

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 19, 2013

In the Matter of QUINLAN, Minors.

No. 311931
Wayne Circuit Court
Family Division
LC No. 11-503887-NA

Before: CAVANAGH, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals by right the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(b)(i), (g), (j), and (k)(ii).¹ We affirm because respondent's rights were not violated and there was sufficient evidence to support the trial court's factual findings.

Respondent first contends that, when the court permitted witnesses to testify concerning the out-of-court statements of his daughter under MCR 3.972(C)(2), he was denied his due process right to confront and cross-examine the child. This Court reviews de novo questions of constitutional law, including questions involving the right to confront witnesses. *People v Rose*, 289 Mich App 499, 505; 808 NW2d 301 (2010). A criminal "defendant has the right to be confronted with the witnesses against him or her." *People v Yost*, 278 Mich App 341, 369; 749 NW2d 753 (2008). However, the Sixth Amendment right of confrontation does not apply in child protective proceedings. *In re Brock*, 442 Mich 101, 107-108; 499 NW2d 752 (1993). Here, when the court ruled that the child's out-of-court statements could be admitted pursuant to MCR 3.972(C)(2), it made perfectly clear that it was not precluding respondent from calling the child as a witness. Respondent was not denied his right to confront and examine the child. Respondent could have called her as a witness, but he did not. Therefore, his due process argument must fail.

¹ MCL 712A.19b(3)(b)(i) involves physical injury or abuse caused by the parent with a likelihood of recurrence if the child is returned. MCL 712A.19b(3)(g) covers failure by the parent to provide proper care or custody. MCL 712A.19b(3)(j) calls for proof of a reasonable likelihood that the child will be harmed if returned to the parent. MCL 712A.19b(3)(k)(ii) covers abuse by the parent in the form of criminal sexual conduct involving penetration or attempted penetration.

Contrary to respondent's additional arguments, MCR 3.972(C)(2) does not require that "the child would be traumatized if allowed to testify" or that, as a prerequisite to the admissibility of a child's statements concerning sexual abuse, the interviewers who obtain the statements must follow a forensic interview protocol. Nevertheless, in this case, two of the interviewers used the forensic interviewing protocol during their interviews with the child, and the doctor who examined the child was a specialist in child sexual abuse.

Equally lacking in merit is respondent's argument that without medical evidence of trauma or DNA evidence, the conclusion that the child was sexually abused is speculative. As the medical doctor testified, the lack of findings does not mean that the sexual abuse did not occur. Further, respondent actually provided corroboration of the child's out-of-court statements when he admitted that the incidents and occurrences to which she referred had occurred, albeit he contended that they were all innocent accidents.

The court held a full hearing and provided an extensive analysis and opinion. The court complied fully with the requirements of MCR 3.972(C)(2). The court rule requires that the court find "adequate indicia of trustworthiness." The trial court found that the statements were trustworthy. We hold that the trial court did not clearly err or abuse its discretion in permitting the out-of-court statements of sexual abuse under MCR 3.972(C)(2). *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

Respondent next contends that, absent medical evidence, DNA evidence, and corroborating evidence, there was no clear and convincing evidence to support the statutory grounds for termination. We disagree. The trial court did not err in finding that the child's out-of-court statements were trustworthy. They described instances of vaginal and anal touching with respondent's hands and penis, penetration of her vagina with his hands and penis, and cunnilingus. The child also described instances of kissing respondent's penis and having to spread her legs so that respondent could access her vagina. Her descriptions, stated in the language of a young child, were graphic. They were corroborated by respondent's own admissions. The trial court found not credible respondent's statements that all the inappropriate sexual touchings were accidental. This Court defers to the trial court on credibility, because it has superior opportunity to evaluate these matters. MCR 2.613(C); MCR 3.902(A); *People v Sexton*, 461 Mich 746, 752; 609 NW2d 822 (2000). We find that the trial court did not clearly err in finding clear and convincing evidence to support the statutory grounds for termination. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Douglas B. Shapiro