

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of EDEN PAUL SZALMA and
COLE WILLIAM SZALMA, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GEORGE SZALMA,

Respondent-Appellant.

UNPUBLISHED

July 14, 2009

No. 288567

Wayne Circuit Court

Family Division

LC No. 07-471264-NA

Before: Owens, P.J., and Servitto and Gleicher, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights under MCL 712A.19b(3)(b)(i), (j), and (k)(ii). We affirm.

Petitioner sought termination of respondent's parental rights at the initial disposition. A tender years hearing was held regarding Eden's out-of-court statements that respondent sexually abused him. The trial court found that Eden's statements to his mother, two doctors, and the Care House interviewer were admissible under MCR 3.972(C)(2). Following a trial, the trial court found jurisdiction and terminated respondent's parental rights.

Respondent first argues that the trial court clearly erred in finding jurisdiction over the children. A trial court's decision regarding jurisdiction is reviewed for clear error in light of the trial court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). Additionally, the trial court's findings of fact may not be set aside unless they are clearly erroneous, and this Court shall give regard to the trial court's special opportunity to judge the credibility of witnesses who appeared before it. MCR 2.613(C).

For a trial court to have jurisdiction over a child, the fact finder must find by a preponderance of the evidence that the child comes within MCL 712A.2(b). *In re MU*, 264 Mich App 270, 278; 690 NW2d 495 (2004). The trial court found that jurisdiction was established under MCL 712A.2(b)(1) and (2), based on its finding that respondent sexually abused Eden. Respondent centers his argument against jurisdiction around section (b)(2), arguing that it could not be established because the children did not reside in his home and their home with respondent mother was appropriate. MCL 712A.2(b)(2) provides that a child comes within the

jurisdiction of the court if that child's " . . . home or environment, . . . is an unfit place for the juvenile to live in." [emphasis supplied]. While the children's home with their mother was appropriate, the children's environment while with their father during parenting time was properly found to be unfit by the trial court. In finding that section (b)(1) was established, the trial court specifically found that the children were subject to a substantial risk of harm to their mental well-being, based on respondent's sexual abuse of Eden. These findings were not clearly erroneous, and the trial court properly found jurisdiction under section (b)(1) and (2).

Respondent next argues that the trial court erred by denying his subpoena to have Eden testify at trial. Respondent is correct in stating that MCR 3.972(C)(2) did not preclude his calling Eden as a witness. However, the record reflects that respondent never called Eden as a witness, and the trial court did not rule on this issue. Therefore, this Court cannot find error.

Respondent also argues that the trial court clearly erred in finding that the statutory bases for termination were established by clear and convincing evidence. This Court reviews decisions terminating parental rights for clear error. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 357; 612 NW2d 407 (2000). The trial court did not clearly err in finding that sections (b)(i) and (j) were established by clear and convincing evidence. The trial court, which had the best opportunity to judge the credibility of witnesses and the trustworthiness of the child hearsay statements, found that petitioner established that respondent sexually abused Eden. This Court cannot say that the trial court's findings were clear error. Further, we find no merit in respondent's argument that, even if respondent sexually abused Eden, sections (b)(i) and (j) are inapplicable because Eden would never live in respondent's home. Both sections of the statute specify *if* the child is returned to the parent's home. The trial court did not clearly err in finding that, *if* Eden and Cole were placed in respondent's home, there was a reasonable likelihood that they would be harmed.

Regarding section (k)(ii), although Eden told the witnesses that testified that it felt like his father put his whole hand in his butt and moved it back and forth, he also said that he was bent over, could not see what respondent was doing, and that it was wet afterward. Based on these statements, the trial court did not clearly err in finding that respondent penetrated Eden's rectum with his penis. Further, penetration by hand or finger would be sufficient to establish section (k)(ii).

Finally, respondent argues that the trial court clearly erred in finding that termination of his parental rights was in the children's best interests. MCL 712A.19b(5). Although respondent and the children may have shared a bond at one point, the trial court did not clearly err in finding that, because of respondent's sexual abuse of Eden, termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Donald S. Owens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher