STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MCE and TCE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

DAVID EVANS,

Respondent-Appellant.

UNPUBLISHED
November 13, 2001

No. 231344
Oakland Circuit Court
Family Division
LC No. 00-635327-NA

Before: Holbrook, Jr., P.J., and Cavanagh and Gribbs,* JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating his parental rights to the minor children MCE (d/o/b 8/22/1996) and TCE (d/o/b 11/23/1998) pursuant to MCL 712A.19b(3)(j) (likelihood of harm to children if returned to parent). Respondent argues on appeal that the trial court erroneously admitted into evidence hearsay testimony of statements his three-year-old daughter, MCE, made regarding respondent's alleged sexual abuse of her. He also argues that there was not clear and convincing evidence of statutory grounds for termination, and that termination was not in the children's best interests. We affirm.

I

Respondent first argues that MCE's out of court statements should not have been admitted: specifically, that the family court made erroneous findings of fact in determining that MCE's statements were admissible under MCR 5.972(C)(2) and that the court made an error of law by allowing hearsay testimony of statements made by a child who was not competent to testify. In child protective proceedings, this Court reviews a family court's findings of fact for clear error. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Questions of law are reviewed de novo on appeal. *Jones v Slick*, 242 Mich App 715, 719; 619 NW2d 733 (2000).

In general, the Michigan Rules of Evidence, including the hearsay rules, apply at a trial to determine if the family court has jurisdiction over a child. MCR 5.972(C)(1); MRE 802, 803,

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

804. However, MRE 803A, which provides a "tender years" hearsay exception for a child's statements about sexual abuse, by its own terms applies only to criminal and delinquency proceedings. MCR 5.972(C)(2) provides a tender years exception for protective proceedings, stating:

> A statement made by a child under ten years of age describing an act of child abuse as defined in section 2(c) of the child protection law, MCL 722.622(c); MSA 25.248(2)(c), performed with or on the child, not otherwise admissible under and exception to the hearsay rule, may be admitted into evidence at the trial if the trial 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.

In this case, the family court made specific findings of trustworthiness, stating that MCE "knew the difference between right and wrong in the sense that she knew when something was true or not true …." The record reveals no proof to the contrary. MCE was able to describe and demonstrate sexual behavior that a three-year-old would not normally know about, and the evidence showed she made the statements spontaneously and gave the same account to two different witnesses. The trial court properly considered factors such as spontaneity and consistency, and determined from the totality of the circumstances that MCE's statements were trustworthy. *In re Brimer*, 191 Mich App 401, 405; 478 NW2d 689 (1992).

Respondent also contends that the court erred in finding "sufficient corroborative evidence of the act" as required by MCR 5.972(C)(2). The court found MCE's statements to different persons on different occasions to be sufficient corroboration. Respondent does not cite any authority to the effect that the corroborative evidence required by MCR 5.972(C)(2) must be "independent" evidence rather than evidence that the child's statements on different occasions corroborated each other. This issue is consequently waived for failure to cite supporting authority. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).

Respondent further argues that the statements should not have been admitted because MCE was not a competent witness. MRE 601 provides:

> Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

The court rule establishes a presumption of competency, and sets forth the circumstances where that presumption is rebutted. The family court never made any finding regarding MCE's competency as a witness and, indeed, never questioned her to make such a determination. There is no evidence that MCE would be found incompetent under MRE 601. Furthermore, respondent does not cite any legal authority in support of his erroneous legal assumption that MRE 601 applies not only to witnesses who testify at trial, but also to a non-testifying child declarant whose statements are offered into evidence under MCR 5.972(C)(2). The issue is thus waived for failure to cite supporting authority. *Caldwell, supra* at 132.

Respondent raises a number of other arguments against the admission of MCE's statements, but none of these arguments is fully developed. Accordingly, they are waived for respondent's failure to adequately brief them. *Caldwell, supra* at 132. In sum, the family court did not err in admitting MCE's statements under MCR 5.972(C)(2). Respondent is not entitled to relief on this basis.

II

We turn next to respondent's argument that petitioner did not establish by clear and convincing evidence a statutory basis for terminating his parental rights. We disagree.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). This Court reviews the family court's findings of fact under the clearly erroneous standard. MCR 5.974(I); *Trejo, supra* at 356-357.

We first note that, although the family court may have mistakenly applied the less stringent preponderance of the evidence standard, respondent does not argue that issue on appeal and the evidence presented easily established the more stringent clear and convincing standard.

MCL 712A.19b(3) sets forth the statutory grounds for termination of parental rights. Here, the family court found grounds for termination under section 19b(3)(j), which provides:

> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3).]

Here, there was ample evidence to support termination under this statutory provision.

The evidence established that respondent sexually abused MCE and revealed a broader view of respondent's tendency for pedophilia and his propensity to seek satisfaction for his urges. From this evidence, the family court could reasonably conclude that respondent was an unreformed pedophile, that his pedophilia went beyond fantasy and into actual practice, that he had already preyed on his own daughter, and that the probability for self-reform was poor. Because the evidence of how a parent treats one child – including a child who is not his offspring – is probative of how the parent will treat other children, the family court did not err in finding TCE at risk of harm as well. *In re Powers*, 208 Mich App 582, 588-589; 528 NW2d 799 (1995). We also note that once respondent's rights to MCE were terminated, petitioner could promptly request the family court to take jurisdiction over TCE under MCL 712A.19b(3)(i) (parental rights to a sibling of the child have been terminated due to sexual abuse).

III

Finally, respondent argues that termination of his parental rights was not in the children's best interests because the evidence established that he is a good father who has strongly bonded to his children and who provides financial support for them. We disagree.

When the petitioner establishes by clear and convincing evidence that a statutory basis or bases for termination exists, the court must order termination of parental rights unless it finds from evidence on the record that termination is not in the child's best interests. MCL 712A.19b(5); *Trejo, supra* at 353. This Court reviews the best interests decision for clear error. *Id.*, 356-357.

The family court concluded that termination was not against the children's best interest. Respondent had already begun to sexualize his relationship with his daughter. Furthermore, whatever financial advantages respondent could offer did not outweigh the risk of abuse. We find no clear error in this conclusion.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh
/s/ Roman S. Gribbs