STATE OF MICHIGAN

COURT OF APPEALS

In re L. L. CASSEL, Minor.

UNPUBLISHED
April 29, 2021

No. 354417
Wayne Circuit Court
Family Division
LC No. 2020-000033-NA

Before: O'BRIEN, P.J., and STEPHENS and BOONSTRA, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court's order terminating his parental rights to the minor child, LC,[1] under MCL 712A.19b(3)(b)(*i*) (parent's act caused physical injury or sexual abuse), (j) (reasonable likelihood child will be harmed if returned to parent), and (k)(*ii*) (abuse included criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate). We affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case arose after LC disclosed to her maternal grandmother that she had been sexually abused by respondent. Respondent and LC's mother were no longer in a relationship and they resided in separate homes. Per a custody arrangement, LC spent the weekends at respondent's home. At the time, respondent lived with his girlfriend and her two young daughters.

Soon after LC disclosed the sexual abuse, Children's Protective Services (CPS) initiated an investigation into the allegations. CPS investigator Deanne Gillum was assigned to the case and made a criminal referral to the Michigan State Police. The criminal investigation was assigned to Trooper Burr,[2] and then later to Trooper Patrick Leigh. As part of the CPS investigation, LC participated in a Kids-TALK interview with forensic interviewer, Leticia Madlock. During the Kids-TALK interview, LC told Madlock that, "mom really needed me to tell you what my dad did, it's really bad." LC went on to tell Madlock that one evening when she was sleeping at

[1] LC's mother was never a respondent in this case.

[2] Trooper Burr's full name was not apparent from the record.

respondent's home, respondent pulled down her underwear and "touched [her] private parts." LC demonstrated for Madlock that respondent swept his hand through her vaginal and buttocks area. When Madlock commented to LC that it "looks like wiping," LC responded that it was not wiping. When Madlock asked LC what respondent used to do that to her, LC responded "his hands." LC stated that when this was happening, respondent's girlfriend walked in, saw what respondent was doing, and told respondent, "don't do that to tiny little kids." According to LC, respondent walked out of the room stating "nevermind" and slamming a door. At first LC stated that this event occurred in her bedroom, but then later stated it happened in the living room while she was sleeping on the couch. LC also reported that when she is at respondent's home, he does not do "fun stuff" with her. When asked, LC stated that her mother did not tell her what to say.

On January 13, 2020, as a result of these allegations, the Michigan Department of Health and Human Services (DHHS) offered an original permanent custody petition for authorization against respondent seeking to terminate his parental rights to LC. On January 13, 2020, the referee held a preliminary hearing on the petition. On January 14, 2020, the trial court entered an order authorizing the petition. The trial court found that it was contrary to LC's welfare to remain in respondent's home because LC "disclosed on two occasions [that] [respondent] touches her butt and vagina after removing her underwear." Therefore, the trial court suspended respondent's parenting time, and released LC to her mother.

The trial court conducted a number of preajudication hearings in which respondent's parenting time remained suspended. Before trial, the DHHS filed a Tender-Years motion seeking an evidentiary hearing on the admissibility of LC's statements to Madlock and the videotape of LC's Kids-TALK interview. The trial court ordered that it would hear the arguments on the same day as the bench trial.

On July 14, 2020, the trial court began the proceedings by hearing the DHHS's motion to admit Madlock's testimony and the video of the Kids-TALK interview. Madlock testified about her training, her experience as a forensic interviewer, the protocols she used during her interview of LC, and the disclosures of sexual abuse LC made during the interview. Respondent's girlfriend also testified during this portion of the July 14 proceedings. She stated that she never saw respondent touch LC inappropriately. When questioned about respondent caring for her own daughters, the girlfriend stated that she had never left her daughters alone in respondent's care. The girlfriend later stated that she would "absolutely" leave her children in his care if presented with the situation. After hearing the testimony, the trial court concluded that LC's statements contained "indications of trustworthiness" and thus allowed Madlock's testimony and the videorecording of LC's Kids-TALK interview into evidence for the Tender-Years hearing.

The trial court then immediately moved to the adjudicatory phase of the proceedings. CPS investigator Gillum testified that she believed LC was telling the truth when she stated respondent had sexually molested her and that it was Gillum's position that the allegations against respondent were sufficient to bring a petition for the termination of his parental rights. Respondent testified, denying LC's allegations of abuse. Respondent opined that LC's allegations stemmed from her "imagination." Trooper Leigh also testified. He stated that although he did not have the opportunity to participate in the Kids-TALK interview himself, it was his belief that LC's statements contained indicators of deceit. Trooper Leigh testified that he interviewed respondent and it was his opinion that respondent was telling the truth when respondent stated that he did not

sexually abuse LC. LC's mother testified that although she never saw respondent sexually abuse LC, he would sometimes "poke[] and prod[]" a sleeping LC while he was drunk. LC's mother also stated that there had been another allegation of sexual abuse by respondent against LC in 2018, which initiated a CPS investigation. She stated that during the 2018 investigation, respondent's parenting time was suspended for a short time. LC, then three-years-old, participated in a Kids-TALK interview but did not disclose any abuse by respondent. After CPS closed its 2018 investigation, respondent resumed his regular weekend parenting time with LC. At the close of testimony, the trial court determined that, by a preponderance of the evidence, it could take jurisdiction of LC.

The trial court then moved on to the dispositional phase of the proceedings. The trial court acknowledged the discrepancies between LC's allegations and respondent's and his girlfriend's denials. The trial court also acknowledged the testimony of Trooper Leigh, who opined that respondent was telling the truth when respondent denied sexually abusing LC. Even so, the court found that "if [it is] going to err at this time, [it is] going to err on behalf of the protection of the Child."[3] The trial court then found that there were statutory bases for the termination of respondent's parental rights by clear and convincing evidence under MCL 712A.19b(3)(b)(*i*), (j), and (k)(*ii*). The trial court further determined that it was in LC's best interests to terminate respondent's parental rights. The trial court later entered an order terminating respondent's parental rights. This appeal followed.

II. HEARSAY

Respondent argues that the trial court abused its discretion in admitting LC's hearsay statements. We disagree.

A. STANDARD OF REVIEW

"Evidentiary rulings are reviewed for an abuse of discretion; however, we review de novo preliminary questions of law affecting the admission of evidence, e.g., whether a statute or rule of evidence bars admissibility." *In re Martin*, 316 Mich App 73, 80; 896 NW2d 452 (2016) (citation omitted). "An abuse of discretion occurs when the trial court chooses an outcome that falls outside the range of principled outcomes." *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008) (quotation marks and citation omitted). Further, "[w]hen an evidentiary question involves a question of law, such as the interpretation of a statute or court rule, our review is de novo." *Id.*

B. LAW AND ANALYSIS

The Michigan Rules of Evidence generally preclude the use of hearsay statements. MRE 802. A hearsay statement is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). Respondent argues that the trial court erroneously admitted as substantive evidence LC's hearsay testimony disclosing sexual abuse. As respondent was unclear whether he disagrees with the trial

[3] This is in contrast to respondent's allegation in his brief that the trial court stated it wanted to "err on the side of cation [sic]."

court's admission of Madlock's testimony regarding LC's statements during the forensic interview or with the admission of the video of LC's Kids-TALK interview with Madlock, we will address both forms of evidence. First, we consider Madlock's testimony about LC's disclosures of sexual abuse. LC's statements to Madlock would normally be considered inadmissible hearsay because they are out-of-court statements that are "offered in evidence to prove the truth of the matter asserted." MRE 801(c). Even so, the court rules specifically account for the out-of-court statements of children. Under the Tender-Years doctrine, a trial court may properly admit as substantive evidence the otherwise hearsay statements of a child so long as the trial court determines whether "the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness." MCR 3.972(C)(2)(a). The trustworthiness of a child's statement is established through the procedure articulated at MCR 3.972(C)(2). See *In re Archer*, 277 Mich App 71, 80; 744 NW2d 1 (2007). MCR 3.972(C)(2) states:

> (2) Child's Statement. Any statement made by a child under 10 years of age or an incapacitated individual under 18 years of age with a developmental disability as defined in MCL 330.1100a(25) regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622(g), (k), (z), or (aa), 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 as provided in this subrule.
>
> > (a) A statement describing such conduct may be admitted regardless of whether the child is available to testify or not, and is substantive evidence of the act or omission if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness. This statement may be received by the court in lieu of or in addition to the child's testimony.

When analyzing whether a statement has adequate indicia of trustworthiness, a trial court looks to "the totality of the circumstances surrounding the making of the statement." *In re Archer*, 277 Mich App at 82. "Circumstances indicating the reliability of a hearsay statement may include spontaneity, consistent repetition, the mental state of the declarant, use of terminology unexpected of a child of a similar age, and lack of motive to fabricate." *Id.* We have also considered an interviewer's compliance with forensic interview protocol as bearing on the determination of reliability. *Id.*

Here, the trial court conducted the evidentiary hearing on the DHHS's Tender-Years motion for the specific purpose of determining the admissibility of LC's statements to Madlock and the video of the Kids-TALK interview. Madlock testified about LC's disclosures of abuse during the Kids-TALK interview and Madlock's process in eliciting statements from LC. Looking to the trial court's findings regarding the trustworthiness of Madlock's testimony on LC's statements, the trial court found that Madlock had "specific knowledge and training regarding forensic interviews." The trial court noted that, given LC's young age, the way some of the questions were posed may have been confusing. However, the trial court also found that Madlock was able to establish with LC "the difference between a truth and a lie" and that Madlock established a rapport with LC. Further, the trial court opined that "[Madlock] took her time in having the interview with [LC]. She did not coach [LC]. She did not make statements. She waited

until [LC], in response to her questions, volunteered information. As [LC] volunteered information, [Madlock] pursued some more questions regarding the statements that were made." With respect to LC's disclosures of abuse, the trial court stated its belief "that the responses were truthful."

Respondent's girlfriend also testified at the Tender-Years hearing and asserted that she never saw respondent harm LC. The trial court addressed the inconsistency between Madlock's and the girlfriend's testimonies stating:

> As far as the contradiction by the adult who is the girlfriend of the [r]espondent in this matter, the girlfriend has stated on open record that she lives with this man, that she has a relationship with this man. She was hesitant initially about allowing, of stating on the record that she would leave her children with this man without her being in attendance. Only upon questioning of [respondent's] [c]ounsel did [respondent's girlfriend] agree that she would allow these children to remain in his care without her presence.

The applicable standard is whether, given the *totality of the circumstances*, the trial court should admit the evidence. *In re Archer*, 277 Mich App at 81. Despite the inconsistency between LC's statements to Madlock and the girlfriend's testimony, the trial court found a number of indicators of trustworthiness. These included Madlock's experience, interviewing techniques, and rapport with LC. In addition, the trial court noted that LC appeared truthful in her recitation of the abuse. Given the trial court's findings that a number of factors weighed in favor of trustworthiness, the trial court's decision to permit Madlock's testimony about the statements made by LC during the Kids-TALK interview was not an "outcome [falling] outside the range of principled outcomes." *In re Utrera*, 281 Mich App at 15. Consequently, under the process articulated in MCR 3.972(C)(2), the trial court did not abuse its discretion in admitting Madlock's testimony as substantive evidence during the July 14 proceedings.

Next, we turn to defendant's argument that the trial court erred in admitting into evidence the video of LC's Kids-TALK interview. While MCR 3.972(C)(2) is a general rule pertaining to "any statement" made by a child concerning sexual abuse, there are other provisions within the law that explicitly pertain to a child's "videorecorded statement." Specifically, MCL 712A.17b states in pertinent part:

> (5) A custodian of the videorecorded statement may take a witness's videorecorded statement. The videorecorded statement shall be admitted at all proceedings except the adjudication stage instead of the live testimony of the witness. The videorecorded statement shall state the date and time that the statement was taken; shall identify the persons present in the room and state whether they were present for the entire video recording or only a portion of the video recording; and shall show a time clock that is running during the taking of the statement.
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> (6) In a videorecorded statement, the questioning of the witness should be full and complete; shall be in accordance with the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238,

MCL 722.628; and, if appropriate for the witness's developmental level, shall include, but need not be limited to, all of the following areas:

(a) The time and date of the alleged offense or offenses.

(b) The location and area of the alleged offense or offenses.

(c) The relationship, if any, between the witness and the respondent.

(d) The details of the offense or offenses.

(e) The names of other persons known to the witness who may have personal knowledge of the offense or offenses.

Looking at the plain language of the statute, we note that in cases brought under MCL 712A.2(b), "[t]he videorecorded statement *shall* be admitted at all proceedings except the adjudication stage instead of the live testimony of the witness." (Emphasis added.) In other words, when presented with a petition under MCL 712A.2(b), as was the case here, a trial court has no discretion but to admit taped testimony at every stage of the proceeding, except the adjudication, so long as the statement meets the other criteria in the statute. See *In re Brown/Kindle/Muhammad Minors*, 305 Mich App 623, 632; 853 NW2d 459 (2014) ("We hold that MCL 712A.17b(5) requires a trial court to admit videorecordings of a child's forensic interview during a nonadjudicatory stage—here, a tender-years hearing."). Here, the taped testimony clearly satisfied the criteria articulated by the statute, so the trial court was obligated to admit the testimony at all proceedings except the adjudication stage.[4] Consequently, the trial court did not abuse its discretion by admitting the video of the Kids-TALK interview.

Respondent nevertheless argues that LC's statements should not have been admitted based on our Supreme Court's decision in *People v Douglas*, 496 Mich 557, 578; 852 NW2d 587 (2014). We need not address respondent's arguments at length, however, because he relies on *Douglas* to argue that LC's statements should not have been admitted under either MRE 803A or MRE 803(24), apparently ignoring that the statements were admissible under MCR 3.972(C)(2). Because the statements were admissible as substantive evidence under MCR 3.972(C)(2), we need not address whether the statements qualified as exceptions to hearsay under MRE 803A or MRE 803(24).

As a final point, we address respondent's argument that LC's statements during her Kids-TALK interview were "hearsay within hearsay for which no exception exists." Respondent argues that LC's mother "testifie[d] she reported the allegations [of sexual abuse] right away, which would seem to indicate the minor child advised the mother of the alleged abuse prior to the forensic interview." In making this argument, it appears respondent believes that the initial hearsay statement was one made by LC to her mother about the abuse and the second hearsay statement was the mother's report to CPS about the allegations. We, however, are not convinced that the

[4] While not argued by respondent, we note that nothing in the record suggests that the trial court considered the videorecorded statement during the adjudicatory stage of these proceedings.

mother's testimony included any "statement" that could be considered hearsay. The relevant portion of the mother's testimony was as follows,

> [*Respondent's Attorney*]: Did you report these allegations right away?
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> [*LC's Mother*]: Yeah.
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> [*Respondent's Attorney*]: You didn't wait three days to make a report?
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> [*LC's Mother*]: I don't know how many days it was. It was the day after it had happened.
>
> [*Respondent's Attorney*]: It wasn't three days later?
>
> [*LC's Mother*]: I believe it as [sic] the day after.

A hearsay statement is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). Here, even though respondent believes the mother's testimony "seem[s] to indicate" that an out-of-court statement was made, the above colloquy fails to show any out-of-court statement being "offered in evidence to prove the truth of the matter asserted." At bare minimum, a hearsay argument requires a party to show that a "statement" was made, and here, there is just no evidence that there was any out-of-court statement offered into evidence, let alone two out-of-court statements constituting hearsay-within-hearsay. Thus, respondent's argument on this point holds no merit.

In sum, we disagree with any assertion by respondent that the trial court erred in admitting LC's statements to Madlock under the prohibition against hearsay in the Michigan Rules of Evidence. Indeed, the trial court properly applied MCR 3.972(C)(2) and MCL 712A.17b when it admitted the evidence—thus, there was no abuse of discretion on this record. Further, respondent's arguments with respect to the other hearsay exceptions do not warrant appellate relief.

III. STATUTORY GROUNDS

Respondent argues that the trial court erred in finding the existence of statutory grounds to terminate respondent's parental rights to LC. We disagree.

A. STANDARD OF REVIEW

"The clear error standard controls our review of both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009) (quotation marks and citation omitted); MCR 3.997(K). A finding is clearly erroneous if this Court "is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation marks and citations omitted). We defer to "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

B. LAW AND ANALYSIS

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App at 32.

The trial court in this case found clear and convincing evidence to terminate respondent's parental rights under several statutory provisions—MCL 712A.19(3)(b)(*i*), (j), and (k)(*ii*). We initially consider the trial court's finding under MCL 712A.19b(3)(b)(*i*), which permits a court to terminate parental rights if it finds by clear and convincing evidence that:

> (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
>
> (*i*) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

Respondent argues that "[t]ermination on the grounds cited herein was clearly erroneous because there was no evidence showing [LC] would be harmed if she were returned to the care and custody of [respondent]." In support of his argument, respondent points to the conflicting testimonies of Gillum and Trooper Leigh—Gillum testified that she believed LC would remain at risk if she were returned to the care of her father, while Trooper Leigh opined that respondent "would never do anything like this to [LC]." Respondent also notes his girlfriend's testimony, in which she stated she never saw respondent touch LC inappropriately. When considering the conflicting testimony, the trial court stated that it was "going to err on behalf of protection of the [c]hild." Respondent believes that this statement by the trial court fails to meet the "clear and convincing" standard required to find statutory grounds for termination because "[t]he [c]ourt here is merely speculating there **may be harm** to the minor child if returned to the care of [respondent]."

But the fact that some evidence weighed against the trial court's decision does not mean that the trial court was precluded from finding by clear and convincing evidence that there was a reasonable likelihood of harm if LC was returned to respondent's care. See *In re Pederson*, 331 Mich App 445, 472; 951 NW2d 704, 719 (2020) (explaining that "evidence may be clear and convincing despite the fact that it has been contradicted"). Indeed, ample evidence supported the trial court's decision. Madlock described LC's recitation of the sexual abuse, in which LC explained how respondent pulled down her underwear and passed his hand through her vaginal and buttocks areas. There was also testimony from respondent's girlfriend, who stated that she has never left her own children alone in respondent's care. Further, the trial court heard from Gillum who stated her belief that respondent's parental rights should be terminated "[d]ue to the nature of the allegations of sexual abuse and what [LC] indicated . . . ." Gillum testified that LC would still be at risk if a relationship with respondent was maintained. LC's mother also testified about a similar, yet unsubstantiated, allegation of sexual abuse by respondent against LC in 2018. On the basis of this evidence, it was not clearly erroneous for the trial court to find by clear and convincing that there was a reasonable likelihood of harm if LC was returned to respondent's care.

And while respondent rightly points to evidence that tended to support a contrary conclusion, this Court defers to the trial court's credibility determinations and how to weigh the evidence in light of those determinations. See *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). Accordingly, the trial court did not clearly err by terminating respondent's parental rights under MCL 712A.19b(3)(*i*).

Because we believe the trial court did not clearly err in finding statutory grounds under MCL 712A.19b(3)(b)(*i*), we need not consider this issue any further. See *In re Moss*, 301 Mich App at 80.

Respondent also argues that he, as LC's natural parent, has a fundamental liberty interest in the care, custody, and management of the child that is protected by the Fourteenth Amendment. Respondent states that "when one stands to lose the right to have care and custody of his child, there must be more presented that just the uncorroborated testimony of the minor child." Respondent alleges that LC made contradictory and conflicting statements by (1) mentioning at one point that the incident occurred in the bedroom, and then later on the couch, (2) stating that respondent's girlfriend witnessed the incident, but respondent's girlfriend testified that she did not, and (3) lying about the number of children respondent's girlfriend had and bringing up a child named Zoe.[5]

"The Due Process Clause provides heightened protection against government interference with certain fundamental rights and liberty interests." *In re B & J*, 279 Mich App 12, 22; 756 NW2d 234 (2008) (quotation marks and citation omitted). "It is undisputed that parents have a fundamental liberty interest in the companionship, care, custody, and management of their children." *Id*. at 23. "In order to comply with the guarantees of substantive due process, the state must prove parental unfitness by 'at least clear and convincing evidence' before terminating a respondent's parental rights." *Id*. (quotation marks and citation omitted). "Michigan law fully comports with this requirement, requiring proof of at least one statutory ground 'by clear and convincing evidence' before the family court may terminate a respondent's parental rights." *Id*., quoting MCL 712A.19b(3). "Once the petitioner has presented clear and convincing evidence that persuades the court that at least one ground for termination is established under subsection 19b(3), the liberty interest of the parent no longer includes the right to custody and control of the children." *In re Trejo*, 462 Mich at 355. Therefore, so long as petitioner satisfied its burden of establishing one ground for termination under MCL 712A.19b(3) by clear and convincing evidence, respondent's constitutional rights were not violated.

[5] The trial court did not provide an analysis of the "Zoe" issue. This Court conducted its own review of the Kids-TALK interview and found that only Madlock mentioned "Zoe"—LC never did. During the interview, LC mentioned the names of the respondent's girlfriends' daughters, but her pronunciation was difficult to understand. In trying to clarify what LC said, Madlock asked LC if she said "Zoe," but LC corrected Madlock and repeated the name of the daughter. Madlock eventually discerned the name and repeated it to LC, and LC confirmed that the name Madlock said was correct.

Here, as explained, the trial court found clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(b)(*i*). As a result, respondent's constitutional right to parent LC was not violated. Further, the trial court heard testimony during the Tender-Years hearing about the inconsistencies in LC's testimony. Despite the inconsistencies, the trial court overall found LC's statements to be trustworthy. Additionally, respondent merely announced his position that more than LC's testimony was required to terminate his parental rights. Respondent did not cite case law in support of his position. Therefore, the Court considers the argument to be abandoned. *Blackburne & Brown Mortg Co v Ziomek*, 264 Mich App 615, 619; 692 NW2d 388 (2004) ("An appellant may not merely announce its position or assert an error and leave it to this Court to discover and rationalize the basis for its claims, unravel or elaborate its argument, or search for authority for its position. Insufficiently briefed issues are deemed abandoned on appeal.") (Quotation marks and citations omitted.) However, even addressing this argument, the trial court articulated that in finding statutory grounds to terminate respondent's parental rights, it considered testimony from a highly trained forensic interviewer, from the CPS worker, and from LC's mother.[6] Thus, respondent's argument fails.[7]

IV. REASONABLE EFFORTS

Respondent argues that the trial court erred in failing to ensure that the DHHS made reasonable efforts to reunite him with LC. Respondent argues that similar to cases where a respondent-parent is addicted to drugs, the parent is "owed the opportunity to show he could provide the proper care for the minor child." According to respondent, when services are not offered, a parent's "fundamental right" to parent their child is violated. We disagree.

"Under Michigan's Probate Code, [the DHHS] has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks/Brown Minors*, 500 Mich 79, 85; 893 NW2d 637 (2017). However, "[r]easonable efforts toward reunification are unnecessary if a parent caused or created an unreasonable risk of the abandonment, serious physical or sexual abuse, or death of a child." *In re Rood*, 483 Mich 73, 100

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[6] We further note that, while not directly relevant, a defendant in a criminal case can be found guilty of criminal sexual conduct on the basis of the victim's testimony alone. See MCL 750.520h. If a defendant in a criminal case can be found beyond a reasonable doubt to have committed sexual misconduct on the basis of a victim's testimony alone, it seems to logically follow that a respondent in child protective proceedings can be found under the lesser clear-and-convincing-evidence standard to have committed sexual misconduct on the basis of a victim's testimony alone.

[7] Respondent also alleges that LC's statement that she "didn't do fun stuff" with respondent sounds like a child who is "unhappy with her father" as opposed to a child who has been "touched inappropriately." However, respondent admitted that he did not spend quality time with LC, so to the Court, LC's statement was just an honest response to Madlock's question of what else she did while at home with respondent.

Respondent also notes that no charges were filed against him in regards to the allegations made by LC. The trial court, in making its ruling on statutory grounds, stated that the criminal charges carry a different legal standard, beyond a reasonable doubt. This is a higher standard than the clear and convincing standard for finding a statutory basis for termination.

n 37; 763 NW2d 587 (2009), citing MCL 712A.19a(2)(a); MCL 722.638(1) and (2). Specifically, MCL 712A.19a(2)(a) states that reasonable efforts to reunify the child and family are not required if "[t]here is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638." *In re Rippy*, 330 Mich App 350, 355; 948 NW2d 131 (2019). MCL 722.638 provides:

> (1) The department shall submit a petition for authorization by the court under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, if 1 or more of the following apply:
>
> (a) The department determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling of the child and the abuse included 1 or more of the following:
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> * * *
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> (*ii*) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
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> * * *
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> (2) In a petition submitted as required by subsection (1), if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the department shall include a request for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIIA of 1939 PA 288, MCL 712A.19b.

Under MCR 3.977(E):

> The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 3.973, and shall order that additional efforts for reunification of the child with the respondent shall not be made, if
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> (1) the original, or amended, petition contains a request for termination;
>
> (2) at the trial or plea proceedings, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2(b) have been established;
>
> (3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:
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> (a) are true, and

(b) establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), or (m);

(4) termination of parental rights is in the child's best interests.

In its petition, the DHHS sought termination of respondent's parental rights under MCL 722.638 because it believed that LC suffered sexual abuse at the hands of respondent. The DHHS alleged that LC disclosed to CPS that respondent touches her and demonstrated to CPS that respondent takes "takes his finger and runs it from her butt to her vagina." The DHHS further alleged that LC reported the same sexual abuse during a Kids-TALK interview. CPS also sent a criminal referral to the Michigan State Police.

Following the initial dispositional hearing, the trial court found by a preponderance of the evidence that based on all the testimony and evidence presented, an injury occurred to LC and the court would assume jurisdiction over her based on the substantial allegations in the petition. The trial court then found statutory grounds to terminate respondent's rights under MCL 712A.19b(3)(*i*), (j), and (k)(*ii*) because it found LC's disclosure of sexual abuse at the Kids-TALK interview to be trustworthy. As will be discussed in more detail in Section V, the trial court went on to conclude that it would be in the bests interests of LC to terminate respondent's parental rights due to his categorical denial of the allegations and the court's determination that the sexual abuse did occur.

In light of its stated findings, the trial court satisfied the requirements in MCR 3.977(E) necessary to terminate respondent's rights at the initial dispositional hearing. Also, it is clear that the trial court found that LC suffered abuse, that the abuse included criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate, and that respondent was the perpetrator of this abuse. These findings amount to a judicial determination that respondent subjected LC to aggravated circumstances as provided in MCL 722.638(1) and (2). Therefore, under MCL 712A.19a(2)(a), the DHHS was not required to make reasonable efforts to reunite respondent with LC, and respondent's argument that the DHHS failed to make reasonable efforts has no merit.

Furthermore, respondent's argument that the lack of reasonable efforts violates his "fundamental right" to parent LC also holds no merit. In likening his right to services with the right to services of drug-addicted parents, respondent essentially argues that by providing services to parents accused of drug addiction, but not to those parents accused of sexual abuse, parents accused of sexual abuse are denied equal protection under the law. Respondent's argument could also be interpreted as a procedural due-process argument in which he was denied due process when he was not provided the opportunity to participate in services.

Either way, we have previously addressed this exact issue in *In re AH*, 245 Mich App at 82-85. The respondent-parent in *In re AH* argued that the denial of services under MCL 722.638 violated her due process and equal protection rights under the Constitution. *Id*. at 79. We began our analysis with the basic premise that "[t]he equal protection guarantee contained in both our federal and state constitutions requires that persons under similar circumstances be treated alike . . . . However, it does not require that persons under different circumstances be treated the same." *Id*. at 82. In resolving the issue of whether MCL 722.638 denied parents their due-process

rights, we noted that this statute is basically an extension of the anticipatory neglect doctrine, which is intended to protect "children from unreasonable risks of harm." *Id*. at 83. We concluded that "while the statute does in effect create a separate class of parents, we do not conclude that it violates equal protection." *Id*. at 85. Similarly, we determined that MCL 722.638 does not violate procedural due-process principles, stating:

> [A]fter filing the petition, petitioner must still satisfy the statute's "risk of harm" requirement and establish that the parent is "a suspected perpetrator or . . . suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk." Further, a request for termination does not necessarily mean that the court will grant the request. [*Id*.]

Applying this reasoning to this case, we see no merit to an argument that respondent was treated unfairly compared with parents accused of drug addiction. As articulated in *In re AH*, the purpose of MCL 722.638 is to protect children from unreasonable risk of harm—in this case, sexual abuse. Though we acknowledged that this in fact creates a separate class of parents, that separate classification does not necessarily violate equal protection. Further, while the record shows that respondent was denied services during the pendency of this case, the DHHS was still required to present evidence that respondent placed LC at unreasonable risk of harm and the trial court was required to accept this evidence. Thus, there was no violation of respondent's procedural due-process rights.

V. BEST INTERESTS

Respondent argues the trial court erred in finding that termination of respondent's parental rights was in LC's best interests. We disagree.

A. STANDARD OF REVIEW

We review for clear error a trial court's determination regarding best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). "A trial court's decision is clearly erroneous 'if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.' " *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012) (brackets omitted), quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. LAW AND ANALYSIS

"Once a statutory basis for termination has been shown by clear and convincing evidence, the court must determine whether termination is in the child's best interests." *In re LaFrance*, 306 Mich App 713, 732-733; 858 NW2d 143 (2014), citing MCL 712A.19b(5). " 'The focus at the best-interest stage has always been on the child, not the parent.' " *In re Payne/Pumphrey/Fortson Minors*, 311 Mich App 49, 63; 874 NW2d 205 (2015) (brackets omitted), quoting *In re Moss*, 301 Mich App at 87. "Best interests are determined on the basis of the preponderance of the evidence." *In re LaFrance*, 306 Mich App at 733.

The trial court's considerations in determining the best interest of the child should account for "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, [] the advantages of a foster home over the parent's home . . . the length of time the child was in care, the likelihood that the child could be returned to her parents' home within the foreseeable future, if at all, and compliance with the case service plan." *In re Payne/Pumphrey/Fortson Minors*, 311 Mich App at 63-64 (quotation marks and citations omitted). "In assessing whether termination of parental rights is in a child's best interests, the trial court should weigh all evidence available to it." *Id*. at 63. However, placement with a relative is a factor against termination. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Indeed, "the fact that the children are in the care of a relative at the time of the termination hearing is an explicit factor to consider in determining whether termination was in the children's best interest." *In re Olive/Metts Minors*, 297 Mich App at 43 (quotation marks omitted).

Respondent presents two arguments on this point. First, respondent argues that termination of his parental rights was not in LC's best interests because respondent "loved the minor child, . . . he had a stable job, [and] there was plenty of food at his residence." Second, respondent avers that the trial court erred when it failed to consider LC's placement with her mother as a factor weighing against termination.

Addressing respondent's second argument first, the trial court was not required to consider LC's placement with her biological mother because a parent is not considered a "relative" for purposes of MCL 712A.13a(1)(j)—the statute requiring the court to consider a child's placement with relatives. *In re Schadler*, 315 Mich App 406, 413; 890 NW2d 676 (2016) ("[B]ecause BS's biological mother was not a 'relative' for purposes of MCL 712A.19a, the trial court was not required to consider that relative placement.").

Turning to respondent's argument that it was against LC's best interests to terminate his parental rights because he "loved the minor child, . . . he had a stable job, [and] there was plenty of food at his residence," the trial court made the following findings of fact with respect to LC's best interests,

> The Court finds that even though this was was—on the best interest findings, the Court does find that since [respondent] has categorically denied these allegations, and since the Court has found some credibility on these allegations, and made a determination that this abuse did occur, that it would just be in the Child's best interest to expose the Child (inaudible) abuse by [respondent] and the Court does thus find that it would be in the best interest of the Child, the Court cannot logically make that determination based on the findings that this Court has made up to this point based on the Kids[-]TALK interview and also based on all of the evidence that have [sic] been presented before this Court today.

The trial court's findings on this point are supported by evidence in the record. There was significant attention paid in this case to the reliability of LC's disclosures of abuse—which the trial court found were substantiated on the basis of testimony by Madlock, Gillum, respondent's girlfriend, LC's mother, and LC's video testimony. Because the record supports the trial court's conclusions that there was credible evidence showing that the sexual abuse occurred, the trial court did not clearly err in determining that it was in LC's best interests to terminate respondent's

parental rights, even in light of evidence that respondent "loved the minor child . . . had a stable job, [and that] there was plenty of food at his residence." See, e.g., *In re VanDalen*, 293 Mich App 120, 141-142; 809 NW2d 412 (2011) (holding that the trial court did not clearly err by finding that termination was in the children's best interest in light of the abuse they suffered at the hands of the respondents).

VI. CONCLUSION

Affirmed.

/s/ Colleen A. O'Brien
/s/ Cynthia Diane Stephens
/s/ Mark T. Boonstra