STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CONNIE COUILLARD and VERONICA COUILLARD, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

VERNON COUILLARD,

Respondent-Appellant,

and

CONNIE COUILLARD,

Respondent.

UNPUBLISHED
August 5, 2008

No. 282798
Dickinson Circuit Court
Family Division
LC No. 07-000515-NA

In the Matter of CONNIE COUILLARD and VERONICA COUILLARD, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CONNIE COUILLARD,

Respondent-Appellant,

and

VERNON COUILLARD,

Respondent.

No. 282800
Dickinson Circuit Court
Family Division
LC No. 07-000515-NA

Before: Murphy, P.J., and Bandstra and Beckering, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father appeals as of right the trial court order terminating his parental rights to the children under MCL 712A.19b(3)(g) and (j), and respondent-mother appeals as of right the same order terminating her parental rights to the children under MCL 712A.19b(3)(g), (j), and (l). We affirm.

Respondents and the children had been living in Florida, where eight abuse and neglect complaints had been filed, four in Bay County between 2002 and 2004 and four in Hillsborough County between 2005 and 2007. The Hillsborough investigations did not reveal any physical abuse of the children but involved inadequate supervision and unsafe or unsanitary conditions of the home. To avoid removal of the children during one investigation in 2006, Florida authorities provided respondents with services from their Children's Response Team, an agency providing intensive in-home services to work with the family for six weeks. At the end of the six-week period, additional services were recommended, but respondent-mother declined. The most recent complaint filed against respondents in Florida, in May 2007, alleged a severe roach problem in respondents' home.[1] While the 2007 investigation revealed that the risk of harm was low, the case was closed without further involvement by Florida authorities because respondents left the state unexpectedly.

Respondents arrived in Michigan in June 2007, staying at the Salvation Army homeless shelter in Dickinson County between June 11, 2007, and July 24, 2007. The director of the shelter was concerned about respondent-father's anger and observed that respondent-mother and the children seemed to fear him. She was also concerned about the possibility of domestic violence in respondents' relationship. Having previously written up respondent-father for yelling at respondent-mother and the children in violation of shelter rules, she elected not to give him a second written warning, which would have resulted in the family's removal from the shelter, because she believed that the family was safer at the shelter. Protective services were called to investigate concerns of physical abuse of the children.

The protective services worker, Mary Elizabeth Sparapani, interviewed the children during the course of her investigation into the allegations of physical abuse. During the interview, Connie and Veronica, then seven and five years old, volunteered, without any prodding from Sparapani, information, conveyed using vulgar language, that they routinely witnessed respondents engaging in sexual activity. The girls reiterated their statements, again using graphic language to describe respondents' sexual activities, at a follow-up interview a few days later. When Sparapani questioned respondent-mother, she admitted that respondent-father forced her to engage in sexual activity with him, even with the children in the room, that he forced her to speak inappropriately in front of them, and that the children would cry and say "no." She admitted that the children had woken up while she and respondent-father were having sex at the Salvation Army shelter.

[1] This complaint also alleged possible abuse of Connie. However, those allegations were later determined to be unfounded.

Respondent-mother also admitted that she had eight children other than Connie and Veronica; she had lost contact with all of her other children by 1999. She had a history of substantiated abuse and neglect in Jackson County and Eaton County concerning these children, and her parental rights to two of them were terminated by the Eaton County Circuit Court in 2003.

On July 24, 2007, with assistance from the shelter, respondents were able to move into a home. A week later, the protective services worker made an unannounced visit to the home and found it in disarray, with clothes scattered across the floor, garbage bags and open food in the kitchen, cigarette butts and ashes on the floor, and dirty dishes and empty and half-empty pop bottles in the bedroom. Respondents explained that they had not had the opportunity to settle in and were still addressing the issue of paying for garbage service, which required payment for services six months in advance. Witnesses who subsequently visited respondents' home testified that it was suitable.

Initially, respondents elected not to pursue financial assistance when they were informed that they would have to participate in a work program as a prerequisite to financial aid. They subsequently changed their minds. Respondents did receive financial aid, but a fraud referral was made when it was determined that respondents continued to receive financial benefits from the state of Florida. Both respondents claimed to have applied to various companies for employment, but both the caseworker and the parent aide that assisted them felt that respondents were reluctant jobseekers. Although respondent-mother claimed to have procured employment, her employment had already been terminated when she made that representation to the court. While they applied for work, respondents left the children in daycare. Respondent-mother indicated to the daycare director that she preferred to leave the children in daycare rather than at home with respondent-father because she knew they were safe at daycare.

Although Sparapani concluded that allegations of physical abuse were unfounded, she found evidence of physical neglect based on respondents' Florida history, respondent-mother's Michigan history, and her investigation, and she filed a temporary custody petition on August 6, 2007. Upon discovering that respondent-mother's parental rights to two children had previously been terminated, petitioner filed a supplemental petition seeking termination of respondents' parental rights to Connie and Veronica. Before trial, petitioner moved under MCR 3.972 to admit Sparapani's testimony concerning the children's statements to her about witnessing respondents' sexual activities.

On September 28, 2007, the court addressed the issue of jurisdiction and the MCR 3.972 motion. In return for the prosecutor's agreement not to prosecute respondents for welfare fraud occurring in Michigan to date, respondent-mother admitted to allegations in the supplemental petition that she and respondent-father engaged in sexual activities in front of the children, that respondent-father forced her to talk inappropriately in front of the children, that there was a history of substantiated neglect in other counties, and that her parental rights to two children were terminated in Eaton County in 2003. The court concluded that the admissions established its jurisdiction over the children. After hearing Sparapani's testimony regarding the children's statements to her, the court also concluded that the testimony was admissible at the termination trial under both MCR 3.972, the tender years exception to the hearsay rule, and MRE 803(24), the catch-all exception to the hearsay rule.

Following trial on the supplemental petition, the court concluded that the evidence supported termination of both respondents' parental rights under MCL 712A.19b(3)(g) and (j). Additionally, the court found that the evidence supported termination of respondent-mother's parental rights under MCL 712A.19b(3)(l). The court also found that termination was not contrary to the children's best interests.

On appeal, respondents first challenge the court's admission of Sparapani's testimony regarding the children's statements about having routinely witnessed respondents engaging in sexual activities. The court ruled that the testimony was admissible under both MCR 3.972(C)(2) and MRE 803(24). On appeal, respondents challenge the admission of the evidence only under MCR 3.972. Because respondents fail to challenge the court's finding that the evidence was also admissible under MRE 803(24), respondents' argument that the court abused its discretion when it admitted the evidence must fail. *People v Kent*, 194 Mich App 206, 210; 486 NW2d 110 (1992). Moreover, we conclude that the trial court did not abuse its discretion in finding the evidence admissible under both grounds.

MCR 3.972(C)(2) governs the admissibility of a statement made by a child under ten years of age by the person to whom the child made the statement "regarding an act of child abuse, child neglect, sexual abuse or sexual exploitation, as defined in MCL 722.622(f), (j), (w), or (x), performed with or on the child." Respondents argue that the statements were not admissible under MCR 3.972 because the children were not sexually abused or sexually exploited by respondents and because the children's witnessing respondents engaging in sexual relations while at the shelter did not constitute child abuse. However, the court found that the statements were admissible, not as child abuse, sexual abuse, or sexual, exploitation, but rather, as child neglect. "Child neglect" is defined as "harm or threatened harm to a child's health or welfare . . . that occurs through . . . placing a child at an unreasonable risk to the child's health or welfare by failure of the parent . . . to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk." MCL 722.622(j)(ii). Testimony at the motion hearing, including testimony concerning the effect that witnessing respondents' sexual activities had on the children, clearly showed that respondents' conduct harmed the children's mental welfare and that respondents failed to eliminate this risk of harm when able to do so and while having knowledge of the risk. Thus, the trial court did not abuse its discretion when it found that the children's statements fell within the type of statements anticipated under MCR 3.972(C)(2). Because the court also found that the circumstances surrounding the children's giving of the statement provided an adequate indicia of trustworthiness, it did not abuse its discretion when it concluded that the protective services worker could testify regarding the children's statements to her. *Matter of Brimer*, 191 Mich App 401, 405; 478 NW2d 689 (1991).

Additionally, the trial court acted within its discretion in determining that the girls' statements to Sparapani were also admissible under MRE 803(24). MRE 803(24), the catch-all hearsay exception, provides that a statement not specifically covered by any other hearsay exception, "but having equivalent circumstantial guarantees of trustworthiness," may be admitted if the court determines that "(A) the statement is offered as evidence of a material fact, (B) the statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts, and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence." MRE 803(24). The trial court found that each of these criteria was met. Respondents have not

challenged the trial court's findings, and we conclude that the trial court did not abuse its discretion in admitting the evidence under MRE 803(24).

Respondents also argue that the evidence did not support termination of their parental rights under any of the statutory grounds cited by the court. The Eaton County Circuit Court order terminating respondent-mother's parental rights to two other children in 2003 clearly established the statutory grounds for termination of her parental rights under MCL 712A.19b(3)(l). The trial court also did not clearly err when it relied upon MCL 712A.19b(3)(g) and (j) to terminate respondents' parental rights, because the evidence established that the children had witnessed respondents engage in sexual activity on several occasions; that the children used inappropriate sexual language; that respondent-father had forced respondent-mother to engage in sexual activity and the use of inappropriate language in front of the children; that respondents were reluctant to pursue employment and had lied for financial gain when they continued to receive benefits from Florida while pursuing benefits in Michigan; that respondent-mother lied to the court about her employment status; and that, despite services offered by social services in Florida over a prolonged period, respondents were unable or unwilling to maintain their home unless petitioner demanded they do so.

Finally, the evidence did not show that termination of respondents' parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court did not err in terminating respondents' parental rights to the children.

We affirm.

/s/ William B. Murphy
/s/ Richard A. Bandstra
/s/ Jane M. Beckering