

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 28, 2011

In the Matter of D. K. and V. K., Minors.

No. 301401
Mecosta Circuit Court
Family Division
LC No. 10-005534-NA

Before: TALBOT, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

Respondent, the biological father and step-grandfather of the minor children, appeals as of right a circuit court order terminating his parental rights pursuant to MCL 712A.19b(3)(b)(i), (h), (k)(ii) and (n)(i) based on respondent's sexual abuse of various relatives. At least one of these statutory grounds was supported by clear and convincing legally admissible evidence, contrary to respondent's arguments on appeal. Accordingly, we affirm.

I. BACKGROUND

This case involves a manipulative, able minded man who purposefully infiltrated a vulnerable, at-risk family who he then ruled over using fear, control, and sexual exploitation. Respondent had so subdued this family that he remained in control even after he lost both of his legs to diabetes complications.

Respondent met SC in 1992 while both lived in a San Diego homeless shelter. SC resided in the shelter with her three children—CK (DOB 08/20/1978), EK (DOB 04/22/1980), and KK (DOB 07/23/1984)—and all four suffered from varying levels of mental impairment. In April 1993, respondent married SC and they moved into an apartment with her three children. At some point, respondent began forcing his mentally impaired, 14-year-old stepdaughter, CK, to have sex with him. In the month of CK's 15th birthday, respondent impregnated her. CK gave birth to respondent's daughter, DK, while she was still only 15 years old. DK (DOB 05/01/1994) is also mentally handicapped. Respondent continued to force CK to have sex with him and she later gave birth to respondent's second daughter, VK (DOB 01/16/1998). Despite this situation, CK continued to live with her mother (SC), her two brothers (EK and KK), and respondent. Over the years, DK and VK believed respondent was only their step-grandfather. Neither respondent nor CK told the children that respondent was their biological father as well.

In February 2010, *respondent* contacted Children's Protective Services (CPS) to report that his stepfather had touched DK in a sexual manner. A CPS worker and detective investigated

the complaint and interviewed DK at school. They noted a significant change in DK's behavior in response to questions about respondent. The CPS worker and the detective later questioned respondent's wife (SC), who revealed that respondent had sexually abused DK. CK revealed that respondent had sexually abused her as a child, her daughters were a product of this abuse, and she was concerned respondent was sexually abusing DK.

Based on these interviews, the children were immediately taken into the court's custody and respondent was arrested. The DHS filed a petition on February 22, 2010 to take jurisdiction over the children and terminate the parental rights of respondent and CK. The petition described this family's unique dynamics and named respondent as the children's putative father. The petition alleged that respondent had legally changed his name on multiple occasions and that he was required to register as a sex offender in California and Washington. The DHS alleged that CK failed to protect her daughters as she continued to reside with respondent despite the sexual crimes he had committed against her. The petition described an incident revealed by CK where respondent lured DK into the home's "office" and used his electric wheelchair to barricade the door. DK was able to escape by pushing the screen out of a window and was forced outside into the snow without proper attire. DK told CK that respondent bribed her to disrobe. DK was hysterical after the incident and told her mother and grandmother (CK and SC), that respondent had done "something bad to" her. DK referred to incidents where "it" happened with respondent, but she refused to elaborate. The petition alleged that SC did nothing to protect CK or her grandchildren despite the fact that respondent repeatedly raped SC and despite her knowledge that respondent was sexually abusing CK. Based on CK and SC's failure to protect the children by allowing them to live in a house with a known sex offender, the petition alleged that the children would be in danger if returned to the home.

The DHS filed an amended petition on May 14, 2010, reflecting that DNA testing had proven that respondent is DK and VK's biological father. The amended petition included an additional allegation that DK had since revealed that respondent had penetrated her vagina with his penis and finger on multiple occasions and had digitally penetrated her vagina on the evening that he barricaded her in the office. DK further indicated that she told CK about the abuse and CK yelled at respondent to "stop raping her daughter." The petition further alleged that respondent was being criminally charged for failing to register as a sex offender and with various counts of criminal sexual conduct (CSC) against members of the household. The DHS filed a second amended petition on July 1, 2010, indicating that the prosecutor had amended the CSC charges against respondent.

The court established jurisdiction over the children on August 5, 2010. At that hearing, CK entered a plea to jurisdiction, admitting that respondent had repeatedly raped her since the age of 14 and was the father of her children. CK admitted that she knew respondent was required to register as a sex offender in California. Although CK maintained that she "always protected [her] kids," CK acknowledged that she allowed her children to remain in the home with respondent. At the adjudicative hearing, the trial court also allowed the petitioner to present testimony from a foster care worker regarding DK's statements that respondent had sexually abused her. Ultimately, CK voluntarily released her parental rights to the children.

In a separate criminal action, the state charged respondent with and he pleaded no contest to three counts of third-degree criminal sexual conduct, MCL 750.520d(1)(b) (force or coercion

used to accomplish sexual penetration), with respect to his wife (SC), his stepson (EK), and his biological daughter/step-granddaughter (DK). The criminal court sentenced respondent to five to 15 years' imprisonment, with his earliest release date being October 11, 2015.

Based on the change in events, the DHS filed a third amended petition on October 21, 2010 to include respondent's criminal plea and sentence. The petition noted that CK had voluntarily consented to the termination of her parental rights and that respondent was now the sole target of the petition. The petition sought termination under MCL 712A.19b(3)(g) because respondent was "a parent who without regard to intent, fails to provide proper care or custody" for his children and "there is no reasonable expectation" that he could do so within a reasonable timeframe. The DHS also sought termination under MCL 712A.19b(3)(b) because respondent had sexually abused CK and DK such that DK and VK would likely be harmed if returned to his care. The DHS subsequently made an oral motion to include additional grounds for termination: MCL 712A.19b(3)(h) (parent's imprisonment for more than two years), MCL 712A.19b(3)(k)(ii) (parent abused a child or sibling in sexual manner), and MCL 712A.19b(3)(n)(i) (parent convicted of CSC-3).

At the termination hearing, psychologist Byron David Barnes testified that he conducted a psychological evaluation of DK and that she exhibited signs of post traumatic stress disorder and depression. DK told Dr. Barnes that respondent began sexually abusing her when she was 13 years old and would force penile-vaginal and penile-anal penetration on a weekly basis.

Detective Brian Miller testified that he initially investigated respondent's complaint that his stepfather had sexually abused DK. Based on DK's reaction to questions about respondent and based on information provided by respondent's mother, the detective suspected that respondent had also sexually abused DK. However, DK did not personally report that respondent had sexually abused her until after she had been placed in foster care. SC, CK, and EK, on the other hand, revealed during their initial police interviews that respondent had sexually abused them and DK. The detective testified regarding the CSC charges that were filed against respondent and his plea conviction and sentence for those crimes. Detective Miller also testified about respondent's prior criminal conviction for a sex crime in the state of Washington.

CPS worker Amanda Jackson confirmed that genetic testing had been completed to prove that respondent was the biological father of DK and VK. Jackson confirmed that CK was only 15 years old when DK was born. Jackson also explained the family dynamic and confusing familial connections caused by respondent fathering children with his stepdaughter. Jackson reiterated Detective Miller's testimony that DK's demeanor changed when they asked questions about respondent. In that initial interview, DK told Jackson that respondent was in charge at home and would not allow her to attend school functions. DK also told Jackson that CK guarded the children's bedroom door at night so respondent could not enter. DK eventually told Jackson that respondent had lured her into the office to eat chicken wings but then tried to cajole her into disrobing.

Foster care worker Jessica Wilson testified that DK had been placed in a group home where she could receive intensive therapy and counseling. As a result of her psychological trauma, DK often urinated and had bowel movements in her underwear. DK also failed to recognize personal boundaries and wanted to be uncomfortably close with male aides and

authority figures. DK revealed to Wilson that she had been sexually abused by respondent. Wilson testified that respondent had never sexually abused VK and seemed to treat her better than the other family members. Wilson believed, however, that VK would not be safe in respondent's care given his pattern of victimizing other family members. Wilson also testified that VK seemed to be the only family member without mental impairments.

SC testified, but provided confused and non-responsive answers to questions about respondent's long-term sexual abuse of her daughter CK. SC testified that respondent was very controlling and demanded sex in exchange for money. She indicated that she had never consensually had intercourse with her husband of 19 years. Moreover, she accused respondent of sexually abusing her and beating her about the head on the night before respondent was arrested. SC admitted that she never tried to leave or divorce respondent even when he was hospitalized for extended periods and could not harm her or the children.

EK also testified on behalf of the DHS. EK is CK's brother and, therefore, is both the children's biological uncle and stepbrother. EK testified that respondent began having sex with CK while the family still lived in the homeless shelter. Respondent forced EK to stand guard during these incidents. EK indicated that everyone in the household was afraid of respondent because respondent was in charge and was prone to violence when someone disobeyed. Respondent took all the money EK and his brother earned doing odd jobs around the neighborhood and would only return funds in exchange for sex acts. Between the ages of 11 and 18, respondent forced EK to succumb to penile-anal penetration and engage in various types of masturbation. EK further testified that respondent forced sex acts upon KK.

The circuit court terminated respondent's parental rights on November 12, 2010. The court determined that the DHS presented clear and convincing legally admissible evidence that respondent had sexually abused DK and CK and that respondent had been convicted of CSC-3 and would be imprisoned for at least five years. Based on this evidence, the court terminated respondent's rights under MCL 712A.19b(3)(b)(i), (h), (k)(ii), and (n)(i).

II. LEGAL PRINCIPLES

As respondent challenges the trial court's decisions at both the adjudicative and dispositional phases of these proceedings, we find a brief procedural overview to be helpful. "Child protective proceedings consist of two distinct phases: the trial, also known as the adjudicative phase, and the dispositional phase. During the adjudicative phase, which occurs first, the trial court determines whether it may exercise jurisdiction over the minor child pursuant to MCL 712A.2(b)." *In re Utrera*, 281 Mich App 1, 15-16; 761 NW2d 253 (2008) (internal citation omitted). The petitioner must prove by a preponderance of the evidence that there are grounds to take jurisdiction of the child. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). This Court reviews the decision to exercise jurisdiction over children in a protective proceeding for clear error. *Id.*

After the court takes jurisdiction over the child, the court proceeds to the dispositional phase "at which the trial court determines what action, if any, will be taken on behalf of the child." *Utrera*, 281 Mich App at 16 (internal quotation omitted). Pursuant to MCL 712A.19b(3), a trial court "may terminate a parent's parental rights to a child if the court finds,

by clear and convincing evidence” that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). “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 is required by law to order termination. MCL 712A.19b(5). This Court reviews for clear error the trial court’s determination that a statutory ground for termination has been established and its determination that termination is in the children’s best interests. MCR 3.977(K); *In re Archer*, 277 Mich App 71, 73; 744 NW2d 1 (2007). A 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 JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes us as more than just maybe or probably wrong. *Trejo*, 462 Mich at 356.

III. ADJUDICATION

Respondent challenges the trial court’s decision to take jurisdiction over the minor children based solely on the plea of co-respondent CK. Respondent contends that the spirit of the allegations pled to by CK were charges against respondent, not herself. As the DHS failed to raise any real allegations against CK, she was not an actual respondent and, therefore, was unable to plead to jurisdiction. We disagree.

Respondent’s reliance on *In re SLH, AJH, and VAH*, 277 Mich App 662; 747 NW2d 547 (2008), is misplaced. In *SLH*, the DHS did not raise any allegations against the “respondent” mother in the petition to take jurisdiction. The DHS alleged that the respondent father had sexually abused his minor daughter and that the mother “caught him in the act.” *Id.* at 670. At the adjudicative hearing, the trial court allowed the mother to plead to jurisdiction by admitting to the instance of sexual abuse that she witnessed. *Id.* at 669-670. The circuit court reasoned that the DHS had implied that the mother failed to protect her children. *Id.* at 671. This Court disagreed and ruled that the mother’s plea was invalid. The DHS did not actually accuse the mother of failing to protect her children. Moreover, the mother did not admit that she failed to protect her children. On the contrary, the mother admitted that she immediately removed the respondent father from the home in order to protect her children. *Id.* at 670-671. As she was not accused of any wrongdoing, the mother was a “party” to the proceedings, but not a “respondent.” As only a respondent may enter a plea, the trial court could not take jurisdiction over the children based on the mother’s plea. *Id.* at 670.

In this case, the DHS raised a true allegation against the respondent mother: CK raised her children in the same house as respondent despite the fact that respondent had been sexually abusing her since she was 14 years old. The DHS specifically alleged that this amounted to a failure to protect. CK was a true respondent facing a true allegation of wrongdoing. Accordingly, she could enter a valid plea upon which the court could take jurisdiction.

We also reject respondent’s contention that CK’s plea was not voluntary. Respondent raised this issue for the first time on appeal and, therefore, our review is limited to plain error affecting respondent’s substantial rights. *Utrera*, 281 Mich App at 8. MCR 3.971 governs the entry of pleas in termination cases. Subsection (C)(1) mandates the court to “satisfy[] itself that the plea is knowingly, understandingly, and voluntarily made” before it accepts the plea. Here,

the court fully informed CK of her right to proceed toward trial and the rights she was giving up by pleading. See MCR 3.971(B). CK indicated that she understood and wished to continue. CK then admitted that she knew respondent was required to register as a sex offender in California, that respondent was her stepfather and the biological father of her children, that respondent had sexually abused her continuously from the age of 14, and that she allowed her children to live in the same household as her abuser. While this Court may have inquired further into CK's ability to understand the implications of her plea, the trial court's actions were sufficient to render the plea valid.

Respondent also challenges the use of inadmissible hearsay evidence, over his objection, at the adjudication hearing. We agree with respondent's assertion that the petitioner presented hearsay evidence through the testimony of a foster care worker. However, the circuit court's decision to take jurisdiction over the children was supported by admissible, nonhearsay evidence. CK testified regarding her personal experiences of sexual abuse at respondent's hands and the fact that respondent fathered her children. CK also testified regarding her personal feeling of insecurity in the home and the danger she perceived to her children. A witness may testify to a matter of which she has personal knowledge. MRE 602. The court's determination that CK failed to protect DK and VK was based on CK's personal knowledge that she had been sexually abused by respondent and her admission that she allowed her children to live in respondent's home. Any hearsay evidence presented was simply unnecessary to the court's decision.

IV. TERMINATION

A. PROCEDURAL CHALLENGE

Respondent contends that the trial court erroneously proceeded with the termination hearing under MCR 3.977(E) (termination sought at initial dispositional hearing). Respondent argues that the proceeding should have been conducted under MCR 3.977(F) as the court was proceeding toward termination on grounds beyond the plea that allowed jurisdiction. We agree that the circuit court proceeded under the wrong court rule; however, we conclude that respondent was not prejudiced by this error.

As noted in *Utrera*, 281 Mich App at 16, citing MCR 3.973(E)(1), "the Michigan Rules of Evidence do not generally apply at an initial dispositional hearing." The DHS may seek termination at the initial dispositional hearing as the DHS did in this case. When the petitioner seeks termination at the initial dispositional hearing, it must establish by "clear and convincing *legally admissible* evidence" that the allegations in the petition are true and that at least one statutory ground for termination has been met. MCR 3.977(E)(3) (emphasis added). However, the court is not limited to considering only legally admissible evidence in determining whether termination is in the child's best interests. MCR 3.977(E)(4).

Although the petitioner sought termination at the initial dispositional hearing, MCR 3.977(F) is a more specific court rule and must control this action. See *King v State of Michigan*,

488 Mich 208, 227; 793 NW2d 673 (2010) (“[W]here a statute contains a general provision and a specific provision, the specific provision controls.”).¹ MCR 3.977(F) governs when the petitioner proceeds under a “supplemental petition,” i.e. a petition based on “one or more circumstances new or different from the offense that led the court to take jurisdiction.” The DHS filed an amended petition after the court took jurisdiction of the children. The DHS included additional allegations that respondent had pleaded no contest to CSC charges in relation to acts against his wife, his stepson, and DK (his step-granddaughter/biological daughter). As jurisdiction had not been based on respondent’s criminal conviction or the underlying acts against the named family members, the trial court was required to proceed under the more specific provision, MCR 3.977(F).

The trial court conducted the dispositional phase under the wrong court rule, but respondent was not prejudiced by this error as both provisions contain the same evidentiary standards. Both MCR 3.977(E)(3) and MCR 3.977(F)(1)(b) require the petitioner to present “clear and convincing *legally admissible* evidence” that the allegations in the petition are true and that at least one statutory ground for termination has been met. The court is also not bound by the rules of evidence in considering the child’s best interests. MCR 3.977(E)(4); MCR 3.977(F)(1)(c).

B. STATUTORY GROUNDS FOR TERMINATION

Respondent challenges that circuit court’s determination that the petitioner established at least one ground for termination. Specifically, respondent contends that the court’s decision was based on inadmissible evidence presented over his objection. We review a trial court’s evidentiary rulings for an abuse of discretion. *In re Caldwell*, 228 Mich App 116, 123; 576 NW2d 724 (1998). “[A]n abuse of discretion occurs only when the trial court’s decision is outside the range of principled outcomes.” *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007). Ultimately, “[a]n error in the admission . . . of evidence . . . is not ground for” relief “unless refusal to take this action appears to the court inconsistent with substantial justice.” MCR 2.613(A).

The circuit court terminated respondent’s parental rights under the following four provisions of MCL 712A.19b(3):

(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.

¹ The current case involves the interpretation of a court rule, not a statute as in *King*. However, the canons of statutory interpretation apply with equal force to our court rules. *Haliw v Sterling Hgts*, 471 Mich 700, 704; 691 NW2d 753 (2005).

* * *

(h) The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

* * *

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

* * *

(n) The parent is convicted of 1 or more of the following, and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child:

(i) A violation of section 316, 317, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316, 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

The circuit court relied on respondent's plea of no contest to various counts of CSC-3 in finding that the grounds for termination had been established. This was error. MRE 410(2) prohibits the use of such evidence in any civil or criminal proceeding except to defend against a subsequent civil claim brought by the person who entered the plea. This Court has specifically held that a *nolo contendere* plea cannot be used as an admission in another proceeding. *Shuler v Michigan Physician's Mut Liability Co*, 260 Mich App 492, 512; 679 NW2d 106 (2004). Accordingly, the trial court should have limited its use of this evidence to its consideration of the children's best interests.

We conclude that the trial court's error in considering respondent's no contest plea is harmless. Evidence of respondent's plea is duplicative of other legally admissible evidence. Specifically SC and EK, both named victims in the plea, personally testified regarding respondent's acts of sexual abuse toward them. This testimony was based on personal knowledge and was not inadmissible hearsay. MRE 602.

The petitioner also presented testimony from several witnesses regarding DK's out-of-court statements that respondent had penetrated her vagina with his finger and penis. The psychologist who evaluated DK in relation to this case testified that DK reported that respondent had repeatedly forced sexual penetration since DK was 13 years old. The investigating detective testified that DK reported to him that respondent had sexually abused her. CPS worker Jackson

testified that DK told her that respondent had digitally penetrated her vagina after barricading her in the home's office. Foster care worker Wilson testified that DK also told her about the sexual abuse perpetrated by respondent.

These witnesses clearly provided hearsay evidence—they all testified regarding DK's out-of-court statements and the petitioner's intent was "to prove the truth of the matter asserted." MRE 801(c). DK did not testify at the trial and respondent had no opportunity to cross-examine her regarding these statements. However, respondent has not challenged the admission of this evidence on confrontation grounds. Instead, respondent merely contends that this hearsay evidence was inadmissible to prove the statutory grounds for termination of his parental rights.

We agree with respondent that the investigating officer, foster care worker, and CPS worker provided inadmissible hearsay evidence regarding DK's statements. However, DK's statements to Dr. Barnes fall within a hearsay exception and, therefore, were admissible. MRE 803(4) excepts from the exclusionary rule "[s]tatements made for purposes of medical treatment or medical diagnosis in connection with treatment." This Court has recognized that "[s]exual abuse cases involve medical, physical, developmental, and psychological components, all of which require diagnosis and treatment." *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996). Dr. Barnes needed to understand the history of DK's abuse in order to provide an accurate diagnosis (post traumatic stress disorder and depression) and to explain DK's inappropriate social behavior (personal space issues) before he could recommend a course of treatment. DK's statements to Dr. Barnes were properly admitted, and the improperly admitted testimony of other witnesses was merely cumulative.

Based solely on the legally admissible evidence, we find that the petitioner presented clear and convincing evidence to support more than one legal ground for termination. First, the petitioner supported termination under MCL 712A.19b(3)(b)(i) (sexual abuse of the child or a sibling). Given the complicated relationships in this case, EK is both biological uncle and stepbrother to the minor children. CK is both the children's biological mother and their stepsister. EK testified that respondent had forced penile-anal penetration on him over a period of seven years. Dr. Barnes also testified regarding DK's description of sexual abuse perpetrated by respondent. Although CK did not testify at trial, the court could rely on the indisputable fact that respondent fathered two children with his mentally impaired stepdaughter (one during her minority). Based on this legally admissible evidence, the court could conclude by clear and convincing evidence that "[t]he child or a sibling of the child has suffered . . . sexual abuse," that "[t]he parent's act caused the sexual abuse" and "that there is a reasonable likelihood that [DK and VK] will suffer from injury or abuse" if returned to respondent's care. These same facts also provide clear and convincing legally admissible evidence to establish that "the parent abused . . . a sibling of [DK and VK] and the abuse included . . . criminal sexual conduct involving penetration" under MCL 712A.19b(3)(k)(ii).

While MRE 410(2) precluded the petitioner from presenting evidence of respondent's no contest plea from the separate criminal proceeding, no evidentiary rule excludes evidence regarding the length of respondent's sentence relative to MCL 712A.19b(3)(h) (parent imprisoned for more than two years, has failed to provide proper care and custody and will be unable to provide proper care and custody within a reasonable time). Respondent's minimum sentence is five years, making his earliest release date October 11, 2015, which is clearly more

than two years even from today. A court may not terminate a parent's rights based on incarceration alone; the court must also consider the respondent's attempts to provide proper care and custody and his future chances of providing such care. *In re Mason*, 486 Mich 142, 160-161; 782 NW2d 747 (2010). Here, respondent failed to provide proper care and custody for the children. The DHS immediately placed the children into foster care and there is no indication in the record that respondent provided financial support for his children. Further, there is no reasonable expectation that respondent could provide proper care and custody within a reasonable time. DK will be an adult when respondent is released from prison. Given SC and EK's testimony regarding the abuse they faced at respondent's hands, the court could easily determine that VK would suffer similar abuse if suddenly returned to respondent's care at the age of 17. Accordingly, the trial court's determination regarding MCL 712A.19b(3)(h) was established by clear and convincing legally admissible evidence.

However, we must vacate the trial court's determination that termination was supported by MCL 712A.19b(3)(n)(i) (parent convicted of a sex crime). The evidence that respondent was convicted of committing CSC-3 in violation of MCL 750.520d is inextricably linked to the evidence of his no contest plea. Accordingly, the trial court erred in considering that evidence. This error does not require reversal given that the petitioner successfully established three statutory grounds for terminating respondent's parental rights where only one ground is required. MCL 712A.19b(3).

Further, we note that the court specifically recognized that only legally admissible evidence could be relied upon to establish the statutory basis for termination. The court allowed the petitioner to present otherwise inadmissible evidence to establish that termination of respondent's parental rights was in the children's best interests. The court noted on the record that it would parcel out the admissible from the inadmissible evidence in rendering its judgment. A trial court conducting a proceeding without a jury is assumed to know the law and to consider only the evidence properly before it. *Archer*, 277 Mich App at 84. Although the court erred in considering certain inadmissible evidence in this regard, this error did not taint the entire proceeding or cause substantial injustice to respondent. Accordingly, we affirm the trial court's decision to terminate respondent's parental rights.

Affirmed.

/s/ Michael J. Talbot
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly