STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of HEND I. AL-MANASIR, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ABRAHAM BEN-ABBAD,

Respondent-Appellant.

UNPUBLISHED
June 3, 2008

No. 280771
Wayne Circuit Court
Family Division
LC No. 06-457547

Before: Servitto, P.J., and Cavanagh and Kelly, JJ.

PER CURIAM.

Respondent appeals as of right from a trial court order placing his minor child in the temporary wardship of the court pursuant to MCL 712A.2(b)(1) and (2).[1] Because respondent was not deprived of due process, there was no improper vouching testimony that requires reversal, and a preponderance of the evidence supported a finding that the child came within the statutory terms set forth in MCL 712A.2, we affirm.

Respondent asserts on appeal that petitioner did not employ fundamentally fair procedures in the removal of the child from his home, thus depriving him of due process. In child protective proceedings, this Court has applied the balancing test set forth in *Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed2d 18 (1976), to test the constitutional sufficiency of a given procedure:

> Identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the

[1] The child was already under the jurisdiction of the Wayne Circuit Court pursuant to a custody order arising from the divorce of the parents. The child's mother was a respondent in the trial court, but she has not appealed the adjudication order and is not a party to this appeal.

> additional or substitute requirement would entail. [*In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993); *In re AMB*, 248 Mich App 144, 209; 640 NW2d 262 (2001).]

This Court has explained that, "[i]n the adjudicative phase of a child protective proceeding, the parent's liberty interest at stake is the interest in managing his children, and the procedures used in such proceedings protect the parent from the risk of being erroneously deprived of this interest." *In re MU*, 264 Mich App 270, 281; 690 NW2d 495 (2004). The governmental interest at stake is the welfare of the child, "which coincides with the child's interest of being free from an abusive environment." *Id.*

Balancing the liberty interest of respondent against the state's interest in protecting the child, we conclude that the procedures employed were sufficient to protect respondent from an erroneous deprivation. True, only one telephone call was made to respondent to ensure his presence at an August 3, 2006 team decision-making meeting and the telephone call was placed less than one hour before the meeting was to take place. However, the child protective services worker testified that he attempted to notify respondent as soon as he knew when the meeting would occur. Respondent father did appear at the preliminary hearing several hours later on the same day, with counsel, and, notably, waived probable cause at the preliminary hearing and indicated that he had no objection to the child being placed with her mother for the time being. Moreover, given the allegations of severe and ongoing abuse and an existing court order requiring the child to return to respondent's custody in the beginning of August 2006, prompt action was necessary to protect the child. Under these circumstances, we perceive no due process deprivation in the initial removal of the child.

Respondent also argues that the proceedings were infected with anti-Islamic bias. This contention finds no support in the record. We reject respondent's contention that this is really a custody dispute between the parents and are troubled by the original trial judge's conclusion to that effect despite the petition for protective custody alleging severe and ongoing abuse, for which probable cause had been found.

We are also not persuaded that respondent was denied due process by being deprived of visits. As this Court noted in *In re MU, supra* at 282, the welfare of the child "is of the utmost importance in these proceedings" and "the children's interest in maintaining a relationship with their father exists only to the extent that it would not be harmful to them." *Id.* Supervised visits for respondent were ordered at the preliminary hearing. At a pretrial hearing on September 7, 2006, petitioner indicated that it was making visits available, but the child, then almost 13 years old, was choosing not to come and no one was forcing her to come. The referee did not act on that issue because a judge demand had been made. The original trial court judge then ordered that the child visit respondent father at his home for the Muslim Eid dinner, accompanied by her therapist and foster care worker. This visit did not take place, and the original judge recused himself shortly thereafter. The second judge advised, shortly after her assignment to the case, that as a rule she would not force teenagers to visit if they did not wish to do so, citing the mental and physical safety of the child. The court then suspended visitation based on the allegations in the petition, pending an evidentiary hearing to determine the best interests of the child in this regard. Several weeks later, respondent waived the evidentiary hearing and stipulated to reinstatement of his supervised parenting time, to be provided by the child's therapist if the therapist believed it was in the best interest of the child and the child wished to see her father.

Clearly, there was a real issue with regard to whether visits would be harmful to the child, and the trial court acted reasonably to balance the liberty interest of respondent father with the governmental interest in this instance.

Respondent also claims a denial of due process in the trial court's denial of his request that the child undergo a psychological evaluation by a psychologist familiar with parental alienation syndrome. Respondent's request for the additional evaluation was based on the erroneous contention that a second evaluation ordered by the trial court in October 2006 had not taken place. That evaluation, by Dr. Trudy Hale, had taken place on January 8, 2007. Further, the trial court's rationale for denying respondent father's motion for a psychological evaluation by an expert familiar with parental alienation syndrome was to spare the child the experience of a third psychological examination. Under these circumstances, it does not appear that respondent's ability to present a defense was significantly impaired or that the likelihood of an erroneous adjudication was increased appreciably, if at all. In contrast, the governmental interest in protecting the welfare of minor child, which is of the utmost importance in these proceedings, *In re MU, supra* at 282, would be significantly impaired if respondent had been allowed to cause a third evaluation of the child without regard to her mental health and well-being. We conclude that respondent was not denied due process by the trial court's ruling.

Respondent also asserts that he was denied due process by the trial court's ruling allowing the child to testify in chambers with the parties listening over a speaker. In child protective proceedings, "due process often requires confrontation and cross-examination, [but] these are not absolute requirements." *In re Brock, supra* at 109.[2] The balancing test set forth in *Mathews, supra* at 335, suggests that the procedure used in the trial court was constitutionally sufficient. It appears unlikely that the risk to respondent father of an erroneous deprivation of his liberty interest in the management of the child was significantly increased by his inability to view the minor child as she testified. Respondent's attorney was present while the child testified in chambers, was allowed to confer with respondent before cross-examination, and engaged in full cross-examination of the child. On the other hand, the interest of the government in protecting the welfare of the child would be significantly burdened if it were not allowed to exercise some judgment concerning the manner in which testimony is taken where a child is very fearful of the parent, as in this case. We are convinced that respondent's due process rights were adequately protected by the procedure used in this instance.

Respondent next asserts that the psychologist who evaluated the minor child was allowed to improperly vouch for her credibility. Because respondent did not object to the testimony that is challenged on appeal, the issue is reviewed for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Our Supreme Court and this Court have held that an expert may not vouch for the veracity of the complainant/victim. *People v Peterson*, 450 Mich 349, 352; 537 NW2d 857 (1995); *People v Dobek*, 274 Mich App 58, 71; 732 NW2d 546 (2007); *In re Brimer*, 191 Mich App 401, 407-408; 478 NW2d 689 (1991). Our examination of the challenged testimony reveals that Dr. Hale did not vouch for the credibility of the witness, but

[2] The confrontation clause of the Sixth Amendment does not apply to child protective proceedings. *In re Brock, supra* at 108.

merely related the allegations that the child made to her. Indeed, when Dr. Hale was expressly asked to comment on the child's credibility, the court intervened to stop the line of questioning, stating that the court would make the credibility determination. Respondent's claim of improper vouching is not supported by the record.

Respondent finally challenges the sufficiency of the evidence to establish 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 within the statutory terms set forth in MCL 712A.2. *In re Ramsey*, 229 Mich App 310, 314; 581 NW2d 291 comes (1998). The factfinder's determination is reviewed for clear error. *Id.* at 314-315.

The trial court found by a preponderance of the evidence that the child had been subjected to a substantial risk of harm to her mental well-being, and that the father's home or environment was unfit for the child to live in due to neglect, criminality, or cruelty. MCL 712A.2(b)(1), (2). The trial court's finding was supported by the child's testimony that her father would regularly hit her with objects such as sticks, spatulas, or wire hangers, as well as the corroborating medical evidence of healed scars on her upper arm and on her right Achilles tendon, which she attributed to being hit with a wire hanger. The trial court's findings were further supported by a psychological evaluation of the child, which concluded with diagnoses of posttraumatic stress disorder and physical abuse of child.

This case hinged on witness credibility, as the testimony of respondent father was irreconcilably opposed to that of the child. In its written opinion, the trial court credited the testimony of the child, whom it described as "an intelligent young lady, who appeared credible, candid and honest." The trial court also noted that "[h]er fear of her father was palpable during her testimony because she was often visibly distraught when she described several incidents of being hit or threatened with harm against herself of her mother. The court vividly recalls that when she simply heard her father's voice over the speakerphone, [the child] started trembling." The court found respondent father's credibility suspect, noting that he had caused a note to be delivered to a sequestered witness during trial and "appeared controlling and domineering throughout the extensive court hearings." The trial court's credibility determination is subject to deference by this Court, *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), and the record supplies no reason to doubt the trial court's judgment in this regard.

Affirmed.

/s/ Deborah A. Servitto
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly