

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of AMOS PINDER, ROCHEL  
PINDER, QUINCY PINDER, XAVIER PINDER,  
VIRGIL PINDER, and CARMOS PINDER,  
Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

AMOS PINDER, JR.,

Respondent-Appellant,

and

NANCY PINDER,

Respondent.

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In the Matter of MYEISHA PINDER, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

AMOS PINDER, JR.,

Respondent-Appellant,

and

NANCY PINDER,

Respondent.

UNPUBLISHED  
October 16, 2003

No. 245539  
Washtenaw Circuit Court  
Family Division  
LC No. 00-024938-NA

No. 245540  
Washtenaw Circuit Court  
Family Division  
LC No. 01-025138-NA

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In the Matter of AMOS PINDER, ROCHEL PINDER, QUINCY PINDER, XAVIER PINDER, VIRGIL PINDER, and CARMOS PINDER, Minors.

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FAMILY INDEPENDENCE AGENCY,

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NANCY PINDER,

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In the Matter of MYEISHA PINDER, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

NANCY PINDER,

Respondent-Appellant,

and

AMOS PINDER, JR.,

Respondent.

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No. 245552  
Washtenaw Circuit Court  
Family Division  
LC No. 00-024938-NA

No. 245553  
Washtenaw Circuit Court  
Family Division  
LC No. 01-025138-NA

Before: Donofrio, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

In Docket Nos. 245539 and 245552, respondents Amos Pinder, Jr. and Nancy Pinder appeal as of right from an order terminating their parental rights to their six oldest children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). In Docket Nos. 245540 and 245553, respondents Amos and Nancy Pinder appeal as of right from an order terminating their parental rights to their youngest child, Myeisha, pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (g), (j), and (k)(iii). The four appeals have been consolidated for this Court's consideration. We affirm.

Respondents first argue that reversal is required because of hearsay testimony from a doctor and one of the children's therapists. We disagree. Because respondents did not raise a hearsay objection below, this issue is unpreserved. See *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994). Therefore, appellate relief is not warranted absent a plain error (i.e., one that is clear or obvious) affecting respondents' substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *Grant, supra* at 548-549, 552-553; see also *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

In this case, the record discloses that Dr. Pomeranz' testimony was limited to her personal observations. She did not testify regarding anything the children said. Therefore, her testimony was not hearsay. See MRE 801(c). We agree, however, that a therapist repeated allegations of sexual abuse made by one of the children, and that her testimony was offered for the truth of the matter asserted. Therefore, it was hearsay. MRE 801(c). Because the child's statements involved new allegations, different from the circumstances that led to adjudication, legally admissible evidence was required. See MCR 5.974(E); see also *In re Snyder*, 223 Mich App 85, 89-91; 566 NW2d 18 (1997). Although MCR 5.972(C)(2) provides that a statement made by a child under ten years of age describing an act of child abuse may be admitted if, following a hearing, the trial court determines that the nature and circumstances surrounding the statement provide adequate indicia of trustworthiness and there is sufficient corroborative evidence of the act, no hearing was held in this case to determine the admissibility of the statements. Further, the circumstances surrounding the statements did not reveal adequate indicia of trustworthiness, nor was there sufficient corroborative evidence of the alleged acts.

Nonetheless, respondents' substantial rights were not affected by the admission of the statements because the trial court was careful not to find that respondents sexually abused the children. Additionally, there was clear and convincing evidence of the statutory grounds for termination independent of the allegations of sexual abuse. Therefore, this unpreserved issue does not warrant appellate relief.

Next, respondent Nancy Pinder argues that the trial court erred in allowing petitioner to amend the petition after the close of proofs. We disagree. The Juvenile Code provides that "[a] petition or other court record may be amended at any stage of the proceedings as the ends of justice require." MCL 712A.11(6). A trial court's decision to grant or deny a motion to amend is reviewed for an abuse of discretion. *Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001).<sup>1</sup> In this case, the amendment was made after the close of proofs to

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<sup>1</sup> Although *Lynch* concerns a motion to amend brought under MCR 2.118(A)(2), the standard for  
(continued...)

add two new statutory grounds that comported with the evidence. Respondent does not explain how her trial strategy might have been different had the statutory grounds been alleged from the beginning. Respondent has failed to show that the trial court abused its discretion in allowing the amendment.

Respondent Nancy Pinder also argues that the trial court's termination decisions should be set aside because petitioner failed to make reasonable efforts to rectify the conditions and reunify the family. We disagree. The record discloses that the family was offered many forms of assistance over the years and either refused to accept the services or failed to benefit from them. We reject this claim of error.

Next, both respondents argue that the trial court clearly erred in finding that a statutory ground for termination was established. We disagree. The existence of a statutory ground for termination must be proven by clear and convincing evidence. MCR 5.974(A) and (F)(3); *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989); see also MCL 712A.19b(1). "Evidence is clear and convincing when it 'produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations . . . [and] enable[s] [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts [at] issue.'" *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).

The trial court's findings of fact are reviewed for clear error and may be set aside only if, although there may be evidence to support them, the reviewing court is left with a definite and firm conviction that a mistake has been made. See MCR 5.974(I); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). Due regard is to be given to the trial court's special opportunity to judge the credibility of witnesses. MCR 2.613(C); *In re Miller, supra* at 337.

Here, the trial court did not clearly err in finding that §§ 19b(3)(c)(ii), (g), and (j), were each established by clear and convincing evidence with respect to both respondents in connection with the six older children. The evidence showed that the children were physically abused while in respondents' care and that both respondents refused to take responsibility for the abusive environment. Further, despite some improvement, respondents remained unable to adequately control their children's behavior. Additionally, respondents could not understand and did not know how to address the children's special needs.

With regard to the youngest child, the evidence clearly and convincingly established that termination was warranted under § 19b(3)(j) with respect to both respondents, given the past abuse suffered by the older children. Because only one statutory ground is required in order to terminate parental rights, we need not address whether the remaining statutory grounds for termination were properly established.

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granting a motion under the rule—"[I]eave shall be freely given when justice so requires"—is similar to the standard applicable under the Juvenile Code. See MCL 712A.11(6) ("as the ends of justice require").

Finally, we reject respondents' claim that the trial court erred in its determination of the children's best interests. Once a statutory ground for termination is established, "the court shall order termination of parental rights . . . unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." MCL 712A.19b(5). The best interest determination is to be made upon the evidence on the whole record, and is reviewed for clear error. *In re Trejo*, 462 Mich 341, 353-354, 356; 612 NW2d 407 (2000).

Although there was evidence that the six older children were bonded to the parents, given the evidence of physical abuse while in respondents' custody, along with evidence showing that the children were under-socialized and lacked even basic hygiene skills, and that respondents remained unable to control their behavior, we find no clear error in the trial court's best interest determination.

Affirmed.

/s/ Pat M. Donofrio  
/s/ David H. Sawyer  
/s/ Peter D. O'Connell