

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JAMES GONYON, JR.,
MELANIE GONYON, and KEVIN GONYON,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DODY ANDERSON,

Respondent-Appellant.

UNPUBLISHED
March 30, 2004

No. 249675
Kalkaska Circuit Court
Family Division
LC No. 01-003324-NA

Before: Jansen, P.J. and Markey and Gage, JJ.

PER CURIAM.

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

This Court reviews a trial court's order terminating parental rights to determine if the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, then the trial court must terminate respondent's parental rights unless it determines that to do so is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We also review for clear error the trial court's decision with regard to the child's best interests. *Trejo*, *supra* at 356-357. Absent such a finding, this Court will affirm the decision of the trial court.

One child had spent time in a psychiatric hospital and all showed symptoms of anxiety and stress. Services had been provided but were unsuccessful, in part, because the parents' main focus was blaming each other for the family's problems. Respondent and the children's father were not married and had separated some time before the children came into foster care. The children had been living with respondent and her husband, the children's stepfather, since November 2000. The children entered foster care in September 2001, at the ages of seven and a half, six, and five.

In the summer 2002, four incidents occurred during respondent's visitations. First, James, Jr. fell off his bicycle and suffered a concussion. James was not wearing a helmet, although one had been provided, and he was being cared for by respondent's boyfriend while respondent worked. Second, respondent bought the boys pocketknives to calm Kevin, who was having a temper tantrum in a store.¹ Third, the children sustained cuts on their hands and feet, either from playing in a fort littered with nails and broken glass or from playing with the knives. Fourth, James did not receive his medications during a visitation.² The children's father was charged with fourth-degree criminal sexual conduct (CSC) in connection with an alleged assault on a fourteen-year-old niece. The children's father had a previous conviction for fourth-degree CSC involving a young girl. These events led to the filing of a petition requesting the termination of both parents' parental rights to the children. The children's father relinquished his rights.

We hold that the trial court did not clearly err in finding that petitioner established by clear and convincing evidence the existence of one or more statutory grounds for the termination of respondent's parental rights. In terminating respondent's parental rights, the trial court relied primarily on the testimony and evaluations of Dr. Wayne Simmons, a psychologist who evaluated family members in October 2001, and Amber Ligon, who became involved in the case in June 2002. Despite the fact that respondent attempted to comply with her parent-agency agreement,³ after careful examination of this record, we are not left with a definite and firm conviction that a mistake was committed in terminating respondent's parental rights. The trial court found that there was no evidence of substantial improvement in respondent's parenting skills, but, rather, evidence indicating she would not provide a safe environment for the children. The trial court relied upon the testimony of Dr. Simmons and Ligon, and both indicated that respondent was unable to provide a safe and proper environment for the children. Karen Marietti, the foster care worker until June 2002, and Ethel Bartz, respondent's therapist who had counseled respondent for four years, had witnessed significant improvements in respondent's parenting skills.⁴ But, giving deference to the trial court's opportunity to see and hear the witnesses, *Miller, supra* at 337, the trial court's findings were not clearly erroneous. We find that the trial court did not clearly err in finding that clear and convincing evidence established that termination of respondent's parental rights was warranted on the grounds that the conditions that

¹ James had previously approached his siblings with a knife in an improper manner and had cut his brother, with a knife, on a prior occasion. The children were not supervised with the knives.

² With regard to that latter two incidents, because the children were going directly from respondent's house to their father's house it was not clear at which house the incidents occurred. However, we give deference to the trial court's opportunity to see and hear the witnesses. *Miller, supra* at 337. In addition, respondent had provided the boys with the knives and at least one of the medication incidents is attributable to her.

³ We note that respondent's compliance with the parent-agency agreement is evidence of her ability to provide proper care and custody, but is not determinative. See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003)

⁴ We note, however, that in a report dated May 1, 2002, Bartz recommended that the children be considered for adoption by the current foster parents.

led to adjudication continued to exist and were not likely to be rectified within a reasonable time, MCL 712A.19b(3)(c)(i), that respondent failed to provide proper care or custody for her children and could not reasonably be expected to do so within a reasonable time, MCL 712A.19b(3)(g), and that it was reasonably likely that the children would be harmed if returned to respondent's custody, MCL 712A.19b(3)(j).

We also conclude that the trial court did not clearly err by finding that termination was not clearly contrary to the best interests of the children under the circumstances. MCL 712A.19b(5). The trial court decided that termination of respondent's parental rights was actually in the children's best interests, and the fact that respondent was not yet able to properly parent them and protect them supported that decision.

We find no merit to respondent's contention that the trial court improperly admitted Dr. Simmons' psychological report and testimony because it was based on an examination from one year and one half prior to the pertinent proceedings. Pursuant to MCR 3.973(E)(2), "[a]ll relevant and material evidence, including oral and written reports," is admissible at the dispositional hearing. The Michigan Rules of Evidence and most privileges do not apply. MCR 3.973(E)(1); *In re Gilliam*, 241 Mich App 133, 136-137; 613 NW2d 748 (2000). Admission and exclusion of evidence are generally within the sound discretion of the trial court. *People v Manser*, 250 Mich App 21, 31; 645 NW2d 65 (2002). Errors in admission or exclusion of evidence are ordinarily not cause for reversal unless such would be inconsistent with substantial justice. MCR 2.613(A); *Ferguson v Delaware International Speedway*, 164 Mich App 283, 290; 416 NW2d 415 (1987). The trial court did not abuse its discretion in admitting the reports and testimony of Dr. Simmons. Although Dr. Simmons' examinations occurred some sixteen months before the termination hearing, the reports and testimony were still relevant and material to the issues in the case and no abuse of discretion occurred.

Lastly, the trial court did not abuse its discretion in allowing the prosecution to introduce new subjects on redirect examination. See MCR 2.613(A); *Manser, supra* at 31; *Ferguson, supra* at 290. Respondent correctly argues that the bicycle issue was beyond the scope of direct and cross-examination of Marietti. However, several other witnesses had testified concerning the bicycle incident and, thus, there was no unfair surprise or prejudice to allow the FIA to go into this subject on redirect with Marietti.

Further, there was no error requiring reversal in the trial court's extending the questioning of Marietti to the issue of leaving the children with Bill Slyfield. This issue was relevant, and Marietti discussed it with respondent. The dispositional hearing is not controlled by rigid evidentiary rules, and is more in the nature of a search for truth. The trial court acted well within the bounds of its discretion.

Affirmed.

/s/ Kathleen Jansen
/s/ Jane E. Markey
/s/ Hilda R. Gage