

STATE OF MICHIGAN
COURT OF APPEALS

In re Hall, Minors.

UNPUBLISHED
May 19, 2015

Nos. 324206, 324393
St. Clair Circuit Court
Family Division
LC No. 14-000213-NA

Before: HOEKSTRA, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

In Docket No. 324206, respondent Wesley Hall, Jr. appeals as of right the orders terminating his parental rights to his three minor children, WH, KH, and NH, under MCL 712A.19b(3)(b)(i), (ii), (iii), (g), (j), and (k)(iii), (iv), and (v). In Docket No. 324393, respondent Charlisa Wood appeals as of right the order terminating her parental rights to NH. Because the trial court did not clearly err in terminating respondents' parental rights and the trial court's admission of out-of-court statements made by WH was not an abuse of discretion, we affirm.

I. FACTS AND PROCEDURAL HISTORY

In July of 2014, when the instant proceedings began, Wood and Hall were in a romantic relationship. They resided together and they had one daughter, NH, who was then less than two months old. Hall had two other children, WH and KH, from a previous relationship. WH and KH had been living with Wood and Hall since sometime in April of 2014. After it came to light that WH had been physically abused in the home, by order of the court, the children were removed from the home and placed in foster care. A petition was also filed requesting that the trial court assume jurisdiction and terminate respondents' parental rights at the initial dispositional hearing.

Relevant to the present appeal, at a bench trial, the evidence showed that on July 25, 2014, paramedics responded to the family's home in response to a call involving a possible drowning of four-year-old WH. At that time, Wood was home with the children while Hall was at work. When paramedics arrived, although WH had wet hair, he was fully dressed in dry clothing and lying on the dining room floor. WH was limp, unresponsive to questions, and he was having difficulty breathing. Although WH's breathing appeared labored, paramedics explained at trial that his lungs and airway were clear which was inconsistent with a purported drowning. While en route to the hospital, paramedics continued their assessment, including a full body examination which necessitated cutting off WH's clothes. At that time, the paramedics noticed numerous bruises, burns, and abrasions throughout WH's body.

In more detail, as evidenced by photographs of WH and as testified to by the paramedics, police, DHS workers, WH's foster care mother, and doctors, WH had injuries over his entire body, from his head to the bottoms of his feet. These injuries included: a six centimeter abrasion on the back of his head, an ear which appeared purple in color and was marked by fingernails, abrasions on his tongue, a bruise to his chin, extensive bruising and abrasions on his chest and torso area, tenderness over the upper right side of his abdomen, a sizable blistering burn on his left buttock area, burns on his arms, redness on the backs of his arms and lower back, redness on his thigh, bruises just above his ankles as if he had been grabbed or something wrapped around his ankles, and small pin marks or puncture wounds on the bottom of his right foot. Medical testimony indicated that the burns appeared "fairly fresh," likely occurring within the last 12 hours, but many of WH's other wounds appeared to be in various stages of healing.

In addition to WH's visible injuries, a CAT scan of WH's abdomen revealed, among other abnormalities, a five centimeter laceration on WH's liver. The injury to WH's liver, which was likely caused by blunt force trauma on par with the force involved in a motor vehicle accident, was a particularly dangerous injury insofar as it posed a possibility for internal bleeding which would necessitate surgery to prevent an otherwise imminent death. Based on WH's CAT scan, a radiologist opined that the laceration on WH's liver was subacute or chronic, meaning that it had been there for at least several days. Doctors who testified at the trial also explained that WH's injury pattern did not fit the report of a near drowning. Given the irregular location and distribution of the burns in particular, doctors also indicated that WH's injuries were not consistent with a child accidentally burning himself in hot water. KH and NH were also examined on July 25, 2014 and neither showed signs of physical abuse.

Police and a DHS caseworker interviewed both Hall and Wood, and neither Hall nor Wood provided a rational explanation for WH's extensive injuries. Specifically, despite the fact that WH's injuries were not consistent with a near drowning, Wood continued to assert that she allowed WH to run his own bath water and that, when she checked on him, she found him face down in the tub. She and Hall also both maintained that WH was rambunctious and accident prone, which they contended accounted for many of his injuries. They claimed that WH had been known to climb on the counters and refrigerator looking for food, and had just recently fallen from the refrigerator and injured his chin in the process. However, in his statements to authorities before trial, Hall admitted that he may have gone "overboard" with discipline on occasion and that he could be "heavy-handed." He admitted to spanking WH so hard as to possibly leave bruises and to using a belt on WH. Hall described WH as "greedy" when it came to food and Hall specified that he had "beat [WH's] ass" for getting into food in the kitchen.

In comparison to the description provided by Hall and Wood, WH's foster care mother, Colleen Taylor, described WH as having excellent balance and indicated that he had no unexplained injuries while in her care. Regarding the assertion that WH was "greedy," she further specified that he "ate constantly" for the first few weeks after arriving in her home. She let him eat as he pleased, as a result of which he gained seven pounds. Thereafter, according to Taylor, WH's eating leveled off and he now consumes normal portions.

Under MCR 3.972(C)(2), the trial court also permitted Taylor to testify to statements made by WH in Taylor's hearing. These statements implicated both Hall and Wood in the commission of child abuse. In particular, on August 7, 2014, while Taylor assisted WH with a

shower, WH spontaneously told Taylor that “he liked taking showers at [Taylor’s] house, [and] that he didn’t like taking them at his dad’s.” He stated that Wood “tied him up in the shower, in the hot shower” using his sister’s clothes. She would tie his hands and feet “so he wouldn’t get out” and she put hot sauce in his eyes. In support of WH’s statement about being tied with his sister’s clothing, photographs were introduced at trial which showed clothing tied into knots that had been recovered in the family’s home.

On August 11, 2014, in Taylor’s hearing, WH stated that “his dad puts hot sauce and soap in his mouth.” On August 21, 2014, again while taking a bath, WH stated that Wood “hit him with a belt and a shoe, and that his dad holds his feet and . . . [Wood] holds his hands, um, and they put hot sauce in his eyes and his mouth.” On August 25, 2014, while at a medical check-up, a medical assistant asked WH about the bruise on his side and WH said “she hit me with it.” WH then told Taylor that “she slammed me with it, she hit me on the head.” When Taylor asked what she hit him with, he said “that black kitchen thing, the chicken pan.” He told Taylor, “she broke my head and I died. The doctors fixed me. And when you slam stuff people, it makes people dead.” Taylor told WH that he could “show her” when they got home. At home, WH went into the kitchen, retrieved a “great big spoon” and then he demonstrated how he had been hit on the tops of the hands, the palms of his hands, his side, and on his bottom. During this visual demonstration, he said that “his dad hit him, [Wood] hit him.” He again mentioned a “chicken pan,” at which time Taylor opened the oven and WH pulled out a black iron skillet which he used to show how he had been hit on his head and side. During this, he said “[Wood] did, and then my dad, and I hate that.”

Shortly after entering foster care, two-year-old KH also displayed signs supportive of WH’s descriptions of abuse. Specifically, at trial, testimony showed that when a shower was turned on in preparation for giving KH a bath, in response to the water, KH “started screaming hysterically, crawled in the corner” and repeatedly said “no, no, no.” It was also reported that KH showed a fear of the rain and a general dislike of water, including the foster family’s pool.

In light of the events giving rise to the present case, Wood was criminally charged with torture, assault with intent to do great bodily harm, and child abuse. Despite these criminal charges, and even after viewing pictures of WH’s numerous injuries, Hall continued to express a desire to stay in a relationship with Wood. He told Wood that he would wait for her, “even if she went away for five, 10 or 15 years.”

Based on the evidence presented, the trial court assumed jurisdiction and terminated Wood’s and Hall’s parental rights on October 10, 2014. The trial court found statutory grounds for termination under MCL 712A.19b(3)(b)(i), (ii), (iii), (g), (j), and (k)(iii), (iv), and (v), and concluded that termination was in the children’s best interests. Both respondents now appeal as of right.

II. DOCKET NO. 324206

On appeal, Hall argues that the trial court clearly erred by finding clear and convincing evidence to terminate his parental rights under MCL 712A.19b(3)(b)(i), (ii), (iii), (g), (j), and (k)(iii), (iv), and (v). In particular, Hall attributes the physical abuse to Wood and he maintains he was unaware of the abuse. Because Wood is now incarcerated,¹ Hall asserts that he is able to provide proper care and custody and that the children face no risk of harm if returned to his care. He further contends that, because he poses no risk of harm to the children and Wood is in prison, termination of his parental rights was not in the children's best interests.

To terminate parental rights, a court must find clear and convincing evidence that one or more of the statutory criteria for termination have been met. *In re Rood*, 483 Mich 73, 101; 763 NW2d 587 (2009). On appeal, we review a trial court's finding that statutory grounds for termination exist under the clearly erroneous standard. *In re Trejo Minors*, 462 Mich 341, 357; 612 NW2d 407 (2000). "A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). When assessing the trial court's factual findings, due regard is given to the trial court's "special opportunity" to judge the credibility of the witnesses. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

Relevant to the present case, under MCL 712A.19b(3), the court must terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence that:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

(iii) A nonparent adult's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home.

* * *

¹ On appeal, the parties indicate that, on December 5, 2014, a jury convicted Wood of assault with intent to do great bodily harm less than murder, MCL 750.84, torture, MCL 750.85, and first-degree child abuse, MCL 750.136b(2).

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

* * *

(iii) Battering, torture, or other severe physical abuse.

(iv) Loss or serious impairment of an organ or limb.

(v) Life-threatening injury.

Considering the evidence in this case, the trial court did not clearly err in concluding that clear and convincing evidence existed for terminating Hall's parental rights under these provisions. Indeed, given the extent of WH's injuries, there was overwhelming evidence supporting the trial court's conclusion to terminate Hall's parental rights.

First, relevant to MCL 712A.19b(3)(b)(i), there was clear and convincing evidence that Hall caused physical injury to WH and that there was a reasonable likelihood of harm to WH and the other children if they were returned to his care. The evidence of WH's extensive physical injuries was well documented, including bruises, burns, and abrasions from his head to his feet. Contrary to Hall's claims that Wood alone perpetrated this extensive abuse, the trial court reasonably concluded that Hall was also a participant. This finding was not clearly erroneous given that, in his statement to Taylor, WH identified Hall as someone who had hit him with various items, held him down, and put hot sauce and soap in his mouth. In addition, in his own statements to police, Hall admitted that he was "heavy-handed" in his discipline, that he had "whooped" WH hard enough to leave bruises on his buttocks, and that he had on occasion used a belt to hit WH. Moreover, while some of WH's wounds appeared fresh such that it might be supposed they were inflicted while Hall was at work on July 25, 2014, many of his injuries were in various stages of healing which suggests ongoing abuse. Notably, a radiologist testified that the laceration to WH's liver, which was among the most serious of his injuries, was a subacute or chronic injury, meaning that it had been present for at least several days. Neither Wood nor Hall offered a rational explanation for the injuries, and any suggestion that WH self-inflicted the injuries was spurious given the severe nature of WH's injuries, medical testimony that the irregular pattern of burns was not consistent with a child scalding himself, and Taylor's testimony that WH had excellent balance and had not been prone to injury in her home. Although, in contrast to Hall's abuse of WH, there is no direct evidence that Hall abused KH or NH, KH's reaction to water serves as an indication that she too had been mistreated in the home

and, in any event, Hall's abuse of WH serves as evidence of how he may treat his other children. See *In re Hudson*, 294 Mich App 261, 266; 817 NW2d 115 (2011). On the facts of this case, contrary to Hall's protestations of innocence, the evidence clearly and convincingly establishes that he caused physical injury to WH and that all the children faced a reasonable likelihood of harm if returned to his care. Thus, the trial court properly terminated Hall's rights under MCL 712A.19b(3)(b)(i).

Only one statutory ground for termination need be established by clear and convincing evidence, making it unnecessary to consider the trial court's additional grounds for termination. *In re Trejo*, 462 Mich at 360; *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). Nonetheless, we note that the trial court did not clearly err in terminating Hall's parental rights under the additional subsections listed above. Relevant to MCL 712A.19b(3)(b)(ii) and (iii), again it is obvious that WH suffered physical injury. Given the physical evidence of WH's injuries, WH's statements, and Wood's inability to explain the injuries received by WH while in her care, there is also clear and convincing evidence that Wood, a non-parent, inflicted that injury. Moreover, Hall was WH's father and he most certainly had the ability to prevent the abuse inflicted on his son by Wood. Setting aside Hall's own infliction of abuse, the trial court reasonably concluded it "defies reason" to suppose that Hall was unaware of the abuse perpetrated in his home. WH's injuries were extensive and numerous, covering most of his body and the injuries were in various stages of healing, indicating that the abuse in question was ongoing. Hall lived in the home, he saw his children daily, and he bathed WH on occasion. Given these facts, it is wholly disingenuous to suggest that Hall remained ignorant of the abuse and could not have prevented its occurrence. Instead, there was clear and convincing evidence that Hall failed to adequately protect WH from Hall's abuse.

Given Hall's failure to protect WH from Wood's abuse, the trial court also did not clearly err in finding a reasonable likelihood that the children would be harmed if returned to Hall's care. Insofar as Hall emphasizes that Wood has now been convicted on criminal charges and thus poses no ongoing threat to the children, this fact does not render the trial court's conclusion clearly erroneous. At the time the trial court terminated Hall's parental rights, Wood had not yet been convicted and Hall had repeatedly expressed a desire to remain in a relationship with Wood, despite the fact that he had viewed the graphic pictures depicting WH's grievous injuries. Indeed, he indicated that, if necessary, he would wait for her for five, 10, or even 15 years. Given Hall's commitment to an ongoing relationship with a woman who had grievously injured his four-year-old son, the trial court did not clearly err by finding a reasonable likelihood that the children would be harmed, and in particular a reasonable likelihood that they would be harmed by Wood, if returned to his care. Thus, on the facts of this case, the trial court did not clearly err in finding clear and convincing evidence for termination under MCL 712A.19b(3)(ii) and (iii).

Regarding MCL 712A.19b(g), the trial court did not clearly err in finding that Hall failed to provide proper care or custody for the children and that there was no reasonable expectation that he would be able to do so in a reasonable time. Hall's abuse of WH and his failure to prevent the abuse perpetrated by Wood plainly demonstrate an inability to provide proper care and custody for WH, see *In re Ellis*, 294 Mich App at 33, and his treatment of WH was indicative of how he would treat his other children. See *In re Hudson*, 294 Mich App at 266. Moreover, aside from the physical abuse, the evidence presented at trial indicated that Hall had failed to adequately provide for WH's basic needs, such as food. Several witnesses described

WH's habit of attempting to obtain food from the kitchen. Rather than feed WH, Hall described four-year-old WH as "greedy" and beat him for "sneaking food." A fair inference from Taylor's testimony, however, was that WH was underfed, not "greedy." Taylor described WH eating constantly at her home for the first few weeks, during which, as the trial court emphasized, WH gained seven pounds. Once properly nourished, WH's eating leveled off and Taylor reported that he now eats normal portions. Given the abuse in the home and Hall's response to WH's apparent hunger, both of which are indicative of how Hall will treat his other children, the trial court did not clearly err in terminating Hall's parental rights under MCL 712A.19b(3)(g).

Similarly, regarding MCL 712A.19b(3)(j), the trial court did not clearly err in finding a reasonable likelihood, based on Hall's conduct or capacity, that the children will be harmed if returned to Hall's home. As with the other subsections, Hall's abuse of WH, his failure to protect WH from Wood, and his failure to appropriately respond to WH's hunger are a clear and convincing indication that there is a reasonable likelihood that WH and the other children will be harmed if returned to Hall's care. Consequently, the trial court did not clearly err in terminating Hall's parental rights under MCL 712A.19b(3)(j).

Considering MCL 712A.19b(3)(k)(iii), (iv), and (v), we similarly conclude that the trial court did not clearly err in terminating Hall's parental rights under these subsections. As detailed above, there was clear and convincing evidence that Hall abused WH. Given WH's serious injuries and WH's statements to Taylor, the trial court also did not clearly err in finding that WH had been subjected to battering, torture, or other severe physical abuse by Hall. See MCL 712A.19b(3)(k)(iii). WH described Hall hitting him with a belt, a shoe, a pan, a spoon, and holding him down by his ankles to put hot sauce in his mouth. Moreover, Hall beat WH to prevent him from accessing food in the kitchen. WH's statements were corroborated by his extensive physical injuries, which included bruises in various stages of healing and puncture marks on the bottoms of his feet. These circumstances are supportive of the trial court's finding of battering, torture, or other severe physical abuse. See MCL 712A.19b(3)(k)(iii). Likewise, to cause the laceration to WH's liver would require a high degree of force, on par with a car accident, which is again indicative of severe physical abuse. See MCL 712A.19b(3)(k)(iii). Under MCL 712A.19b(3)(k)(iv) and (v), given the evidence regarding the laceration to WH's liver, which could have been fatal had it begun to bleed, the trial court also did not clearly err in finding serious impairment of an organ and in concluding that WH's injuries were life-threatening. In this regard, it is notable that the laceration to WH's liver was described as a subacute or chronic injury at least several days old, meaning that, contrary to Hall's arguments, his own abuse of WH could well be the cause. Moreover, although it is not definitively known who caused the laceration to WH's liver, Hall and Wood were WH's caretakers and they failed to provide a rational explanation for the injury. Even if it cannot be said definitively who caused the damage to WH's liver, termination under MCL 712A.19b(3)(k) "is permissible even in the absence of definitive evidence regarding the identity of the perpetrator when the evidence does show that the respondent or respondents must have either caused or failed to prevent the child's injuries." *In re Ellis*, 294 Mich App at 35-36. Such is clearly the case here. Hall either caused or failed to prevent WH's numerous injuries, including the injury to WH's liver, and thus termination under MCL 712A.19b(3)(k)(iii), (iv), and (v) was appropriate.

Finally, given the facts of this case, the trial court also did not clearly err in determining that termination of Hall's parental rights was in the children's best interests. To terminate

parental rights, the trial court must determine by a preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). When making a best interests determination, the trial court should weigh all available evidence and may consider a wide variety factors. *In re White*, 303 Mich App 701, 713; 84 NW2d 61 (2014). Relevant factors include the child's bond to the parent, the parent's parenting ability, the children's well-being while in care, and the child's need for permanency, stability, and finality. *Id.* at 714. A court may also consider a parent's history of child abuse. *In re Powers Minors*, 244 Mich App 111, 120; 624 NW2d 472 (2000). Further, a child's safety and well-being, including the risk of harm a child might face if returned to the parent's care, constitute factors relevant to a best interest determination. *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011).

In this case, WH lived in Hall's home for approximately three months, during which time he suffered grievous physical injury that Hall participated in causing and which he failed to prevent. It also appears that WH was deprived of basic necessities, such as food. Hall's treatment of WH is, as noted, indicative of how he will treat KH and NH. *In re Hudson*, 294 Mich App at 266. Further, KH had a fear of water, and showers in particular, that was suggestive of her own mistreatment while in the home. In these circumstances, all the children faced a serious risk of harm if returned to Hall's care and the trial court did not clearly err by finding that termination of his parental rights was in the children's best interests.

III. DOCKET NO. 324393

On appeal, Wood contends that the trial court abused its discretion by allowing Taylor to testify at trial regarding WH's out-of-court statements while, at the same time, excluding as impeachment evidence WH's out-of-court statements made to the authorities on July 31, 2014 and August 7, 2014. We review the trial court's decision to admit or exclude evidence for an abuse of discretion. *In re Archer*, 277 Mich App 71, 77; 744 NW2d 1 (2007). Insofar as resolution of an evidentiary question involves a preliminary question of law, such as interpretation of a court rule or statute, this Court's review is de novo. *Id.*

In proceedings involving juveniles, MCR 3.972(C)(2) permits the trial court to admit out-of-court statements made by a child under the age of 10 regarding acts of child abuse. In relevant part, MCR 3.972(C) states:

(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.

* * *

(c) If the child has not testified, a statement denying such conduct may be admitted to impeach a statement admitted under subrule (2)(a) if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement denying the conduct provide adequate indicia of trustworthiness.

“MCR 3.972(C)(2) is a general rule that applies to ‘any statement’ made by a child ‘regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation’” *In re Brown/Kindle/Muhammad Minors*, 305 Mich App 623, 633; 853 NW2d 459 (2014). As indicated by the rule’s plain language, to admit a child’s out-of-court statements, those statements must have “an adequate indicia of trustworthiness.” *In re Archer*, 277 Mich App at 82. Whether a statement is trustworthy “depends on the totality of the circumstances surrounding the making of the statement.” *Id.* “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.* Whether a child’s description of abuse is corroborated by other evidence may also be considered when assessing the indicia of trustworthiness. See, e.g., *id.* at 83.

In this case, before trial, petitioner filed a notice of intent to present testimony regarding statements made by WH to Taylor or in her hearing. In response, Wood requested that the trial court deny the petitioner’s request to admit these statements and/or also admit contradictory statements made by WH before trial. On September 30, 2014, the trial court held a hearing to determine the admissibility of Wesley’s various statements under MCR 3.972(C)(2). It concluded that those statements made in Taylor’s hearing, which are detailed above, bore sufficient indicia of trustworthiness to merit admission under MCR 3.972(C)(2)(c). The trial court found circumstances indicative of the statements’ trustworthiness because WH’s statements were supported by physical evidence of his injuries, the statements were made spontaneously, and WH was also able to act out the abuse.

In comparison, the trial court excluded evidence of statements made by WH on July 31, 2014 and August 7, 2014.² In particular, on July 31, 2014, WH was interviewed by Detective Keith Merritt and a CPS employee while still in the hospital. During this interview, WH stated that he liked living with his father and that he liked when Wood gave him a bath. Inconsistently, he also stated, however, that he did not like living with his father. When asked about his injuries, Wesley stated that he ran into a wall outside and that one of his injuries happened in his sister’s bedroom. Notably, however, every injury that the interviewers inquired about—including things

² WH was again interviewed by authorities on August 12, 2014, at which time he made statements describing the abuse which were consistent with his remarks to Taylor. For instance, WH told interviewers that he had been choked and hit by Wood, tied up with clothing, and placed in a shower to make his skin come off. Wood references this interview on appeal and asserts it was not admissible at trial. However, petitioner did not seek to introduce evidence of this interview, and the trial court did not address its admissibility under MCR 3.972(C)(2). Consequently, on appeal, we will not address the admissibility of these statements.

like a blister on his fingers—WH automatically responded with the assertion that he had run into a wall. Further, Detective Merritt noted that WH was not attentive during the interview in the hospital and he appeared to have no interest in answering their questions. WH appeared hyper and distracted. He was eating paper and coloring, and he wanted to play with toys that had been brought into his hospital room.

The trial court concluded that WH's statements on July 31 lacked indicia of trustworthiness because they were not spontaneous, WH had no interest in answering the questions, he appeared hyper and distracted, he answered questions inconsistently, and his "pat answer" about running into a wall was not consistent with the physical evidence.

In addition to the interview in the hospital, on August 7, 2014, Detective Merritt also observed an interview with WH at the Child Advocacy Center. Detective Merritt again described Wesley as inattentive, explaining that it was "better than at the hospital but he was still distracted and didn't really want to pay attention to what was going on." At that time, WH made no specific statements denying that he had been injured by Wood and Hall. WH again said that he had run into a wall, and when asked how his arms were hurt, he said "probably from the wall." He also stated that Wood helped him shower. But, when asked more specifically about the shower, WH grew antsy and began to act out. At that point, the interview was terminated. Regarding the August 7 interview at the Child Advocacy Center, the trial court reasoned that WH's statements at this interview were not inconsistent with his statements to Taylor and thus could not be admitted for impeachment purposes under MCR 3.792(C)(2)(c).

On appeal, considering the evidence presented at the hearing before trial, we conclude that the trial court did not abuse its discretion in admitting evidence of WH's statements to Taylor and excluding evidence of WH's statements on July 31 and August 7. First, regarding WH's statements to Taylor, the trial court did not abuse its discretion in concluding the circumstances surrounding those statements provided adequate indicia of trustworthiness. WH made these remarks spontaneously, without any initial prompting or questioning from Taylor. Further, as the trial court noted, he made these remarks in circumstances which seemed to trigger his recounting of events. For example, he first spontaneously mentioned the abuse related to the shower when he was getting ready to take a shower at Taylor's house. WH was also consistent in his remarks to Taylor. Several times he described the abuse in the shower, being tied up, the use of hot sauce and soap, and being hit. He not only described being abused, he acted out the abuse with the use of a kitchen spoon and skillet. His descriptions were also corroborated by his extensive physical injuries which, as described previously, included numerous bruises, burns, and abrasions. He also showed a noticeable fear of showers which added further trustworthiness to his reports of being burned in the shower. WH had no discernible reason to lie, and witnesses opined that he knew the difference between a truth and a lie, and right from wrong. In these circumstances, the trial court did not abuse its discretion in permitting Taylor to testify to WH's out-of-court statements at trial under MCR 3.972(C)(2)(a).

In comparison, regarding WH's statements on July 31, 2014, the trial court did not abuse its discretion in determining that the circumstances surrounding WH's statements in the hospital were not indicative of trustworthiness. His remarks on this date emerged in the course of questioning by police and a CPS worker and, notably, Wesley showed no interest in answering these questions. He appeared "hyper," distracted by the hospital surroundings and the presence

of toys in the room. Further, he answered questions inconsistently. For instance, he said both that he liked living with his dad and that he did not like living with his dad. Interviewers also noticed something “automatic” about the nature of WH’s answers that also undercuts the trustworthiness of his statements. Specifically, when asked about his injuries—any injury, including things like blisters on his finger—he said that he ran into a wall. As the trial court recognized, this “pat answer” did not comport with the physical evidence. Considering the totality of the circumstances, the trial court did not abuse its discretion in determining that the circumstances surrounding WH’s statements in the hospital were not indicative of trustworthiness and thus the statements were properly excluded.

Regarding WH’s statements on August 7, on appeal, Wood argues that these remarks made at the Child Advocacy Center were made in circumstances indicative of trustworthiness. In making this argument, Wood ignores, however, that the trial court excluded these statements because they had no impeachment value, not because they lacked trustworthiness. Specifically, under MCR 3.972(C)(2)(c), when a child’s statements regarding abuse have been admitted as evidence and the child does not testify at trial, “a statement *denying such conduct* may be admitted to impeach a statement admitted under [MCR 3.972(C)](2)(a) . . .” (emphasis added). In this case, the trial court aptly recognized that on August 7, 2014, WH did not deny the occurrence of the abuse he described to Taylor. For example, when asked about the shower, WH became antsy and began to act out. He threw play-doh at the interviewer, ran around the room, spit on the window, and attempted to spit on the interviewer. As a result, the interview was terminated. In other words, at no time did WH deny that he had been tied up in a hot shower or otherwise abused. It is true that WH did state during this interview that he ran into a wall and, when asked how he hurt his arms, he said “probably from the wall.” This remark comes closer to having some impeachment value, but again it is not actually a denial that Wood and Hall abused him in the manner he described to Taylor. On the evidence presented, the trial court did not abuse its discretion in excluding these statements made on August 7, 2014 because they did not constitute statements “denying the conduct” he described to Taylor and, as such, they were not admissible under MCR 3.972(C)(2)(c).

In any event, even if the trial court abused its discretion in admitting WH’s statements to Taylor and excluding his statements made on July 31 and August 7, this error was not outcome determinative and thus reversal is not required. See *In re Brown/Kindle/Muhammad Minors*, 305 Mich App at 633; *In re BKD*, 246 Mich App 212, 219; 631 NW2d 353 (2001). In particular, even without the admission of WH’s statements to Taylor, the evidence overwhelmingly demonstrated WH had been grievously injured while in Wood’s care. Wood provided no rational explanation for WH’s severe injuries and she persisted in asserting that WH nearly drowned, despite the fact that his injuries in no way supported the occurrence of a near drowning. WH’s statements to the effect that he “ran into a wall,” even if admitted at trial, would not have adequately explained his severe injuries, including the burns and the laceration to his liver. Given the nature of WH’s injuries and Wood’s inability to provide a rational explanation, a reasonable inference from the evidence is that Wood abused WH. Her treatment of WH is an indication of how she will treat NH. Thus, even without WH’s incriminating statements, the trial court had clear and convincing grounds for terminating Wood’s parental rights, and a preponderance of the evidence supports the conclusion that termination was in NH’s best interests. In short, any evidentiary error relating to WH’s out-of-court statements was harmless, and the trial court did not clearly err in terminating Wood’s parental rights to NH.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Stephen L. Borrello