

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of A. M. HASKINS, Minor.

UNPUBLISHED  
May 29, 2014

No. 316962  
Wayne Circuit Court  
Family Division  
LC No. 04-436176-NA

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Before: MARKEY, P.J., and SAWYER and WILDER, JJ.

PER CURIAM.

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

I. BACKGROUND

On July 16, 2010, the trial court entered an order terminating respondent's parental rights to the minor child. Respondent appealed the decision. This Court reversed the termination of respondent's parental rights, finding that respondent no longer posed a risk of harm to the child. This Court specifically found insufficient evidence to terminate parental rights under MCL 712A.19b(3)(g) and (j) and remanded the case for further proceedings consistent with its opinion.<sup>1</sup>

The trial court presented respondent with a case service plan on April 12, 2011, and authorized supervised visits. On December 8, 2011, the trial court authorized unsupervised visits for respondent, which began by April 2012. The child had her first overnight visit with respondent on July 6, 2012, but by July 20, 2012, she was refusing to go on a visit with respondent and had a severe physical tantrum. The child's reaction to respondent worsened over time. Based on the recommendation of the child's trauma therapist, the trial court granted petitioner authority to cancel visits that were believed to be harmful to the child. On January 17, 2013, the child informed her therapist that respondent had sexually abused her. Petitioner filed a termination petition in March 2013 and the trial court terminated respondent's parental rights on June 6, 2013.

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<sup>1</sup> *In re A M Haskins, Minor*, unpublished opinion per curiam of the Court of Appeals, issued March 15, 2011 (Docket No. 299481).

## II. HEARSAY STATEMENTS

Respondent first argues that the trial court erred in admitting hearsay statements made by the child to her therapist. 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 71, 80; 744 NW2d 1 (2007).

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.*

Although the child's therapist, Chavez, did not use a forensic interview method, contrary to respondent's claims, the child's statements do meet criteria for reliability. The child's account of the incident remained consistent. Chavez testified that she had been working with the child for three months when the child volunteered the information about her abuse during therapy. Her statements were made spontaneously and came at an appropriate time in the sequence of therapy. There was no evidence that the child's feelings about reunification with respondent influenced her disclosures.

On appeal, respondent asserts that the child's failure to repeat the statements of abuse to others undermine their reliability. This contention is unpersuasive. The child made the disclosures to her therapist in a therapeutic setting, after establishing a trusting relationship with her. When considering the totality of the circumstances, it is clear that the child did not tell anyone else about what respondent did to her because the abuse was difficult for her to discuss. Under the circumstances, her willingness to share details of the abuse only with her therapist does not make it any less reliable.

Further, the child never changed her story. Although there were some inconsistencies about the incident when respondent used the bathroom while the child was on the toilet, there were no inconsistencies in the statements she made to Chavez. Any inconsistency occurred only between Chavez's statements and the child's testimony. Given the child's tender age of three at

the time of the incident and the large amount of time that had passed since the abuse, any inconsistency does not undermine the reliability of the statements she made during therapy sessions.

Moreover, contrary to respondent's claim on appeal, Chavez did describe the child's mental state when she made the statements regarding the abuse. Chavez stated that during therapy sessions the child had a heightened state of stress relating to respondent. Chavez observed the child's anxiety rise and noted tension in her body, suggesting her claims of abuse were reliable.

Further, the child's description of respondent's attempts to pull down her pants, "dig" his fingers into her privates, and smell or lick his fingers were not within the typical experiences of a five-year-old child. Her statements suggested that she experienced something beyond her years. Although the child may not have wanted to be reunified with respondent, respondent's claim that the child had motive to fabricate abuse to undermine impending reunification efforts is unpersuasive. The child made statements of abuse in January 2013, once she established a trusting relationship with Chavez. Chavez explained that it normally took children some time in therapy before they made disclosures of abuse and here disclosures were made after three months, a reasonable amount of time. Moreover, the child made these statements months after visits had stopped when reunification was likely an abstract consideration to her. Thus, the trial court did not abuse its discretion by admitting the child's statements to her therapist pursuant to MCR 3.972(C)(2).

### III. TERMINATION OF PARENTAL RIGHTS

The trial court did not clearly err in finding that MCL 712A.19b(3)(b)(i), (c)(ii), (g), and (j) had been established. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 355-357; 612 NW2d 407 (2000). Given the testimony that respondent put his fingers inside the child's private parts and smelled or licked his fingers and the testimony that respondent used the bathroom on his daughter, we conclude that termination of parental rights was proper. The child likely would have been abused again if placed in respondent's home. Since there were no allegations of sexual abuse at the time of the adjudication, this new allegation served as an "other" condition that brought the child within the court's jurisdiction. In sexually abusing the child respondent demonstrated his inability to properly care for her. Additionally, respondent had low intellectual functioning and memory, which impeded his ability to understand and provide for the child's needs. Because there was no evidence respondent understood the child's posttraumatic stress disorder (PTSD), it is unlikely he could meet her emotional needs within a reasonable period of time, which would put her at further risk of harm.

Respondent argues that he was in substantial compliance with his treatment plan and there was insufficient evidence that the issues in the case could not be rectified. Respondent's claim is unpersuasive. It is necessary but not sufficient to comply with the terms of the case service plan. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). Although respondent's housing was assessed as suitable, he completed parenting classes in August 2011, and he claimed to have obtained full-time employment by April 8, 2013, he failed to consistently participate in therapy sessions. The evidence showed that the child had a severely negative emotional reaction to respondent and wanted nothing to do with him. Despite a multitude of

therapy sessions the child's comfort with respondent worsened over time. The evidence showed that respondent did not know how to engage his young daughter. Even if he was substantially compliant with his treatment plan, given the sexual abuse he perpetrated and her negative reaction toward him, no amount of compliance with a case service plan would have been enough to justify reunification. Thus, termination of parental rights was proper under MCL 712A.19(b)(3)(b)(i), (c)(ii), (g), and (j).

Termination of parental rights was improper under MCL 712A.19b(3)(c)(i). At the time of the adjudication respondent was involved in a relationship with the child's mother where there was domestic violence. The child was adjudicated as a temporary court ward because respondent failed to protect the child from her mother. By the time of the permanent custody hearing, parental rights of the child's mother were terminated. Protection from the child's biological mother and exposure to domestic violence were no longer at issue. In fact, on prior appeal this Court found that respondent demonstrated his ability to protect the child, and thus the conditions leading to the adjudication no longer continued to exist. An erroneous termination of parental rights under one statutory basis is harmless error if the court properly terminated rights under another statutory ground. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). In this case, since the trial court properly terminated respondent's parental rights under four other statutory grounds, erroneous termination under MCL 712A.19b(3)(c)(i) was harmless error.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interests of the children. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). In deciding whether termination of parental rights is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. *In re Olive/Metts, Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

Based on the record as a whole, the trial court correctly found that termination of respondent's parental rights was in the child's best interests. It is in the child's best interests to be in an environment free from sexual abuse. The evidence shows that respondent had not learned to deal with the child's emotional issues. The child began acting out before visits. Her PTSD symptoms worsened once overnight visits started, and she was emotionally traumatized by the prospect of spending any time with respondent. Moreover, the child's bond with respondent was nonexistent. The child consistently stated she did not want to visit respondent and easily separated from him at the conclusion of visits. There was no overt affection between respondent and his daughter. The child was in need of stability and permanency after being in foster care for three years. The foster parents were willing to provide an adoptive family for the child and she wanted to be in their home with her biological siblings. Termination of parental rights was therefore in the child's best interests.

#### IV. REASONABLE EFFORTS

Respondent next argues that petitioner did not make reasonable efforts to service the case. Generally, in petitioning for the termination of parental rights, "petitioner must make

reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights.” *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). The failure to make reasonable efforts to avoid the termination of parental rights may prevent the establishment of statutory grounds for termination. *In re Newman*, 189 Mich App 61, 67-69; 472 NW2d 38 (1991).

Respondent argues that he was in Grand Rapids and had difficulty getting to every visit. He argues there was little assistance provided to help him with housing, transportation, and visitation. He argues that he was not provided with specialized parenting training or counseling to assist with his child’s emotional and behavioral problems. Contrary to respondent’s claim, his housing was suitable and his ability to get to visits was not the biggest concern. The main issue in the case was that respondent could not engage his daughter and she wanted no relationship with him. Therapy was put in place and respondent was asked to attend therapy sessions to help him understand the child’s PTSD and emotional issues. He chose not to participate. He only attended a couple mental health sessions and never complained of transportation or physical distance as the reason for his failure to participate in therapy. Respondent indicated that he missed visits so he could work more and limit transportation costs, but there is no evidence he complained of transportation itself or physical distance as the reason for his failure to participate. Regardless, the caseworkers made efforts to have therapy sessions on the same day as visits to accommodate respondent even though he never asked for scheduled therapy sessions to be changed. Moreover, the main issue in this case, respondent’s sexual abuse of his young daughter, could not be addressed by any kind of services.

Respondent was offered a new case service plan in April 2011. Contrary to his claim on appeal, he was provided with services that were timely and appropriate. Petitioner made reasonable efforts to reunite respondent with the child but the efforts were unsuccessful. Respondent had nearly two years to participate in services and work on reunification before the termination petition was filed. Thus, because extensive services were offered before the termination petition was filed, petitioner’s efforts did not undermine the establishment of statutory grounds for termination. The trial court’s finding that petitioner made reasonable efforts to avoid termination of parental rights was not clearly erroneous. MCR 3.977(K).

## V. VISITATION

Finally, respondent argues that the trial court improperly denied him parenting time with the minor child before the filing of the termination petition. This claim is without merit. There is no court rule or statutory provision that governs the trial court’s authority concerning parenting time between adjudication and the filing of a termination petition. “[T]he issue of the amount, if any, and conditions of parenting time following adjudication and before the filing of a petition to terminate parental rights is left to the sound discretion of the trial court and is to be decided in the best interests of the child.” *In re Laster, Minors*, 303 Mich App 485, 490; \_\_\_ NW2d \_\_\_ (2013).

There was evidence that the minor child was traumatized by the prospect of visiting respondent. These visits would have been emotionally abusive when the child was in a riled emotional state, as she was when faced with visiting respondent. The evidence showed that forcing an interaction with respondent could have overridden the establishment of a trusting

relationship. Under the circumstances of the child's severe emotional distress when faced with a visit, suspension of parenting time was in the child's best interests.

Respondent argues that restricting his visits only served to minimize the contact and bonding he could have with his daughter. In making this claim respondent disregards the fact that he failed to regularly exercise supervised parenting time when it was available to him. He chose to visit every other week to limit his transportation costs and to work more, which delayed his ability to begin overnight visits. Respondent's decision not to visit when visits were available to him restricted bonding more than the trial court's restriction of visits. Further, there is no evidence that the suspension of parenting time interfered with the parent-child bond because there was no potential for a bond given that respondent sexually abused the child and she completely rejected respondent. Accordingly, the trial court did not err when it suspended respondent's parenting time.

Affirmed.

/s/ Jane E. Markey

/s/ David H. Sawyer

/s/ Kurtis T. Wilder