

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

April 12, 2011

In the Matter of PEARSON, Minors.

No. 300019
Wayne Circuit Court
Family Division
LC No. 99-377263

Before: FORT HOOD, P.J., and TALBOT and MURRAY, JJ.

PER CURIAM.

C. Pearson challenges the order terminating his parental rights to the minor children.¹ We affirm.

This Court reviews the trial court's findings of fact in termination proceedings for clear error.² "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed."³

The petition was filed by the Michigan Children's Law Center, which represented the children after the Department of Human Services (DHS) requested dismissal of an earlier petition it had filed.⁴ The trial court acknowledged that the petition was filed by the children's attorney and referenced a history of petitions filed previously on behalf of the minor children alleging neglect and abuse. The current petition was premised on allegations by one of the minor children that she has been sexually abused by Pearson.

At the termination hearing, the trial court heard testimony from both the minor child and Pearson. The court made detailed findings of fact and discussed its impressions of both Pearson

¹ Pearson's parental rights were terminated in accordance with MCL 712A.19b(3)(b)(i) [sexual abuse of minor child or sibling], (g) [failure to provide proper care and custody], (j) [reasonable likelihood of harm if returned to parental home], and (k)(ii) [parent sexually abused child or sibling involving penetration].

² MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

³ *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

⁴ Electing not to proceed with termination, DHS instead provided a safety plan that included preventative services.

and the child as witnesses. The trial court found the minor child's testimony regarding sexual abuse by Pearson to be credible. In contrast, the trial court found Pearson's testimony to be incredible. Based on this Court's recognition of the special opportunity the trial court has to assess the credibility of the witness,⁵ we find that the trial court did not clearly err when it determined that a statutory basis for termination had been established by clear and convincing evidence.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made."⁶ While the trial court failed to specifically address the best interests of the minor children in terminating Pearson's parental rights, this omission is not a ground for reversal. "Limitations on corrections of error" in proceedings involving children are governed by court rule.⁷ "[A]n error in a ruling or order" or in anything "omitted by the court" is not a ground to reverse a verdict "unless refusal to take this action appears to the court inconsistent with substantial justice."⁸ The trial court found that Pearson sexually abused one of the minor children and that it was reasonably likely that the children would be abused or harmed if returned to Pearson's home. The trial court also determined that Pearson could not provide proper care and custody for the children within a reasonable period of time. In accordance with these factual determinations, we find that the trial court had evidence to support a finding that termination of Pearson's parental rights was in the children's best interests. Our decision to not vacate the termination based on the trial court's failure to specifically address the children's best interests is not inconsistent with substantial justice.

Pearson also contends that his counsel was constitutionally ineffective. As Pearson did not move for a new trial or an evidentiary hearing on the issue of ineffective trial counsel, our review is limited to the existing record.⁹ To establish a claim of ineffective assistance of counsel, Pearson must show that counsel's performance fell below an objective standard of reasonableness and that he was prejudiced by counsel's deficient performance. Pearson must further demonstrate that there was a reasonable probability that the result of the proceedings would have been different, were it not for counsel's deficient performance.¹⁰

Pearson asserts that his trial attorney's failure to subpoena the Children's Protective Services (CPS) investigators who interviewed the minor child about her allegations of sexual

⁵ MCR 2.613(C); *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

⁶ MCL 712A.19b(5).

⁷ MCR 3.902(A).

⁸ MCR 2.613(A).

⁹ *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

¹⁰ *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2002).

abuse denied him the effective assistance of counsel. Through the testimony of the minor child and the fact that the petition was filed by the children's attorney and not DHS, the trial court was made aware that CPS did not believe the minor child's allegations. The trial court had the opportunity to hear and observe the testimony of both the minor child and Pearson. Not only did the trial court find the child's testimony credible, it also specifically opined that Pearson's testimony was incredible. Even if the assistance rendered by Pearson's counsel fell below an objective standard of reasonableness, because it is highly unlikely that the result of the proceedings would have been different, we find that Pearson was not denied the effective assistance of counsel.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Michael J. Talbot
/s/ Christopher M. Murray