

STATE OF MICHIGAN
COURT OF APPEALS

In re JONES, Minors.

UNPUBLISHED
August 8, 2017

No. 336836
Wayne Circuit Court
Family Division
LC No. 15-520555-NA

Before: CAVANAGH, P.J., and METER and M. J. KELLY, JJ.

PER CURIAM.

Respondent-father appeals as of right a circuit court order terminating his parental rights to his two children pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), and (k)(ii). We reverse and remand for further proceedings.

Respondent's two children, NAJ and NNJ, accused respondent of sexually abusing NAJ. Recordings of the children's forensic interviews were admitted into evidence at a combined adjudicative and dispositional hearing, following which the trial court terminated respondent-father's parental rights. In a prior appeal, this Court held that the trial court "committed two fundamental errors, first by not conducting separate adjudicative and dispositional hearings, and second by basing its finding of sexual abuse on legally inadmissible evidence." *In re Jones*, unpublished opinion per curiam of the Court of Appeals, issued November 8, 2016 (Docket No. 332616), slip op at 1. Specifically, the trial court erred when it "admitt[ed] the recordings of the children's own statements rather than testimony of a person or persons who heard the children make the statements," thus "relying on inadmissible evidence to find that it had jurisdiction over the children." And by not conducting a separate dispositional hearing, the court "appear[ed] to have made its determination regarding the statutory grounds on the same evidence that was introduced for purposes of trial, and that evidence was not legally admissible." *Id.*, slip op at 2.

On remand, the trial court referee held a new hearing to determine the admissibility of the children's statements under MRE 3.972(C)(2). The referee determined that the children's statements bore adequate indicia of trustworthiness and were, therefore, admissible. Again, the children's own recorded statements made during their forensic interviews were admitted into evidence, rather than the testimony of a person who heard the children make the statements. And the referee, again, failed to hold separate adjudicative and dispositional hearings. At the combined hearing, the referee relied on the children's statements made during their forensic interviews even though the interviews are not admissible for purposes of adjudication, MCL

712A.17b(5), and were not admitted into evidence for purposes of disposition. In short, the referee repeated the same errors that caused this Court to reverse the earlier termination order.

Because of these fundamental procedural and evidentiary errors, we again reverse the trial court's order terminating respondent's parental rights and remand this case to the trial court for a new hearing. Because the referee has shown an inability to follow this Court's instructions, the case shall be assigned to a judge or another referee on remand to preserve the appearance of justice. See *People v Evans*, 156 Mich App 68, 72; 401 NW2d 312 (1986). In light of our decision to reverse the trial court's order, it is not necessary to address respondent's other issues on appeal.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Patrick M. Meter

/s/ Michael J. Kelly