

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ZADORA JOHNSON and
WILLIE JOHNSON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

WILLIE JOHNSON,

Respondent-Appellant.

UNPUBLISHED
February 26, 2009

No. 287438
Wayne Circuit Court
Family Division
LC No. 08-477683-NA

Before: Whitbeck, P.J., and O'Connell and Owens, JJ.

PER CURIAM.

Respondent appeals as of right from an order that terminated his parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i), (j), and (k) (ii). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that the statutory grounds for termination were proven by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Five-year-old Zadora alleged that respondent sexually abused her. Before trial, a tender years hearing was held pursuant to MCR 3.972(C)(2) at which four witnesses--a therapist, a nurse, Zadora's mother, and Zadora's grandmother--testified about Zadora's spontaneous statements that respondent had, among other things, put "his penis in my mouth and peed." On appeal, respondent argues that the mother was a bitter, delusional schizophrenic who coached Zadora into making her statements. However, the trial court, as the trier of fact, was in a better position to judge the credibility of the evidence before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). All four witnesses testified that Zadora's statements were unsolicited and were not the result of direct questioning. The trial court determined that the circumstances surrounding the giving of the statements provided adequate indicia of trustworthiness. The statements were supported by other evidence, including Zadora's regression in potty training, nightmares, and inappropriate play. Because the trial court believed the statements Zadora made regarding sexual abuse, there was clear and convincing evidence to terminate respondent's parental rights pursuant to subsections 19b(3)(b)(i), (j), and (k)(ii).

Having found the statutory grounds for termination proven by clear and convincing evidence, the trial court was obligated to terminate respondent's parental rights if it was in the children's best interests to do so. MCL 712A.19b(5). Zadora was the victim of sexual abuse. Both she and Willie would have been at risk of harm if continued contact with respondent was allowed. No amount of evidence regarding respondent's love and affection for his children could outweigh the damage inflicted upon them. The trial court was well within its right in concluding that termination was in the children's best interests.

Respondent also argues that he was denied a fair trial because the judge was biased against him. Respondent failed to move to disqualify the judge in the trial court and the issue is not preserved for appellate review. MCR 2.003; *In re Schmeltzer*, 175 Mich App 666, 673; 438 NW2d 866 (1989). Unpreserved constitutional issues are reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). The trial court did not show any bias or act in an inappropriate manner. Respondent must do more than simply demonstrate that a trial judge has ruled against him on a contested issue. *In re Susser Estate*, 254 Mich App 232, 237; 657 NW2d 147 (2002). "[R]ulings against a litigant, even if erroneous, do not themselves constitute bias or prejudice sufficient to establish a denial of due process." *Id.* We have reviewed respondent's alleged instances of bias and find them to be without merit. First, there was no error in proceeding with a bench trial. Pursuant to *In re CR*, 250 Mich App 185, 202-203; 646 NW2d 506 (2002), a trial court need not ascertain whether it has jurisdiction over each parent. Because jurisdiction attaches to the child, the trial court need only assert jurisdiction over one parent and, because the mother was not requesting a jury trial, the trial court did not have to hold a separate hearing for respondent. Second, the trial judge did not act inappropriately in denying respondent's motion for adjournment in order to review medical records regarding the mother's psychiatric condition. These documents were offered into evidence by petitioner and, if anything, assisted respondent's case by pointing out the mother's history of schizophrenia and recent hospitalizations. Finally, the trial court judge did not impermissibly prevent respondent from questioning witnesses regarding the mother's possible coaching of Zadora. Respondent was able to present his theory of the case and was not inhibited from questioning the witnesses regarding relevant material.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Donald S. Owens