

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KRISTA MARIE LITTLEJOHN,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TRACI EVANS,

Respondent-Appellant,

and

HEATH LITTLEJOHN,

Respondent.

In the Matter of KRISTA MARIE LITTLEJOHN,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

HEATH LITTLEJOHN,

Respondent-Appellant,

and

TRACI EVANS,

Respondent.

UNPUBLISHED
March 19, 2009

No. 287260
Saginaw Circuit Court
Family Division
LC No. 07-031321-NA

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Before: Donofrio, P.J. and K.F. Kelly and Beckering, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from an order terminating their parental rights to the minor child. Respondent-mother's parental rights were terminated pursuant to MCL 712A.19b(3)(b)(i) and (j). Respondent-father's parental rights were terminated pursuant to MCL 712A.19b(3)(b)(ii) and (j). We affirm.

Respondent-mother argues that the trial court erred in admitting into evidence, under MCR 3.972(C)(2), certain statement the minor child made regarding sexual abuse. We review a trial court's decision whether to admit evidence for an abuse of discretion. *In re Hill*, 221 Mich App 683, 696; 562 NW2d 254 (1997). A trial court abuses its discretion when its decision falls outside a range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Any statement made by a child under ten years of age regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation performed with or on the child by another person may be admitted into evidence through the testimony of a person who heard the child make the statement if the court finds that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness. MCR 3.972(C)(2)(a). The reliability of a statement depends on the totality of the circumstances surrounding the statement. *In re Archer*, 277 Mich App 71, 82; 744 NW2d 1 (2007). Circumstances indicating the reliability of a hearsay statement under MCR 3.972(C) include spontaneity, consistent repetition, the mental state of the declarant, the use of terminology unexpected of a child of similar age, and lack of a motive to fabricate. *In re Brimer*, 191 Mich 401, 405; 478 NWd2 689 (1991).

Here, the minor child repeated the statements at issue numerous times to several people over a long period of time, and many of the statements were made spontaneously. Furthermore, the child's statements indicated that she had sexual knowledge that is not common in children her age. In addition, there was evidence that the child was truly distressed and agitated by the events contained in the statements. Although the child's statements were inconsistent with respect to whether respondent-mother's boyfriend touched her inappropriately, the trial court recognized these inconsistencies and took them into consideration when determining the weight to be given the evidence. We therefore conclude that the trial court did not err in finding that the statements were made under circumstances providing adequate indicia of trustworthiness and find no abuse of discretion in the admission of the statements under MCR 3.972(C)(2).

In her brief on appeal respondent-mother also made several arguments that were not included in her statement of the questions presented on appeal. The failure to include an issue in the statement of questions presented on appeal constitutes an improper presentation of the issue. MCR 7.212(C)(5); *Health Care Ass'n Workers Compensation Fund v Director of the Bureau of Workers Compensation*, 265 Mich App 236, 243; 694 NW2d 761 (2005). Moreover, we find no merit in these arguments. First, the trial court did not base its decision to terminate respondent-mother's parental rights on unsupervised visitation. Rather, the court terminated respondent-mother's parental rights under MCL 712A.19b(3)(b)(i), finding that she caused the child's sexual abuse, and (j), finding that the child was at risk of physical and emotional harm in respondent-

mother's care. Second, because we find no error in the admission of the child's statements under MCR 3.972(C)(2), we need not further address respondent-mother's argument that the statutory grounds for termination were not supported by clear and convincing evidence. Finally, while respondent-mother abandoned her argument that the trial court erred in relying on uncertified records of her criminal sexual conduct conviction by failing to properly brief it, see *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959), any error in the admission of the records was harmless in light of the remaining evidence, which clearly and convincingly established grounds for terminating respondent-mother's parental rights.

In his appeal, respondent-father argues that the trial court erred in finding that petitioner made reasonable efforts to maintain the family unit and prevent the child's removal from the home. We review a trial court's findings of fact for clear error. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Generally, when a court places a child with someone other than a custodial parent, guardian, or legal custodian, the court must determine whether reasonable efforts to prevent the removal of the child have been made. MCR 3.965(D). Here, the record shows that petitioner provided referrals for forensic interviews and sexual assault counseling, made home and school visits to check on the family and to discuss issues, and developed a safety plan for the child using relatives to supervise respondent-mother's parenting time. It was respondent-father's repeated failure to cooperate with the safety plan that resulted in the removal. We find no clear error in the trial court's finding that petitioner made reasonable efforts to prevent the child's removal from the home.

We, therefore, affirm the order terminating respondents' parental rights to the minor child.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering