

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of TAYLOR VONEITZEN and  
KELSEY VONEITZEN, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellant,

v

BRIAN VONEITZEN and TAMMY SCHATZER,

Respondents-Appellees.

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UNPUBLISHED  
September 28, 2004

No. 247427  
Bay Circuit Court  
Family Division  
LC No. 02-007620-NA

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

MEMORANDUM.

Petitioner appeals as of right the order dismissing the petition after a jury finding of no jurisdiction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, petitioner argues that the trial court erred in granting respondents' motion in limine to exclude evidence that the grandfather exposed the children to pornography. Petitioner asserts that the evidence was admissible under MCR 5.972(C)(2), which provided:

A statement made by a child under ten years of age describing an act of child abuse as defined in section 2(c) of the child protection law, MCL 722.622(c) ..., performed with or on the child, not otherwise admissible under an exception to the hearsay rule, may be admitted into evidence at the trial if the court has found, in a hearing held prior to trial, that 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.

“Circumstances indicating the reliability of a hearsay statement may include spontaneity and consistent repetition, the mental state of the declarant, use of terminology unexpected of a child of a similar age, and lack of motive to fabricate.” *In re Brimer*, 191 Mich App 401, 405; 478 NW2d 689 (1991). Whether particular guarantees of trustworthiness are present depends on the totality of the circumstances. *Id.*

Here, the trial court did not decide the issue as an application of a hearsay exception, but as a question of relevance. MRE 403 provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

A trial court's decision to exclude evidence under MRE 401 and 403 is reviewed for abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995).

There is no showing that the trial court abused its discretion in excluding the evidence. The allegations only concerned the children's grandfather, and there is no indication that respondents were involved. Absent some evidence of parental involvement, the court could readily find that respondents would be unfairly prejudiced by the admission of evidence of actions for which they were not responsible.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Christopher M. Murray  
/s/ Karen M. Fort Hood