

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
May 10, 2012

In the Matter of N. BRITTON, Minor

No. 306495
Wayne Circuit Court
Family Division
LC No. 11-499515-NA

In the Matter of K. BRITTON, Minor

No. 306498
Wayne Circuit Court
Family Division
LC No. 11-499514-NA

Before: DONOFRIO, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court's order terminating his parental rights to the two minor children, "NB" and "KB," under MCL 712A.19b(3)(b)(i) (parent's act caused physical injury or abuse and children will be harmed if returned to parent's home), (g) (failure to provide proper care and custody), (j) (children will be harmed if returned to parent's home), and (k)(iii) (parent abused child or sibling and abuse included battery, torture or other severe physical abuse). Because the trial court did not abuse its discretion by admitting NB's statements to the Children's Protective Services (CPS) investigator, and termination of respondent's parental rights was in the children's best interests, we affirm.

The children were brought to the court's attention after NB arrived at the hospital with first-degree frostbite on the bottoms of both feet. NB reported to CPS investigator Kim Hoskins that she had gotten into trouble at school, which resulted in respondent waking her up in the middle of the night and forcing her to go outside. Respondent told NB to put on a robe and sneakers, and they went outside, where respondent began shoveling snow. Respondent became upset and pushed NB into a snow bank. He then made her take off her robe and shoes and left her outside for approximately 20 minutes wearing only her pajamas and socks despite the below-freezing temperature. When respondent came back outside, he threw a pitcher of cold water on NB before allowing her to go inside the house. NB also told Hoskins about other instances of abuse, including respondent's method of discipline in which he made NB and her brothers take cold showers and baths. NB further stated that, on one occasion, respondent made her take off

all her clothes except her socks and stand in the garage in the winter while he threw cold water on her and made her younger brothers throw cold water on her.

During respondent's first discussion with Hoskins, he admitted most of the allegations regarding the frostbite incident, but maintained that it was breezy and not cold that night.¹ Respondent denied forcing NB to stand naked in the garage. Respondent had two previous child abuse substantiations involving NB's brother and stepbrother. One incident involved respondent whipping NB's brother, leaving marks. The other incident involved respondent placing NB's stepbrother's hand on a light bulb, causing a blister burn. Respondent was offered services after the previous incidents.

Respondent first argues that the trial court abused its discretion by admitting NB's statements to Hoskins under MCR 3.972. We review for an abuse of discretion a trial court's decision whether to admit evidence. *In re Archer*, 277 Mich App 71, 77; 744 NW2d 1 (2007). An abuse of discretion occurs when the trial court chooses an outcome outside the range of reasonable and principled outcomes. *In re Jones*, 286 Mich App 126, 130; 777 NW2d 728 (2009).

MCR 3.972(C)(2)(a) allows the statement of a child under the age of 10 to be admitted into evidence through the testimony of a person who heard the statement if it concerns "child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622(f), (j), (w), or (x)," and if the court determined in a pretrial hearing that "the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness." Here, NB's statements to Hoskins concerned child abuse as defined in MCL 722.622(f) ("Child abuse" means harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent") Respondent argues that the circumstances surrounding NB's statement did not provide adequate indicia of trustworthiness.

"The reliability of a statement depends on the totality of the circumstances surrounding the making of the statement." *In re Archer*, 277 Mich App at 82. Factors indicating the reliability of a statement include "spontaneity, 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." *Id.* Other indicia of trustworthiness are that the interviewer was trained and experienced in the state's forensic protocol and followed the protocol, that the child indicated that she was telling the truth, that there was no evidence of fabrication, and that the child had no motive to lie. *Id.* at 82-83.

In this case, Hoskins was extensively trained in the forensic interviewing protocol and she used the protocol when she interviewed NB. Hoskins interviewed NB outside her parents' presence and determined that the child understood the difference between the truth and a lie. NB

¹ Although NB reported that respondent had made her stand outside wearing only pajamas and socks, respondent told Hoskins that he left NB outside without a coat, shoes, or socks.

spontaneously told Hoskins about the frostbite incident, and her statement was clear and consistent with details displaying her complete recollection of events. NB cried when she told Hoskins about the incident, and there was no indication that NB was lying or had a motive to lie. Based on these circumstances, the trial court did not abuse its discretion by determining that there was adequate indicia of trustworthiness and admitting the statements.

Respondent argues that the trial court should not have admitted the statements because the interview was not video or audio taped and the court did not articulate its findings regarding the indicia of trustworthiness. MCR 3.972(C)(2), however, does not require that a statement be recorded or that the trial court articulate its reasoning. Further, all of the parties suggest that NB's statements to Hoskins were either bolstered or weakened by other testimony at the termination hearing. Although the trial court, in deciding whether to admit the statements, was limited to the evidence presented at the pretrial hearing, the court was free to consider other evidence in determining the weight to be given to NB's statements and whether petitioner established the statutory grounds for termination.

Respondent next argues that the trial court erred by determining that termination of his parental rights was in the children's best interests. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). We review for clear error the trial court's best-interest determination. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). A finding "is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

Although the trial court ordered a Clinic for Child Study evaluation to assist the court with its best-interest determination, respondent appeared 45 minutes late for the evaluation and then indicated that he had trust issues with Hoskins and was not comfortable sharing information about himself. He nevertheless indicated that he wanted to resume the peaceful atmosphere his family once had, that he would bend in any direction to make that happen, and that he loved his children immensely and missed them. Respondent did not testify at the termination hearing. Accordingly, there was little or no evidence of a positive bond between the children and respondent or of respondent's willingness to change his inappropriate disciplinary methods. Considering respondent's abuse of NB in this instance, his previous abuse of NB and her siblings, and his failure to change after twice being afforded services, the trial court did not clearly err by determining that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kathleen Jansen
/s/ Douglas B. Shapiro