

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RAYNA BELLAMY, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RAYMOND BELLAMY,

Respondent-Appellant,

and

TWILA BELLAMY,

Respondent.

UNPUBLISHED

August 24, 2004

No. 251344

Wayne Circuit Court

Family Division

LC No. 02-413509

Before: Neff, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order taking jurisdiction of the minor child under MCL 712A.2(b) following a jury trial. We affirm.

This case came to the attention of the Family Independence Agency when the minor child, while hospitalized following an acute psychotic episode, disclosed that respondent-appellant had sexually abused her from the age of eight. Over the objection of respondent-appellant's counsel, the trial court admitted medical records of the minor child's hospitalization containing the hearsay statements of the child as well as testimony of her treating psychiatrist, Dr. Kim, recounting disclosures that the minor child made to him. Respondent-appellant contends on appeal that the statements of the child constituted inadmissible hearsay. We disagree.

In *Merrow v Bofferding*, 458 Mich 617, 626-627; 581 NW2d 696 (1998), the Supreme Court concluded that medical records kept in the regular course of business by a hospital were admissible under MRE 803(6). Similarly the medical records in this matter, consisting of daily chart notes, were admissible under the business records exception to the general exclusion of hearsay evidence. However, as the *Merrow* Court noted, where the medical records contain a

contested hearsay statement, that statement must also be admissible under a hearsay exception unless it qualifies as nonhearsay.¹ *Id.* at 627. In this case, we conclude that the hearsay statements found within the medical records as well as those testified to by Dr. Kim were admissible under MRE 803(4), the medical record exception. *Id.* at 628.

MRE 803(4) allows for the admission of “[s]tatements made for purposes of medical treatment or medical diagnosis in connection with treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably necessary to such diagnosis and treatment.” The supporting rationale for this hearsay exception is “(1) the self-interested motivation to speak the truth to treating physicians in order to receive proper medical care, and (2) the reasonable necessity of the statement to the diagnosis and treatment of the patient.” *Merrow, supra* at 629, quoting *Solomon v Shuell*, 435 Mich 104, 119; 457 NW2d 669 (1990).

In *People v Meeboer (After Remand)*, 439 Mich 310, 322, 330; 484 NW2d 621 (1992), the Supreme Court held that, given adequate indicia of trustworthiness, statements disclosing the identity of a sexual abuser to medical health care providers can be admissible under MRE 803(4). The Court enumerated various factors that may relate to the trustworthiness of a statement. *Id.* at 323-325. Under the analysis outlined in *Meeboer*, the spontaneity and consistent repetition of the minor child’s allegations in the instant case are indicators of their trustworthiness. *Id.* at 323. The only factor arguably weighing against trustworthiness is that the disclosures were made relatively shortly following an acute psychotic episode and during the child’s psychiatric hospitalization. However, Dr. Kim indicated that the statements were made as the minor child began to improve and her reality testing became better. Indeed, this timing may indicate trustworthiness because the initial disclosures followed relatively soon after an acute and traumatic episode and were made in a therapeutic environment that the minor may have perceived as safe. We note particularly that the statements preceded any litigation or indeed any awareness by the authorities of alleged sexual abuse.² Moreover, the minor child repeatedly asked those to whom she disclosed the abuse to tell no one and repeatedly indicated that she did not want to get anyone in trouble, reflecting the absence of any motive to fabricate. Considering the totality of the circumstances as the Court in *Meeboer* instructed, *id.* at 324, we conclude that the statements bear sufficient indicia of trustworthiness for admission under MRE 803 (4).

¹ The exception for records of regularly conducted activity can itself justify admission of a hearsay statement contained in a business record if the source of the statement is also acting within the course of business. *Merrow, supra* at 627, n 8.

² These factors distinguish the disclosures of the minor child in this case from those made in *People v Lalone*, 432 Mich 103, 115; 437 NW2d 611 (1989), where the disclosures of the identity of the perpetrator of sexual abuse were made in the course of a psychological examination after an investigation was underway, and the Supreme Court concluded that the statements were insufficiently reliable for admission under MRE 803(4).

Further, the statements were reasonably necessary for the minor child's diagnosis and treatment. The *Meeboer* Court noted that the identification of a sexual abuser "can be as important to the health of the child as treatment of the physical injuries that are apparent to the physician." *Id.* at 328. Furthermore, the Court recognized the "psychological trauma experienced by a child who is sexually abused" as an area requiring diagnosis and treatment. *Id.* at 329. In the present case, the revelations of prolonged sexual abuse and concealment of such abuse preceding the minor child's psychotic episode were reasonably necessary to the diagnosis and treatment of the child's medical condition. Therefore, this information constituted relevant medical history under MRE 803(4), as well as possibly relating the external source of the child's medical condition. *Id.* at 330. We thus conclude that the trial court did not abuse its discretion by admitting the minor child's statements contained in the medical records of her hospitalization and in the testimony of Dr. Kim.

Respondent-appellant also challenges the sufficiency of the evidence to establish a statutory ground allowing the court to exercise jurisdiction over the minor child. In order to acquire jurisdiction over a minor, the trier of fact must determine by a preponderance of the evidence that the child comes within the statutory terms set forth in MCL 712A.2(b). *In re SR*, 229 Mich App 310, 314; 581 NW2d 291 (1998). We review the factfinder's determination for clear error, according deference to the special opportunity of the trier of fact to judge the credibility of the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re SR*, *supra* at 314-315.

The jury did not clearly err in finding that the conditions for jurisdiction over the minor child were established by a preponderance of the evidence. The factual basis upon which the petitioner sought the jurisdiction of the court was the alleged sexual abuse of the minor child by respondent-appellant. The medical records and the testimony of Dr. Kim reflected sexual abuse of the minor child by respondent-appellant from the age of eight until shortly before her hospital admission.³ Other evidence of respondent-appellant's inappropriate conduct during the child's hospitalization lent further credibility to the disclosures of sexual abuse.

Respondent-appellant notes some inconsistencies in the minor child's reports and relies upon his own testimony that there was no sexual abuse. However, the trier of fact had the opportunity to judge the credibility of respondent-appellant as well as the other witnesses, and we accord great deference to the jury's assessment of credibility. *In re Miller*, *supra* at 337.

Respondent-appellant also notes that the minor child recanted allegations of sexual abuse. This occurred on the first day of trial out of the presence of the jury and is not part of the evidence considered by the jury. We note that respondent-appellant was advised that the child had recanted the allegations and was given the opportunity to call her as a witness, but declined to do so. The evidence presented to the jury was sufficient to allow the jury to conclude by a preponderance of the evidence that respondent-appellant sexually abused the minor child. The jury did not clearly err in finding jurisdiction under MCL 712A.2(b)(1), (2).

³ The minor child had her fourteenth birthday during her hospitalization.

Affirmed.

/s/ Janet T. Neff

/s/ Michael R. Smolenski

/s/ Brian K. Zahra