

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL THOMAS PLUNKETT,

Defendant-Appellant.

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UNPUBLISHED

March 11, 1997

No. 179570

Monroe Circuit Court

LC No. 93-25735-FH

AFTER REMAND

Before: MacKenzie, P.J., and Jansen and T. R. Thomas\*, JJ.

PER CURIAM.

We remanded this case for the limited purpose of having the trial judge put his reasons on record for allowing the victim to testify via videotape. Having received a transcript of the trial court's fact-finding on this issue, we now address defendant's claim that he was denied his right of confrontation.

In order to justify the use of a closed-circuit television procedure that permits a child witness in a child abuse case to testify in the absence of face-to-face confrontation with the defendant, the trial court must determine whether use of the procedure is necessary to protect the welfare of the child witness who seeks to testify, find that the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant, and find that the emotional distress suffered by the child witness in the presence of the defendant would be more than *de minimis*, i.e., more than "mere nervousness or excitement or some reluctance to testify." *Maryland v Craig*, 497 US 836, 855-856; 110 S Ct 3157; 111 L Ed 2d 666 (1990), MCL 600.2163a; MSA 27A.2163a.

The trial court noted that the child victim's mother believed the victim would not be able to testify in the presence of the defendant (her father). The mother indicated that the child would likely "clam up and become very emotional" if forced to be in the same room with defendant. A counselor of the child victim testified that she saw the child on five occasions. On one occasion, the victim "refused to accept the fact that the Defendant would be in the courtroom while she testified." The victim insisted that her father would not be in the courtroom, that he would be in jail. When the possibility of placing

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\* Circuit judge, sitting on the Court of Appeals by assignment.

defendant behind a screen during the victim's testimony was brought up, the victim repeatedly insisted that the screen would not be high enough. The idea of making the screen taller only made the victim desire a complete wall between defendant and herself. The counselor believed that the victim would be too emotionally and psychologically upset and would be unable to tell her story if defendant were in the same room.

On the basis of this testimony, the trial court allowed the victim to testify via videotape. The witness was not bothered by the idea of appearing in the court generally, only when defendant was going to be in the same room. The emotional distress to which the witness would have been subjected was more than *de minimis*.

After our review, we are convinced that it was proper for the trial court to allow the child witness to testify via videotape, and that the requirements of *Craig, supra* were met.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Kathleen Jansen

/s/ Terrence R. Thomas