the criminal proceedings in Wayne County, and the timing of ADW's allegation and the problem with respondent-father's lack of access for two weeks before the discharge was detected, and his subsequent negative test, provide reason to question whether the child's statements identifying respondent-father were reliable.

Respondent-father also argues that the family court erred in denying his motion for psychological examination. We agree. An order had been entered on June 25, 1999, following the preliminary hearing, providing that ADW shall have a psychological evaluation. No such evaluation was performed, however, and respondent-father thus filed a motion for psychological examination. Petitioner stated that no psychological examination of ADW had been conducted, and none was anticipated. The family court denied the motion without prejudice, stating that if the child is evaluated and the report is submitted, respondent-father could renew the motion. Petitioner never had the child evaluated and so the motion was not renewed.

We strongly agree with respondent-father to the extent he argues that psychological examinations are imperative in a case such as this where there is a real possibility that a very young child has been coached, particularly given the long-standing extremely acrimonious child-custody battle between the parents, and the timing of ADW's having contracted gonorrhea and her alleged statements regarding her father touching her. We note that psychological evaluations of the parents would seem to be advised as well.

We vacate the order of termination and remand for psychological evaluations and further exploration of the medical issues noted above, in proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot