

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 16, 2013

In the Matter of E. FRENCH, Minor.

No. 312798
Oakland Circuit Court
Family Division
LC No. 11-789970-NA

Before: JANSEN, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g), (j), and (k)(ii). We affirm.

The minor child came within the trial court’s jurisdiction after his half-sister, E.D., disclosed to two forensic interviewers that she had been sexually abused by respondent, who was her stepfather. E.D, who was then seven years old, told of multiple incidences of sexual abuse that included digital penetration. Petitioner sought immediate termination of respondent’s parental rights to the minor child, under the doctrine of anticipatory neglect, because of the gravity of the sexual abuse of his half-sister.

Respondent first contends that the trial court erred in admitting E.D.’s hearsay statements regarding respondent’s sexual abuse through the testimony of two forensic interviewers under the “tender years” exception provided in MCR 3.972(C)(2). Respondent argues that the circumstances surrounding the statements did not provide adequate indicia of reliability. The record does not support respondent’s claim of error.

A trial court’s ruling on whether to admit or exclude evidence is reviewed for an abuse of discretion; to the extent appellate determination of an evidentiary question requires an examination of MCR 3.972(C), review is de novo. *In re Archer*, 277 Mich App 71, 77; 744 NW2d 1 (2007). A trial court abuses its discretion if its decision falls outside the range of principled outcomes. *In re Jones*, 286 Mich App 126, 130; 777 NW2d 728 (2009). “This Court, however, will not reverse on the basis of an evidentiary error unless the court’s ruling affected a party’s substantial rights.” *In re Caldwell*, 228 Mich App 116, 123; 576 NW2d 724 (1998).

Hearsay statements of children pertaining to acts of child abuse are admissible in child protective proceedings if the criteria for reliability set out in MCR 3.972(C)(2) are satisfied. *In re Archer*, 277 Mich App at 80. MCR 3.972(C) provides, in relevant part:

(2) *Child's Statement.* Any statement made by a child under 10 years of age . . . regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622(f), (j), (w), or (x), 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.

In determining the reliability of statements, the trial court is to review 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.*

The trial court did not abuse its discretion in finding that the circumstances surrounding E.D.'s statements provided adequate indicia of trustworthiness. Respondent's arguments that E.D. was inconsistent, had confused stories of abuse by her biological father against respondent, or that she was potentially coached are unpersuasive. The evidence at the tender years hearing shows that the circumstances surrounding E.D.'s statements provided adequate indicia of trustworthiness. E.D. made the statements to Jennifer Dubs and DaVida Pace, who were both trained and experienced forensic child interviewers. The interviewers used the Michigan forensic interviewing protocol, which was designed to gather information from a child in a way that is truth-seeking, unbiased, and child-sensitive. They both established that E.D. was able to distinguish between telling the truth and telling a lie. The initial purpose of the interviews was to investigate whether E.D. had been sexually abused by her biological father, and thus the interviewers did not have any preconceived notions of respondent being a sexual abuser. Without either Dubs or Pace asking E.D. specifically about respondent, E.D. spontaneously revealed to both of them that respondent had sexually abused her. Dubs established that E.D. was able to distinguish between respondent and her father. Both forensic interviewers and the lawyer-guardian ad litem, who had reviewed videotapes of the interviews, stated that there was no indication that E.D. was confused between her father and respondent when she was disclosing the detailed incidences of sexual abuse. E.D.'s descriptions of the abuse in the two interviews were very consistent. E.D.'s demeanor in both interviews revealed a child who was naturally reluctant to speak of the abuse. When describing the private area where respondent had touched, she wrote a word on a piece of paper rather than responding verbally. She again resorted to drawing her response on paper when questioned about whether the sexual abuse involved digital penetration. At no time in the interviews did E.D. use terminology unexpected of a seven-year-old child. E.D. did not repeat the same words over and over, fail to give details, or show other signs of being coached. Nothing in the record indicates a reason that this young child would fabricate a story. The forensic interviewers, both of whom had experience with a child who had made false allegations of sexual abuse, opined that there was no reason to believe that E.D. was coached or was otherwise being untruthful.

Viewing the totality of the circumstances, E.D.'s statements provide adequate indicia of trustworthiness. In accord with MCR 3.972(C), the trial court carefully and thoroughly considered the testimony and relevant factors in making its determination that E.D.'s statements were trustworthy and credible and did not abuse its discretion in admitting the testimony regarding E.D.'s statements.

Next, respondent argues that the trial court erred in finding that a statutory ground for termination was established. To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erred in finding sufficient evidence under other statutory grounds. *In re Huisman*, 230 Mich App 372, 384-385; 584 NW2d 349 (1998). After finding at least one statutory ground for termination established, the trial court must order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews parental termination decisions for clear error. *In re Rood*, 483 Mich 73, 90-91, 126 n 1; 763 NW2d 587 (2009); MCR 3.977(K). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The statutory ground under MCL 712A.19b(3)(k)(ii) was established by sufficient evidence. The trial court found E.D.'s statements regarding sexual abuse to be credible. E.D. stated that the sexual abuse involved digital penetration. It is not for this Court to displace the trial court's credibility determinations. *In re HRC*, 286 Mich App 444, 460; 781 NW2d 105 (2009). Moreover, the trial court properly found that respondent's sexual abuse of E.D. was probative of how he would treat her half-sibling under the well-recognized doctrine of anticipatory neglect. *Id.* at 460-461; *In re Jenks*, 281 Mich App 514, 517-518; 760 NW2d 297 (2008).

Respondent argues that petitioner should have provided him with sex offender therapy to help him rehabilitate before terminating his parental rights. This argument is meritless. Generally, petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. *In re HRC*, 286 Mich App at 462, citing MCL 712A.18f. However, reunification services are not required when termination of parental rights is the agency's goal. MCR 3.977(E)(1) provides that the court "shall order that additional efforts for reunification of the child with the respondent shall not be made" if the petition contains a request for termination. *In re HRC*, 286 Mich App at 463. Petitioner is *required* to seek termination of parental rights when the parent has committed sexual abuse involving penetration on the child or a sibling. MCL 722.638(1)(a)(ii). Therefore, the trial court properly found a statutory basis to terminate respondent's parental rights even though petitioner had not provided reunification services.

Respondent contends that petitioner did not provide him with services before terminating his parental rights because of an alleged bias against him. He points to instances where petitioner had provided services to respondents in other cases, citing two unpublished opinions. Respondent's claim of bias is groundless. First, unpublished opinions are not precedentially

binding. MCR 7.215(C)(1). Second, the cases respondent cites are distinguishable from the present case in that termination was not sought for any of the “aggravated circumstances” enumerated in MCL 712A.19a(2). When a parent sexually abuses the minor child or the child’s sibling, petitioner must seek termination of parental rights and is not required to provide reunification services. *In re HRC*, 286 Mich App at 463.

Respondent also argues that at the time of the initial petition, he lived in a stable home with the mother of the minor child and E.D., was the primary father figure to both children, and had no criminal history, domestic violence, drug or mental health issues alleged against him. This argument is irrelevant and misstates the record. The trial court properly considered respondent’s circumstances at the time of the termination hearing. He was financially unstable, homeless, and had recently served time in jail for possession of methamphetamines. Respondent was also facing a pending felony charge of obstruction of justice. The evaluating psychologist testified that respondent’s guilty plea to a methamphetamines possession charge raised a concern that respondent might have a current drug problem.

Respondent’s argument that the trial court’s written opinion and order does not state specifically that it found all three statutory grounds were proven by clear and convincing evidence is also unpersuasive. The trial court properly made findings of fact and conclusions of law on the record regarding the statutory bases for termination. The trial court specifically found that there was a statutory basis to terminate respondent’s parental rights under MCL 712A.19b(3)(g), (j), and (k)(ii). At the best-interest hearing, the court reiterated “that there is clear and convincing evidence to support that there’s a statutory basis to terminate father’s parental rights” to the minor child. The primary purpose of the trial court’s final written opinion was the best-interest determination. These opinions and orders sufficiently satisfy MCR 3.977(I), which requires the trial court to make only “[b]rief, definite, and pertinent findings and conclusions on contested matters” on the record or in writing.

The trial court did not clearly err in finding a statutory ground for termination under MCL 712A.19b(k)(ii), thus it is unnecessary to review the trial court’s determination under MCL 712A.19b(g) and (j). The trial court’s termination findings, based on aggravated circumstances of sexual abuse involving penetration, were not clearly erroneous merely because petitioner did not provide respondent with reunification services.

Finally, the court also correctly ruled that termination of respondent’s parental rights was in the child’s best interests. MCL 712A.19b(5). Respondent’s argument that the court could not determine the child’s best interests without first offering him reunifications services is groundless. Petitioner was not required to provide reunification services when immediate termination was sought for aggravated circumstances. Although the evaluating psychologist opined that termination of respondent’s parental rights might be premature and that respondent could possibly benefit from sex offender therapy, the psychologist also noted that acknowledgement of the abuse was an essential component to successful sexual abuse rehabilitation, which respondent had never done. The court also appropriately considered the risk of harm to the strong sibling bond shared by the children if respondent’s rights were not terminated because respondent was not allowed contact with E.D. Additionally, there was ample evidence of significant barriers to respondent being able to properly parent the minor child within a reasonable time. At a minimum, respondent would have to successfully complete a six

to 12-month sex offender treatment program, obtain housing and a consistent income, remain out of jail, remain drug free, resolve his pending felony charges, and complete individual counseling. The minor child's need for permanency outweighed the probability of respondent overcoming these issues, even if provided with sex offender treatment, with reasonable certainty and within a reasonable time.

Affirmed.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Deborah A. Servitto