STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DEANNA L. KORDONIS, MICHAEL A. KORDONIS, and DION EDWARD WOODS, JR., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TONYA LORRAINE KORDONIS, a/k/a TONYA LORRAINE BURKS,

Respondent-Appellant,

and

DION WOODS, SR.,

Respondent.

UNPUBLISHED
May 19, 2000

No. 217992
Wayne Circuit Court
Family Division
LC No. 96-338876

In the Matter of DEANNA L. KORDONIS, MICHAEL A. KORDONIS, and DION EDWARD WOODS, JR., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TONYA LORRAINE KORDONIS, a/k/a TONYA LORRAINE BURKS,

No. 218672
Wayne Circuit Court
Family Division
LC No. 96-338876

Respondent,

and

DION WOODS, SR.,

Respondent-Appellant.

Before: McDonald, P.J., and Gage and Talbot, JJ.

PER CURIAM.

In Docket No. 217992, respondent Tonya Kordonis, a/k/a Tonya Burks appeals as of right from the trial court's order terminating her parental rights to the three minor children. In Docket No. 218675, respondent Dion Woods, Sr. appeals by delayed leave granted from the same order terminating his parental rights to the minor child, Dion Woods, Jr. The order provided that respondents' parental rights were terminated pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(b)(i), (b)(ii), (c)(i), (g), and (j). We affirm.

Respondent mother argues that hearsay testimony regarding the children's statements of sexual abuse was improperly admitted under MCR 3.972(C)(2). We disagree. This Court reviews a trial court's decision whether to admit evidence for an abuse of discretion. *People v Smith*, 456 Mich 543, 549-550; 581 NW2d 654 (1998).

MCR 5.972(C)(2) provides that "[a] statement made by a child under ten years of age describing an act of child abuse as defined in . . . MCL 722.622(c); MSA 25.248(2)(c), performed with or on the child, not otherwise admissible under an exception to the hearsay rule, may be admitted into evidence at the trial if the court has found, in a hearing held prior to trial, that the nature and circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness, and that there is sufficient corroborative evidence of the act." The foundational requirements of the rule must be proven by a preponderance of the evidence and the rules of evidence do not apply to the determination of whether those requirements have been met. MRE 104(a); see also *In re Brock*, 193 Mich App 652, 669; 485 NW2d 110 (1992), rev'd on other grounds 442 Mich 101; 499 NW2d 752 (1993). In this case, it is undisputed that the alleged conduct qualifies as child abuse for purposes of MCL 722.622(c); MSA 25.248(2)(c), and that the alleged statements were not admissible under other exceptions to the hearsay rule. It is also undisputed that Michael was not under ten years of age when he made the statements of abuse and, therefore, his statements were not admissible as substantive evidence under MCR 5.972(C)(2). Only Deanna's statements concerning the alleged abuse "performed with or on" her were subject to admission as substantive evidence under the court rule.

After a thorough review, we conclude that the trial court did not abuse its discretion in admitting Deanna's statements describing acts of sexual abuse by both parents, and describing how she was forced to perform sexual acts with her brother Michael. The reliability of her statements was supported by her use of sexual terminology inappropriate for a six-year old child, her consistent repetition of her story to the foster mother and the therapist, the spontaneity of her initial statements, and the evidence that she was "totally petrified, cried, scared, shook [up]." See *In re Brimer*, 191 Mich App 401, 405; 478 NW2d 689 (1991); see also *In re Brock*, *supra* at 670. Further, Deanna's statements were corroborated by an incident of inappropriate sexual activity witnessed by the foster mother and by behavior that was consistent with sexual abuse. Consequently, Deanna's statements concerning the alleged abuse "performed with or on" her were properly admitted as substantive evidence pursuant to MCR 5.972(C)(2).[1]

Limiting our review to legally admissible evidence only, MCR 5.974(E); *In re Snyder*, 223 Mich App 85, 89-91; 566 NW2d 18 (1997), we conclude that the trial court did not clearly err in finding that §§ 19b(3)(b)(i), (b)(ii), (g) and (j) were each established by clear and convincing evidence with respect to both respondents. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Because only one statutory ground is required to terminate parental rights, *In re Hamlet (After Remand)*, 225 Mich App 505, 522; 571 NW2d 750 (1997), we need not decide whether termination was also warranted under § 19b(3)(c)(i). Further, both respondents failed to show that termination of their parental rights was clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Accordingly, the trial court did not err in terminating respondents' parental rights.

Affirmed.

/s/ Gary R. McDonald
/s/ Hilda R. Gage
/s/ Michael J. Talbot

[1] To the extent the trial court also admitted hearsay testimony regarding Michael's statements of abuse as substantive evidence, there is no indication that the court relied on those statements in support of the termination decision.