

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LAKASHIA ARNOLD and
LARNELL ARNOLD, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

V

LARIN K. ARNOLD,

Respondent-Appellant,

and

MARTHA ARNOLD,

Respondent.

UNPUBLISHED

September 27, 2005

No. 262781

Jackson Circuit Court

Family Division

LC No. 02-000548-NA

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court's order terminating his parental rights to the minor children under MCL 712A.19b(3)(g), (j), and (k)(ii). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1).

The children in this case were removed from respondent-appellant's care after respondent-appellant's daughter, Lakashia, made allegations that respondent-appellant had repeatedly sexually abused her, including multiple instances of penetration over several years beginning when she was eight years-old.¹ Throughout the proceedings, respondent-appellant repeatedly denied the allegations of sexual abuse and his son, Larnell, expressed a desire to return to respondent-appellant's care. The court, finding Lakashia's testimony about the sexual abuse to be credible, subsequently terminated respondent-appellant's parental rights to both children.

¹ The children had previously been removed from respondent-appellant's care in 2002 for physical abuse, but were subsequently returned to his custody after he complied with services.

Respondent-appellant first claims on appeal that the trial court erred by failing to appoint a separate attorney in addition to the guardian ad litem (GAL) pursuant to MCL 712A.17d(2) to represent Larnell's interests. We disagree. Under section 17d(2) the trial court *may* appoint a separate attorney where the child's wishes are inconsistent with the GAL's determination of the child's best interests. See also MCR 3.915(B)(2)(b). Given the use of the word "may" in the statutory language, such an appointment is discretionary. See *Warda v City Council of Flushing*, 472 Mich 326, 332; 696 NW2d 671 (2005). Accordingly, we review this issue for an abuse of discretion.

In this case, it is undisputed that Larnell desired to return to respondent-appellant's care and custody. It is further undisputed that the GAL in this case supported termination of respondent-appellant's parental rights. At the hearing on the motion requesting appointment of a separate attorney, the GAL informed the trial court of Larnell's wish to return to respondent-appellant's care as required by law. MCL 712A.17d(1)(i). The GAL also assured the trial court that she was able to represent both children even though they had different wishes concerning respondent-appellant, was able to express Larnell's desire to return to respondent-appellant's care, and could make a recommendation considering his best interests. Given the GAL's testimony, which indicates that she was capable of competently representing both children in this matter and the GAL's indication to the trial court of Larnell's wishes, we find no abuse of discretion in the trial court's failure to appoint a separate attorney for Larnell, especially given his young age. MCL 712A.17d(2). Moreover, we find that Larnell's position was adequately represented given that respondent-appellant's attorney elicited testimony from witnesses regarding the strong relationship between Larnell and respondent-appellant and argued that Larnell wanted to return home and it would be in his best interests to do so. Furthermore, testimony by Larnell and the caseworker indicated that Larnell desired to return to respondent-appellant's care and the trial court specifically found that it was not disputed that Larnell wished to return to respondent-appellant. Accordingly, it is evident from the record that the trial court was fully aware of Larnell's position.

Respondent-appellant next claims that the evidence failed to clearly and convincingly support termination of his parental rights because Lakashia's allegations of sexual abuse were unsubstantiated and she was known as being untruthful. We disagree. In order 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 Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993), citing *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). "Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000); MCL 712A.19b(5). This Court reviews the trial court's determination for clear error. *Trejo, supra* at 356-357. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003), citing *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, to be clearly erroneous the decision must be "more than just maybe or probably wrong . . ." *Trejo, supra* at 356, quoting *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999).

Among the statutory grounds on which the court found that termination of respondent-appellant's parental rights was justified was MCL 712A.19b(3)(k)(ii). Termination under subsection (k)(ii) was appropriate if respondent-appellant sexually abused his child or a sibling and the abuse constituted criminal sexual conduct including penetration. At the adjudication trial, Lakashia gave direct testimony detailing the alleged sexual abuse by respondent-appellant, which occurred once or twice per month for approximately five years from approximately age eight to age thirteen. During the incidents, respondent allegedly put his finger in Lakashia's vaginal opening, engaged in vaginal intercourse with Lakashia, on one occasion attempted to engage in anal sex with her, and on several occasions had Lakashia perform oral sex. These acts clearly constituted criminal sexual conduct because Lakashia was under age thirteen when they occurred and involved multiple types of penetration. See MCL 750.520b(1)(a).

Although there was testimony indicating that Lakashia lied in the past and respondent-appellant and his other children denied the allegations of sexual abuse, Lakashia provided a detailed account of the sexual abuse through her testimony and there was evidence indicating that it appeared that Larnell had been coached to say that Lakashia was lying. Given the unique position of the trial court to judge Lakashia's credibility, as well as the credibility of respondent-appellant and his other children, we find no clear error in the trial court's finding that petitioner established by clear and convincing evidence that respondent-appellant sexually abused Lakashia and that the abuse involved criminal sexual conduct including penetration. The trial court was in the best position to determine whether Lakashia's testimony should be believed. MCR 2.613(C); *Miller, supra* at 337. Therefore, termination of respondent-appellant's parental rights to his children was appropriate under subsection (k)(ii). Although only one statutory ground in MCL 712A.19b(3) must be met by clear and convincing evidence to terminate parental rights, *Jackson, supra* at 25, we note that, given the serious sexual abuse allegations and respondent-appellant's past physical abuse of his children, termination was also warranted under subsections (g) and (j) the remaining statutory grounds relied on by the trial court.

Respondent-appellant next claims that the trial court erred because termination of his parental rights was clearly not in the children's best interests. We disagree. Regarding Lakashia, given her allegations of serious sexual abuse, which included multiple and repeated acts of penetration spanning over several years, and her strong desire never to be returned to respondent-appellant's care, the evidence did not establish that termination of respondent's parental rights was clearly not in her best interests.² *Trejo, supra* at 354; MCL 712A.19b(5). Regarding Larnell, although it is evident that Larnell and respondent-appellant had a strong relationship and Larnell desired to be returned to his care, given the serious sexual abuse of Lakashia, his sister, respondent-appellant's past physical abuse of his children, and the risk of future abuse to Larnell, especially given his tender age, we find that the evidence did not establish that termination of respondent-appellant's parental rights to Larnell was clearly not in his best interests. *Trejo, supra* at 354; MCL 712A.19b(5). In addition, as noted by the trial court, the evidence indicating that it appeared that Larnell was being coached to say that Lakashia was lying, thereby placing

² Respondent concedes that it would not be in Lakashia's best interests to return her to his care given her allegations of sexual abuse.

him in the middle of the conflict and placing an extreme burden on Larnell to choose between respondent and his sister, was clearly not in his best interests.

Affirmed.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Pat M. Donofrio