STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CATARINA TWAROZYNSKI, MAKAYLA TWAROZYNSKI, LINDSAY LEMMER, and ROSS KEITH LEMMER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NICOLE LEMMER,

Respondent-Appellant,

and

ROSS LEMMER,

Respondent.

UNPUBLISHED
November 27, 2007

No. 277702
Bay Circuit Court
Family Division
LC No. 06-009182-NA

In the Matter of LINDSAY LEMMER and ROSS KEITH LEMMER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROSS LEMMER,

Respondent-Appellant,

and

NICOLE LEMMER,

Respondent.

No. 277703
Bay Circuit Court
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LC No. 06-009182-NA

Before: Donofrio, P.J., and Hoekstra and Markey, JJ.

PER CURIAM

In these consolidated appeals, the trial court terminated the respondents' parental rights to their children Lindsay Lemmer and Ross Keith Lemmer. Respondent mother also lost her parental rights to two other children, Catarina Twarozynski and Makayla Twarozynski. The court terminated father's parental rights pursuant to MCL 712A.19b(3)(b)(i), (j), and (k)(ii), and mother's parental rights pursuant to MCL 712A.19b(3)(b)(ii), (c)(i), and (j). We affirm.

The trial court did not clearly err by finding at least one statutory ground for termination of respondents' parental rights was established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 350, 356-357; 612 NW2d 407 (2000). The respondents' challenge to the sufficiency of the evidence for the termination of their parental rights is wholly dependent on their contention that the trial court clearly erred by crediting the testimony of Catarina that respondent father had sexually abused her on two occasions. But when applying the clearly erroneous standard of review, this Court accords deference to the trial court's assessment of witness credibility. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court discussed the credibility of the child's testimony at some length. The court noted that the child has never recanted her allegations although she has had ample opportunity to do so. The court noted the testimony of petitioner's expert on forensic interviewing and the dynamics of child sexual abuse that if a child is making false allegations, normally she will recant by the time she is interviewed forensically. The trial court found that the "core description of sexual abuse remain[ed] consistent" despite minor inconsistencies concerning time, date, what the child was wearing, and time of day. We are not persuaded that the child's failure to report penetration at the initial (forensic) interview, and her sometimes differing subsequent accounts of which incidents involved penetration and of the depth of penetration, indicate a lack of credibility. Petitioner's expert witness, Catherine Connell, testified that the majority of research indicates that disclosure is a process. The fact that a child may not disclose everything in the first interview does not mean that subsequent disclosures are not reliable. Also, Ms. Connell testified that in her previous testimony the child had been asked some "awful" questions and this was why things were so confusing for her. A child's description of the depth of penetration, according to Ms. Connell, is not really significant. The record before us supplies no reason to discount the trial court's carefully considered judgment concerning Catarina's credibility, and we decline to do so.[1]

[1] Respondent father also argues that the trial court should not have believed the testimony of Ms. Osier, the school secretary, who saw Catarina for ten or fifteen minutes two or three times per week over three years, over that of Ms. Gillette, a special education director, who saw her approximately two hours per day in first through fourth grades. Ms. Osier found the child truthful and helpful, while Ms. Gillette described her as chronically untruthful. Again, the trial court's credibility determination is entitled to deference. *In re Miller, supra* at 337. It should be

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This conclusion is only underscored by several statement respondents made that were frankly incredible. For example, both respondents testified that in their six years of marriage, Catarina was never left alone with respondent father. Respondent mother testified that she moved in with her own parents on several occasions because of their threats. A more plausible explanation is found in record evidence of domestic violence between respondents and respondent father's abusive behavior, including degrading and foul language, pushing and shoving, and throwing food. The record convinces us that the trial court did not clearly err when it found as fact that respondent father sexually abused Catarina with fondling and attempts at penetration digitally and with his penis. Given that finding, termination of respondent father's parental rights under MCL 712A.19b(b)(i) and (k)(ii) was clearly warranted.

We conclude that the trial court clearly erred by terminating respondent mother's parental rights pursuant to MCL 712A.19b(3)(b)(ii) because the record does not establish that respondent mother "had the opportunity to prevent the . . . sexual abuse." *Id.* This does not alter the outcome of the case, however, because once a single ground for termination is established, termination is required unless it would be clearly contrary to the best interests of the child. MCL 712A.19b(3), (5); *In re Trejo*, 350, 354. The record amply supports the trial court's termination of the parental rights of respondent mother pursuant to MCL 712A.19b(3)(c)(i). The primary condition of adjudication with respect to respondent mother was her failure to protect her children after father's abuse was disclosed to her. Respondent's therapist testified that she refused to consider the remote possibility that the allegations were true. When asked to put herself in Catarina's shoes, she had no empathy or understanding. The foster care worker similarly testified that respondent mother was adamant that the alleged sexual abuse did not happen. She would simply assert respondent father's innocence then just "tune out." Throughout this case, respondent mother has chosen to remain loyal to respondent father over her children. She was ordered not to contact respondent father, but she did and lost the ability to visit the children. Most tellingly, respondent mother testified that if Makayla, whom she described as "well natured" and truthful, stated that respondent father had molested her, she would "do a little investigating," the same as she had done with Catarina. Respondent mother's investigation concerning Catarina consisted of asking her at the initial disclosure when, how, and where the touching had occurred, then apparently abandoning the subject when the child could not answer. It should be noted that at respondent father's criminal trial respondent mother testified that she asked the child no questions after the initial disclosure. Respondent mother's inability to protect the children is reflected in her continuing to live with respondent father and by her testimony that she felt Catarina and respondent father could live in the same house. This evidence clearly indicates that the conditions of adjudication concerning respondent mother continued to exist and that there was no reasonable likelihood that respondent's refusal or

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noted that Ms. Gillette's husband is a first cousin to the mother of respondent father. Ms. Gillette's impression that the family was close and loving might also reveal a lack of partiality or discernment given other evidence that respondent father was verbally abusive to both Catarina and respondent mother, that the respondents had a history of domestic violence, and that respondent mother and the children had moved from the family home at least three times before these proceedings began.

inability to protect the children would be rectified within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i).

The trial court did not clearly err by finding with respect to both respondents that the children would be harmed if returned to their care. MCL 712A.19b(3)(j). Various cases recognize that "how a parent treats one child is certainly probative of how that parent may treat other children." *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995). The trial court was therefore justified in concluding that there was a reasonable likelihood that Lindsay and Ross would be harmed if returned to the care of respondent father. As for respondent mother, the same evidence demonstrating that there is no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the ages of the children, MCL 712A.19b(3)(c)(i), equally indicates that there is a reasonable likelihood that the children would be harmed if returned to her care, MCL 712A.19b(3)(j).

Finally, the trial court did not clearly err by finding that termination of the parental rights of respondents was not clearly contrary to the best interests of the children. MCL 712A.19b(5). Respondent mother has shown a complete lack of either inclination or ability to protect the minor children. She continues to live with respondent father and to disbelieve the allegations of sexual abuse. Catarina and Makayla are living with their father, Michael Twarozynski, and doing well. Lindsay and Ross are living with their maternal grandmother and also doing well. By continuing to associate with respondent father during these proceedings, respondent mother effectively abandoned her children. She has not been allowed to visit them since June 2006 because of her continued contact with respondent father. Respondent father, for his part, has never contacted the foster care worker and, to her knowledge, has never provided money, clothing, or presents for the children. Most importantly, respondent father has sexually abused a sibling of his children. Patently, he is neither a safe nor appropriate caregiver. We are left with no impression that the trial court made a mistake by finding that termination was not clearly contrary to the best interests of the children. *In re Terry*, 244 Mich App 14, 22; 610 NW2d 563 (2000).

We affirm.

/s/ Patrick M. Donofrio
/s/ Joel P. Hoekstra
/s/ Jane E. Markey