STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CHELSIE PILARSKI, MERANDA PILARSKI and SHAWNA PILARSKI, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JENNIFER PILARSKI and GARY PILARSKI,

Respondents-Appellants.

UNPUBLISHED
December 28, 1999

Nos. 214488; 214516
Sanilac Circuit Court
Family Division
LC No. 97-032985 NA

Before: Neff, P.J., and Murphy and J.B.Sullivan*, JJ.

PER CURIAM.

In Docket No. 214488, respondent Jennifer Pilarski ("respondent-mother") appeals as of right from an order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii) and (g); MSA 27.3178(598.19b)(3)(b)(ii) and (g). In Docket No. 214516, respondent Gary Pilarski ("respondent-father") appeals by delayed leave granted from the same order that terminated his parental rights to the minor children under MCL 712A.19b(3)(b)(i); MSA 27.3178(598.19b)(3)(b)(i). We affirm.

Both respondents argue that the trial court erred in allowing three expert witnesses to provide testimony with regard to the credibility or truthfulness of the minor children's statements concerning sexual abuse, contrary to *People v Peterson*, 450 Mich 349; 537 NW2d 857 (1995), amended on other grounds 450 Mich 1212 (1995). We conclude that error requiring reversal has not been shown because the testimony was admitted for the limited purpose of establishing a foundation for the admission of the children's hearsay statements under MRE 803(4). Moreover, it is clear from the trial court's comments that the court was aware of the limited purpose of the experts' testimony, and also aware that, as the trier of fact, it was solely responsible not only for determining whether the children's

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

accounts of sexual abuse were credible but also that its decision was to be made uninfluenced by any experts' opinion regarding credibility.

Both respondents also argue that the trial court erred in admitting the children's hearsay statements under MRE 803(4), where those statements were made during psychological and sexual abuse evaluations. The trial court did not abuse its discretion in admitting the statements. *In re Hill*, 221 Mich App 683, 696; 562 NW2d 254 (1997). Petitioner properly established a foundation for the admission of the statements under *People v Meeboer (After Remand)*, 439 Mich 310, 324-326; 484 NW2d 621 (1992). Respondents primarily argue that the eighth factor set forth in *Meeboer*, regarding the type of examination performed, was not satisfied. However, we conclude that the testimony describing the nature and purpose of the examinations was sufficient to establish the trustworthiness of the children's statements, notwithstanding that they were made in the course of a psychological or sexual abuse evaluation. Compare *People v LaLone*, 432 Mich 103; 437 NW2d 611 (1989).

A review of the factors set forth in *Meeboer* reveals that, first, the children were able to demonstrate that they were mature enough to know the difference between a lie and the truth. Second, the statements were not elicited with leading questions. Third, the children used child-like phrases in describing the sexual abuse. Fourth, all of the expert witnesses were in agreement that the children demonstrated knowledge of sexual matters that was unusual for their ages. Fifth, the evaluations were initiated by petitioner for purposes of seeking treatment for the children, as well as for determining what occurred. Sixth, the timing of the evaluations appeared to be close enough to the sexual assaults to indicate reliability in the statements. Seventh, the timing of the examinations was not close to the dates of the termination proceeding. In fact, no request for termination was pending at the time of the evaluations. The eighth factor, as discussed above, was sufficiently established. Ninth, the children did not mistake the identity of the perpetrator. Tenth, there was no apparent reason or motive for the children to fabricate their statements of abuse at the time the statements were made. Finally, we note that physical corroborative evidence existed that both of the older children had been sexually penetrated.

The fact that the children had named other possible perpetrators did not preclude the court from determining that the statements in question were sufficiently trustworthy to be admitted under MRE 803(4). The children's statements were also properly admitted even if they had the effect of impeaching Chelsie's trial testimony, given that MRE 607 allows a party to impeach its own witnesses. Moreover, given Chelsie's age, petitioner was not required to follow the procedures set forth in MRE 613 for impeachment with a prior statement. Thus, considering the totality of the *Meeboer* factors, the trial court did not abuse its discretion in finding that a sufficient foundation was established for admission of the children's statements.

Next, respondents argue that they were denied due process because they were not allotted adequate funds to pay their expert witnesses to testify at trial. Respondents filed their initial motion for funds December 15, 1997, and the court awarded $1,000. Immediately prior to presenting their case at the termination hearing on March 25, 1998, respondents asked for additional funds, arguing that Sondra Hadaway, the children's counselor, refused to testify unless she was paid fifty dollars an hour for her testimony, and that Dr. Terry Campbell "will not return" to the court without more money. The

court denied respondents' request for additional funds because it had already awarded them $1,000 for expert witness fees, because Ms. Hadaway was under subpoena to testify and because it found no authority to award additional funds, even questioning the authority for the initial award.

In support of their claim, respondents rely on a criminal case, *In re Klevorn*, 185 Mich App 672, 678-679; 462 NW2d 175 (1990), wherein this Court held that the trial court abused its discretion by denying the defendant's motion to appoint an expert at public expense to counter the tests and conclusions of the prosecution's experts, and on a criminal statute, MCL 775.15; MSA 28.1252, which authorizes payment of the fees for an expert witness if a defendant can show "a nexus between the facts of the case and the need for an expert." *People v Jacobsen*, 448 Mich 639, 641; 532 NW2d 838 (1995).

We note that termination proceedings are civil in nature. *In re Brock*, 442 Mich 101, 107; 499 NW2d 752 (1993); *In re Sterling*, 162 Mich App 328, 341; 412 NW2d 284 (1987). Both court rule and statute provide for court-appointed counsel in termination proceedings. See MCR 5.915(B)(1), and see MCL 712A.17c(4)-(6); MSA 27.3178(598.17c(4)-(6). However, respondents have provided no authority, and we decline their invitation, to mandate expert witnesses at public expense in termination proceedings. Compare *Reist v Bay County Circuit Judge*, 396 Mich 326; 241 NW2d 55 (1976) (Opinion by Levin, J.). Moreover, respondents made no offer of proof as to what Dr. Campbell's testimony would provide. Even if we agreed that criminal law is dispositive of this issue, awarding fees based merely on speculation would have been an abuse of discretion. *Jacobsen, supra*. We do question, however, why the court did not enforce the subpoena under which Ms. Hadaway was to testify.

Respondent-mother's argument that she was unable to investigate the other children in the foster home due to a lack of funds is without merit because a protective order had been entered that prevented respondents from investigating the other children in the foster home. We also find no error with the trial court's refusal to grant respondents the right to have their own expert conduct a second physical examination because the initial examination was performed by an independent clinic.

Next, the trial court did not clearly err in finding that a statutory ground for termination was established by clear and convincing evidence with respect to respondent-mother. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). There was overwhelming evidence that the children were sexually abused in the family home, that respondent-mother was aware of the abuse, and that she failed to intervene to protect the children. This evidence supports the trial court's decision to terminate respondent-mother's parental rights under §§ 19b(3)(b)(ii) and (g). Because respondent-mother failed to show that termination of her parental rights was clearly not in the children's best interests, the trial court did not err in terminating her parental rights to the children. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 471-473; 564 NW2d 156 (1997).

The trial court also did not clearly err in finding that a statutory ground for termination was established by clear and convincing evidence with respect to respondent-father. MCR 5.974(I); *In re Miller, supra*. The overwhelming evidence indicating that the children were sexually abused by

respondent-father supports the court's decision to terminate his parental rights under § 19b(3)(b)(i). Further, any question as to whether respondent-father sexually abused the youngest child did not preclude termination of his parental rights to that child based on the sexual abuse to the two older children. See *In re Powers*, 208 Mich App 582; 528 NW2d 799 (1995). Respondent-father also failed to show that termination of his parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Hall-Smith, supra*. Therefore, the trial court did not err in terminating respondent-father's parental rights to the children.

Finally, respondent-father argues that the trial court erred when it suspended visitation with the minor children before the termination hearing. We are unable to conclude that the trial court abused its discretion. The court suspended visits after the allegations of sexual abuse surfaced. At the time visitation was suspended, both MCL 712A.18f(3)(e); MSA 27.3178(598.18f)(3)(e), and MCL 712A.13a(10); MSA 27.3178(598.13a)(10) granted parents of children under the court's jurisdiction the right to frequent parenting time or visits, unless harmful to the children. Under MCL 712A.13a(11); MSA 27.3178(598.13a)(11), the court was permitted to modify the initial service plan if it was in the children's best interests. See also MCR 5.965(C)(7) and (8). Thus, the trial court had the authority to suspend visits if it was in the children's best interests. The court's decision to suspend visitation is supported by the record. We find no record support for respondent-father's claim that the purpose behind the suspension of visitation was to destroy his bond with the children.

Affirmed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Joseph B. Sullivan