

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOEL WICKMAN, JENNIFER
ANN WICKMAN, and JUSTIN CALEB
WICKMAN, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
January 23, 2007

Petitioner-Appellee,

v

KEVIN L. WICKMAN,

Respondent-Appellant.

No. 270326
Oakland Circuit Court
Family Division
LC No. 05-707449-NA

Before: Fort Hood, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i) and (j).¹ We affirm.

Respondent and his minor children were all deaf or hearing impaired. After respondent's daughter made allegations of sexual abuse against respondent, a petition seeking permanent wardship was filed. Because the child was deaf, an interpreter was employed during her forensic interview. The forensic interviewer asked questions, which the interpreter translated into sign language for the child. In order to verify the accuracy of the interpretation, the interpreter was asked to whisper what she was signing to the child as she did the signing. Then, when the child signed her responses, the interpreter verbalized the interpretation out loud. Following a "tender years" hearing, held pursuant to MCR 3.972(C), the trial court ruled that the testimony of the forensic interviewer about the child's statements could be admitted as substantive evidence in the trial.

At trial, the trial court went to great lengths to accommodate the need for interpreters. These efforts included the attempt to schedule not only interpreters for respondent, but also a

¹ A clear reading of the trial court's written opinion and order shows that the trial court found clear and convincing evidence established only for MCL 712A.19b(3)(b)(i) and (j).

deaf interpreter for those witnesses who were deaf.² There was only one point in the trial in which a deaf witness was being questioned and a deaf interpreter was not available. Before that testimony, the trial court instructed both the witness and the hearing interpreter to immediately notify the court should any problems develop with the interpretation. When the hearing interpreter determined a breakdown had occurred, that witness's testimony was immediately suspended until a deaf interpreter was available.

Respondent first challenges the sufficiency of the evidence for termination of his parental rights. The trial court did not clearly err by finding that at least one statutory ground for termination of respondent's parental rights was established by clear and convincing evidence. MCR 3.977(J); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). Given the evidence about respondent's touching of his daughter, respondent's frequent rubbing of his daughter's body against his pelvic area, respondent's admissions to police about being sexually aroused by thoughts of his daughter, respondent's masturbation while lying next to his naked daughter when she was three months old, and respondent's repeated inappropriate sexual talk in front of the children, the trial court did not clearly err when it found that respondent's actions constituted "sexual contact" that had abused the child, and that the children were at risk of harm in the foreseeable future if they were returned to respondent's care. MCL 712A.19b(3)(b)(i) and (j).

Next, the trial court did not abuse its discretion when it admitted as substantive evidence at trial the hearsay testimony of the forensic interviewer about the child's statements of sexual abuse. Although an interpreter acted as the go-between for the interviewer and the child, the interviewer was the party to whom the child directed her statements, while the interpreter was the "language conduit" or agent of the interviewer and, thus, did not add a multiple layer of hearsay. Any problems concerning the reliability or accuracy of the interpretation were adequately safeguarded by the foundational requirements set forth in MCR 3.972(C)(2)(a), which allow the admission of the child's statements through the testimony of the person to whom the statements were made 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." Furthermore, other competent evidence corroborated this testimony since the child herself testified at trial about the same incidents of sexual abuse and, therefore, any error in admitting the hearsay testimony of the forensic interviewer was harmless. *People v Hill*, 257 Mich App 126, 140; 667 NW2d 78 (2003).

² A deaf interpreter, also known as an intermediary interpreter, can be requested by one of the interpreters under MCL _____ to improve the quality of the interpretation. A deaf interpreter is a person who is actually deaf and who makes sure the sign language being used is on the level of communication that a deaf witness is using. As explained to the trial court, when a deaf witness was asked a question, the non-deaf interpreter, also known as the hearing interpreter, signed the question to the deaf interpreter, who would then sign the question to the witness in a way the witness would be able to understand. When the deaf witness answered the question by signing to the deaf interpreter, the deaf interpreter would then sign to the hearing interpreter, who would verbalize the testimony for the courtroom to hear. The benefit of a deaf interpreter over a hearing interpreter for deaf witnesses is that a deaf interpreter better understands the nuances of communication with a person who is deaf.

Next, respondent did not preserve his argument that the trial court violated the Americans with Disabilities Act of 1990 (“ADA”), 42 USC 12101, *et seq.*, during the one instance during the trial when a deaf interpreter and a hearing interpreter were not available at the same time. In fact, respondent’s attorney agreed with the safeguards implemented. Therefore, our review is for plain error that affected respondent's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). During the sole time that a deaf interpreter was unavailable for a deaf witness and the questioning proceeded with just a hearing interpreter, the questioning was immediately stopped when the hearing interpreter concluded that a deaf interpreter was necessary. Therefore, the trial court did not violate the ADA, and furthermore respondent’s substantial rights were not affected.

Lastly, the evidence showed that respondent had a longstanding problem with pedophilic tendencies. The children need stability and permanence in their lives and should not be required to wait while respondent tries to get that sexual propensity under control. The trial court did not clearly err in finding that termination of respondent’s parental rights was in the children’s best interests.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Michael J. Talbot
/s/ Deborah A. Servitto