# STATE OF MICHIGAN

# COURT OF APPEALS

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In the Matter of ANTHONY LEWIS, CHRISTOPHER LEWIS, JEFFREY LEWIS AND SPENCER LEWIS, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MURLINE WILLIAMS,

Respondent-Appellant,

and

JETHRO LEWIS AND JOHN LEWIS,

Respondents.

UNPUBLISHED
June 29, 1999

No. 212787
Allegan Circuit Court
Family Division
LC No. 95-005318 NA

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JETHRO LEWIS,

Respondent-Appellant,

and

MURLINE WILLIAMS and JOHN LEWIS,

No. 212900
Allegan Circuit Court
Family Division
LC No. 95-005318 NA

Respondents.

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Before: Cavanagh, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Respondent Murline Williams appeals as of right from the family court order terminating her parental rights to her minor children Anthony, Christopher, Jeffrey, and Spencer pursuant to MCL 712A.19b(3)(b)(ii) [failure to protect children from physical or sexual abuse], (c)(i) [conditions that led to adjudication continue to exist and are not likely to be rectified within a reasonable time], (c)(ii) [other conditions exist that cause the children to come within the jurisdiction of the court and are not likely to be rectified within a reasonable time], and (g) [parent, without regard to intent, fails to provide proper care or custody for the children]; MSA 27.3178(598.19b)(3)(b)(ii), (c)(i), (c)(ii), and (g). Respondent Jethro Lewis appeals as of right from the family court order terminating his parental rights to Christopher, Jeffrey, and Spencer pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), and (g); MSA 27.3178(598.19b)(3), (c)(i), (c)(ii), and (g). We affirm.

Both respondents argue that the family court erred in admitting evidence of various out-of-court statements made by the children regarding acts of physical and sexual abuse committed against them by respondents. The decision to admit evidence at a termination hearing is reviewed for an abuse of discretion. *In re Hill*, 221 Mich App 683, 696; 562 NW2d 254 (1997).

We conclude that the family court did not abuse its discretion in admitting the children's statements. The nature and circumstances surrounding the statements provided adequate indicia of trustworthiness and there was sufficient corroborative evidence to justify admission of the statements pursuant to MCR 5.972(C)(2). Specifically, the sexual abuse statements were corroborated by the children's sexual knowledge and behavior, their fear of respondent Lewis, their aggressive behavior, and their consistent responses to play therapy games. The children's fear and aggressiveness, and Anthony's scars, are also corroborative of the statements of physical and emotional abuse. Although not all the statements were made spontaneously, they were repeated consistently and there was no apparent motive for the children to fabricate. See *In re Brimer*, 191 Mich App 401, 405-406; 478 NW2d 689 (1991).

Respondents also contend that the family court erred in admitting the preliminary hearing testimony of a deceased witness, Albert Thorne, at the termination hearing. We agree that the trial court abused its discretion in admitting the testimony. See *Hill*, *supra*. The record indicates that respondents were not present at the preliminary hearing because they had not been given proper notice. Respondents, who were not represented by counsel at that point, were therefore deprived of the opportunity to cross-examine Thorne, and no other party had a similar motive to explore the witness' motivation and potential bias. Thus, admission of the testimony was improper under MRE 804(b)(1). We are likewise not convinced that Thorne's testimony was admissible under MRE 803(24) or MRE 804(b)(6). Nonetheless, given the overwhelming weight of the properly admitted evidence, we

conclude that the error in admitting Thorne's preliminary hearing testimony was harmless. See *In re Snyder*, 223 Mich App 85, 92-93; 566 NW2d 18 (1997).

Finally, respondents assert that the family court erred in terminating their parental rights. We disagree. The family court did not clearly err in finding that §§ 19b(3)(b)(ii), (c)(ii), and (g) were established by clear and convincing evidence. See MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Furthermore, respondents failed to satisfy their burden of providing some evidence that termination of their parental rights was clearly not in the children's best interest. See MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Hilda R. Gage