STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of HATHAWAY, Minors.

UNPUBLISHED
March 11, 2014

No. 317539
Saginaw Circuit Court
Family Division
LC No. 13-033744-NA

Before: DONOFRIO, P.J., and SAAD and METER, JJ.

PER CURIAM.

Respondent father appeals as of right from the order terminating his parental rights to two minor children pursuant to MCL 712A.19b(3)(b)(*i*) (parent caused sexual abuse and reasonable likelihood of future abuse), (j) (reasonable likelihood that child will be harmed), and (k)(*ii*) (criminal sexual conduct involving penetration). We affirm.

Respondent lived with his two minor children and their mother. Additionally, the mother's minor daughter ("J") from a previous relationship also lived in the house. Evidence was introduced during the termination proceedings that respondent sexually abused J for many years, starting when she was approximately 12 or 13 years old, and it was this abuse that formed the basis for the trial court terminating respondent's parental rights to his two children.

I. USE OF SEXUAL HISTORY FOR IMPEACHMENT PURPOSES

Respondent first argues that the trial court improperly precluded him from inquiring into J's sexual history. He claims that this deprived him of the ability to challenge J's credibility. We review a trial court's decision whether to admit evidence for an abuse of discretion. *Hilgendorf v St John Hosp & Med Ctr Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001). An abuse of discretion occurs when the result is outside the range of principled outcomes. *In re Jones*, 286 Mich App 126, 130; 777 NW2d 728 (2009).

During the adjudicative trial phase in a termination proceeding, the rules of evidence for a civil proceeding apply. MCR 3.972(C)(1); *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). Respondent appears to assume that the trial court relied on Michigan's rape-shield law, MCL 750.520j, in prohibiting respondent from inquiring into J's sexual history. However, the trial court never stated on the record that it was relying on the rape-shield law when it limited

respondent's questioning.[1] Complicating the matter on appeal, respondent in his brief has failed to cite to specific instances in the record where he believes the trial court erred. Instead, he makes the general assertion that "the trial court erred when it denied Respondent the ability to inquir[e] into [J's] character, or attempt to impeach the witness by addressing inconsistencies in [J's] statements regarding any sexual activity." Arguably, respondent has abandoned the issue because of the failure to properly brief the issue. See *Blackburne & Brown Mortgage Co v Ziomek*, 264 Mich App 615, 619; 692 NW2d 388 (2004). Regardless, we conclude that the trial court did not abuse its discretion in limiting respondent's cross-examination of J.

First, regarding Michigan's rape-shield law, we conclude that it is inapplicable because from its plain and unambiguous language, it only applies to criminal sexual conduct cases. MCL 750.720j(1) provides that "[e]vidence of specific instances of the victim's sexual conduct . . . shall not be admitted under sections 520b to 520g . . . ." Sections 520b through 520g refer to MCL 750.520b through MCL 750.520g, which is part of Michigan's Penal Code and defines conduct that constitutes criminal sexual conduct. While the underlying facts in this case involve instances of criminal sexual conduct, the proceeding itself is governed by the rules of evidence for civil proceedings. MCR 3.972(C)(1); *In re AMAC*, 269 Mich App at 536.

In any event, we conclude that the trial court did not abuse its discretion. It is well established that the proponent of evidence bears the burden of establishing its relevance and admissibility. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 781; 685 NW2d 391 (2004). At trial, respondent never cited a rule of evidence that supported its admissibility. Instead, he merely averred that the evidence "goes to credibility."

The pertinent rules of evidence for this matter are MRE 402 and MRE 608. MRE 402 requires that only relevant evidence be admitted. And MRE 608 provides the following:

> Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility . . . may not be proved by extrinsic evidence. They may, however, in the discretion of the court, *if probative of truthfulness or untruthfulness*, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness . . . . [Emphasis added.]

Respondent alleges that J made false, or at least inconsistent, statements regarding her sexual behavior and history to other people outside of trial and those statements are probative of her character for untruthfulness. We respectfully disagree. Respondent implied at trial that J lied to others regarding her sexual behavior with a boyfriend she had at the time. Although there was nothing on the record to support this position, even assuming that it was true, those untruthful statements were allegedly regarding *concealing* sexual relations. A minor concealing her and her boyfriend's sexual activities to other adults outside a court setting is hardly probative of the

[1] We are aware that petitioner did refer to the rape-shield law during one of its many objections, but in the other instances, no such reference was given. In fact, at least one of those other objections was based on Michigan's physician-patient privilege, MCL 600.2157.

minor's character for truthfulness with respect to her allegations of being sexually assaulted by her step-father. Because MRE 608 only allows such inquiry if it would be "probative of truthfulness or untruthfulness," respondent's inquiries were properly limited. Therefore, even if the trial court improperly relied on the rape-shield law for limiting this evidence, the court's ultimate decision was correct because MRE 608 does not support admitting the evidence. And we will not reverse when the trial court reaches the correct result albeit for the wrong reason. *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 150; 624 NW2d 197 (2000).

II. STATUTORY BASIS FOR TERMINATION

Respondent next argues that the trial court erred when it found that statutory grounds for terminating his parental rights had been shown by clear and convincing evidence.

We review a trial court's factual findings, including its determination that a statutory ground for termination of parental rights has been proven by clear and convincing evidence, for clear error. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

A trial court may terminate a respondent's parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and (2) that termination is in the children's best interests. *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2001).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(b)(*i*), MCL 712A.19b(3)(j), and MCL 712A.19b(3)(k)(*ii*), which provide:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
>
> * * *
>
> (b) The child or a sibling of a child has suffered physical injury or physical 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.
>
> * * *
>
> (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:

* * *

(*ii*) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

The trial court did not clearly err in finding that a statutory ground supporting termination was met by clear and convincing evidence. Respondent's reliance on there being no evidence that respondent ever was inappropriate with his two minor children is misplaced. MCL 712A.19b(3)(k)(*ii*) allows for the termination of parental rights to a child if the parent abused "the child *or a sibling of the child*" and that abuse included criminal sexual conduct involving penetration. Here, there was substantial evidence that respondent engaged in criminal sexual conduct involving penetration with J, who was a sibling to the children who were the subject of the termination proceeding. J testified that respondent had penetrated her "hundreds of times" over the years. Since J lived in the same household as respondent and was at least 13 but less than 16 years of age during some of these penetrations, that means that there was evidence to support a finding that respondent engaged in first-degree criminal sexual conduct pursuant to MCL 750.520b(1)(b). The trial court expressly found J credible, and this Court will not interfere with that determination because of "the trial court's special opportunity to judge the credibility of the witnesses." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). Not only was J's testimony sufficient to support the statutory ground for termination, J's testimony was also corroborated by her friend, whom J confided in during the period that she was being sexually abused. Importantly, MCL 712A.19b(3)(k)(*ii*) allows for the termination of parental rights to children who were not the subject of the underlying criminal sexual conduct – as long as a sibling of the child was assaulted, that is sufficient. Therefore, the trial court did not clearly err in finding that the statutory ground under MCL 712A.19b(3)(k)(*ii*) was established by clear and convincing evidence. Because only one statutory ground is necessary to support the termination of a parent's rights, we need not address whether any other conditions were satisfied as well. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

Respondent next argues that the trial court erred in finding that termination of his parental rights was in the children's best interests. However, respondent has abandoned this issue. Respondent's argument on this issue is contained in a single sentence that avers that if he had been allowed to impeach J's testimony, then there would have been no need for the trial court to make any best-interest findings since the court would have been unable to conclude that any statutory ground had been established by clear and convincing evidence. Accordingly, since

respondent does not challenge the best-interest finding itself, he has abandoned the issue, and we need not consider it. *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008).

Affirmed.

/s/ Pat M. Donofrio
/s/ Henry William Saad
/s/ Patrick M. Meter