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STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
August 26, 2026
11:08 AM

In re ASHER, Minors.

No. 377114
Macomb Circuit Court
Family Division
LC Nos. 2024-000172-NA;
2024-000173-NA

Before: GADOLA, C.J., and BOONSTRA and CAMERON, JJ.

PER CURIAM.

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

I. FACTS

In 2019, the Department of Health and Human Services (DHHS) filed a petition to terminate the parental rights of GA's and LA's biological mother because her untreated mental illness was preventing her from properly caring for the children. During the 2019 termination proceedings, the children's mother accused respondent of sexually abusing LA. Children's Protective Services (CPS) investigated the allegations of sexual abuse but was unable to substantiate them. The mother's parental rights to GA and LA were terminated in June 2020. Respondent also was named as a respondent in the 2019 petition and was provided with a parent-agency treatment plan and service agreement. While respondent worked on the treatment plan, GA and LA, then approximately ages three and four, were placed in a licensed foster home. In July 2021, GA and LA were returned to respondent's care.

In July 2024, LA disclosed to the children's maternal grandmother that respondent had touched her inappropriately. The grandmother reported the abuse to the police. LA was forensically interviewed by Care House forensic interview specialist Jessalyn Gaskin. LA, then age seven, gave a detailed history of the sexual abuse. LA disclosed during the interview that respondent had touched her genitals under her clothes on numerous occasions and that respondent showed her videos of the Teenage Mutant Ninja Turtles having sex. During the interview LA also

reported that respondent directed her to take a picture of her private area on his phone. She also disclosed that respondent had instructed her to touch her private areas in a sexual manner.

DHHS filed the petition initiating this action seeking to terminate respondent's parental rights at the initial dispositional hearing under MCL 712A.19b(3)(b)(*i*), (g), (j), and (k)(*ii*). At the preliminary hearing, the trial court authorized the filing of the petition. Thereafter, the trial court granted the prosecution's motion to introduce Gaskin's testimony regarding LA's disclosures of abuse during her Care House interview under MCR 3.972(C)(2), known as a "tender years" motion.

The trial court referee then conducted an adjudication hearing and an initial dispositional hearing. CPS specialist DeMia Shelley testified that CPS had investigated earlier allegations that respondent had sexually abused LA in February 2019, June 2019, and July 2023, but had been unable to substantiate the earlier allegations. Shelley testified that when she investigated the July 2024 allegations, LA disclosed the abuse to her. Similarly, Gaskin testified that in her July 2024 forensic interview with LA, the child disclosed in detail the sexual abuse by respondent. Respondent then testified, denying that he had touched LA inappropriately and asserting that the children's grandmother had coached LA regarding the allegations.

Respondent also called LA as a witness. LA testified that respondent touched her private parts, but denied parts of her earlier account to Gaskin, including that respondent had shown her pornographic videos of the Teenage Mutant Ninja Turtles. After LA's testimony, respondent testified again, denying sexually touching LA or showing her pornographic cartoons. The parties rested, and the trial court continued the trial for closing arguments on a different day.

When trial resumed 3 weeks later, the case had been reassigned to Referee Eric O. Lundquist, Jr., who informed the parties that they would proceed with a new trial because he could make a fair determination of the case only by personally observing the witnesses and assessing their credibility. Both parties objected to the court's directive to retry the case, but the trial court maintained the need for a new trial.

Referee Lundquist also required the tender-years motion to be relitigated so that he could make his own determination regarding the admissibility of the forensic interview. Following a hearing, the trial court again held that LA's statements during the interview were admissible as substantive evidence of abuse under MCR 3.972. The parties then retried the case before Referee Lundquist. The prosecution called Amy Dumas, a CPS supervisor, who testified about the CPS investigation that led to the termination proceedings, as well as the prior complaints to CPS alleging that respondent was sexually abusing LA. LA testified that respondent touched her private parts at least ten times, that respondent told her not to tell anyone, and that he bought her presents after each incident. LA also testified that respondent took pictures of her while unclothed. Gaskin testified regarding LA's disclosures of sexual abuse during her forensic interview, which was consistent with Gaskin's prior testimony on the subject. The children's foster mother testified regarding LA's overtly sexual behavior, which they were attempting to address with therapy.

Respondent called as witnesses his two adult sons, one of whom lived with respondent and the children before their removal, who testified that they did not witness any sexual abuse in the home. The sons' mother also testified that respondent had never been accused of sexual abuse of

any kind when she was raising her sons with him. Respondent testified about the history of sexual abuse allegations made by the mother of LA and GA. Respondent denied that he had ever sexually abused LA, and he denied the specific allegations made by LA in the Care House interview.

The prosecution called Jennifer Smith, the children's therapist, as a rebuttal witness. She testified that LA disclosed the sexual abuse during her therapy sessions. Smith also testified that GA exhibited symptoms of trauma, and that GA had disclosed to her that he witnessed respondent sexually abusing LA.

The trial court issued its opinion on the record, finding that LA's testimony was consistent across multiple settings and was emotionally appropriate, that there was no evidence of coaching or external influence, and that "the child described sensory details and contextual facts that could not have been fabricated." The trial court discounted the testimony of respondent's adult sons and former partner because they had no firsthand knowledge of the incidents LA described, and their knowledge of the home was limited to shared or public spaces of the home. The trial court found respondent's categorical denial of any sexual misconduct not credible. The trial court found that jurisdiction was proper under MCL 712A.2(b)(1) and (2) and that clear and convincing evidence established that there were statutory grounds for termination under the provisions charged. The trial court then conducted a best-interest hearing, at the conclusion of which the trial court found that the preponderance of the evidence weighed in favor of terminating respondent's parental rights to GA and LA. The trial court entered an order assuming jurisdiction of the children and an order terminating respondent's parental rights. Respondent now appeals.

II. DISCUSSION

A. DUE PROCESS

Respondent contends that he was denied his fundamental right to a fair trial because he was required to repeat the proceedings before a second trial court referee after having partially completed the proceedings before the first referee. We disagree that respondent was denied due process.

A parent has a "fundamental right to direct the care, custody, and control of his or her child free from governmental interference." *In re Sanders*, 495 Mich 394, 415; 852 NW2d 524 (2014). This interest is a "core liberty interest recognized by the Fourteenth Amendment," and therefore is protected by due process. *Id*. at 409, 415. We review de novo whether child protective proceedings complied with a respondent's substantive and procedural due process rights. *In re Sanborn*, 337 Mich App 252, 268; 976 NW2d 44 (2021).

"Procedural due process requires notice and a meaningful opportunity to be heard before an impartial decision-maker," whereas "the essence of a substantive due process claim is the arbitrary deprivation of liberty or property interests." *In re TK*, 306 Mich App 698, 706; 859 NW2d 208 (2014). "Procedural due process limits actions by the government and requires it to institute safeguards in proceedings that affect those rights protected by due process, such as life, liberty, or property." *In re VanDalen*, 293 Mich App 120, 132; 809 NW2d 412 (2011) (quotation marks and citation omitted).

Respondent in this case does not specify whether he is alleging a violation of procedural or substantive due process but appears to argue a procedural due process violation because he emphasizes the "need for procedural integrity." A procedural due process claim requires this Court to consider: "(1) whether a liberty or property interest exists which the state has interfered with, and (2) whether the procedures attendant upon the deprivation were constitutionally sufficient." *VanDalen*, 293 Mich App at 132 (quotation marks and citation omitted).

"In Michigan, procedures to ensure due process to a parent facing removal of his child from the home or termination of his parental rights are set forth by statute, court rule, DH[H]S policies and procedures, and various federal laws." *In re Sanborn*, 337 Mich App at 268 (quotation marks and citation omitted). Although a parent has an interest in the companionship, care, and custody of his children, which is protected by due process, see *Sanders*, 495 Mich at 409, the government has a competing interest "in protecting the welfare of children, which coincides with the child's interest of being free from an abusive environment." *VanDalen*, 293 Mich App at 132-133 (quotation marks and citation omitted). In this case, this interest is significant given the serious nature of the abuse reported by LA. Because there are competing interests at stake, "the pertinent question [is] whether the procedures used were constitutionally adequate." *Id*. at 133 (quotation marks and citations omitted). We conclude that they were constitutionally adequate in this case given that the process provided was that established by statute and not unlike that provided in any child protective proceeding.

Generally, child protective proceedings are divided into the adjudicative phase and the dispositional phase. *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993). During the adjudicative phase, the trial court determines whether it has jurisdiction over the child under MCL 712A.2(b). If the trial court assumes jurisdiction of the child, the case proceeds to the dispositional phase of the proceedings where the trial court determines what action, if any, will be taken on behalf of the child. *In re Brock*, 442 Mich at 108. Typically, during the dispositional phase, reasonable efforts must be made by the DHHS to reunify the child with the parent. *In re KV*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 374236); slip op at 4. In certain circumstances, however, such as when the parent has subjected the child to aggravated circumstances under MCL 722.638(1) and (2), the trial court may hold a combined adjudicative and dispositional hearing, and the parent's parental rights may be terminated at the initial dispositional hearing, if a statutory basis for termination under MCL 712A.19b(3) is established and if the trial court determines that termination is in the child's best interests. *Id*.

In this case, respondent argues that he was prejudiced by starting the trial anew because the result was that certain witnesses, such as LA and Gaskin, testified a second time and thereby were able to hone their testimony.[1] Respondent has not identified authority to support the

[1] We observe that the second trial arguably was favorable to respondent. In the first trial, respondent primarily offered his own testimony to refute LA's allegations of abuse. In the second trial, respondent also offered the testimony of his two adult sons and respondent's former partner, who testified that they had never seen respondent act inappropriately toward LA. This change in the presentation of respondent's case suggests that respondent benefitted from having seen DHHS's evidence during the first trial and bolstered his case to refute the allegations of abuse.

argument that duplicative testimony results in a violation of due process, however, which constitutes abandonment of the issue on appeal. See *Henderson v Dep't of Health & Human Servs*, 347 Mich App 36, 46; 14 NW2d 184 (2023) (The failure to cite relevant authority results in abandonment of an issue on appeal).

Moreover, respondent has not demonstrated that the procedures involved in this case were constitutionally insufficient. See *VanDalen*, 293 Mich App at 132. "Due process is flexible and calls for such procedural protections as the particular situation demands." *In re Sanborn*, 337 Mich App at 268 (quotation marks and citation omitted). That certain witnesses testified more than once during the dispositional phase of the proceedings in this case does not distinguish this case from a typical child protective proceeding.

As discussed, in child protective proceedings more than one hearing typically is held; a preliminary hearing is held to determine whether probable cause exists to issue a petition, followed by an adjudication hearing to determine whether the trial court may exercise jurisdiction over the child. If the trial court assumes jurisdiction of the child, the dispositional phase of the proceedings ensues during which, typically, a series of hearings is held over several months or even years. Certain witnesses who may have testified at the preliminary hearing or at the adjudication hearing often are called upon again to testify at hearings during the dispositional phase. Often, a CPS worker or a foster care case worker testifies at several dispositional-phase hearings before termination is sought or the case is otherwise resolved. And often, when numerous dispositional hearings are held over the course of several months or even years, different trial court referees preside over the various hearings, undoubtedly resulting in the need to repeat and clarify information regarding various issues from one hearing to the next.

In this case, because the petition sought adjudication and also termination of parental rights at the initial dispositional hearing, only an initial dispositional hearing was held rather than a series of dispositional phase hearings. The case was then reassigned to a different trial court referee who was tasked with determining at the initial dispositional hearing whether respondent's parental rights were to be terminated, necessitating the trial starting over at the beginning to enable the second referee properly to determine the resolution of the case. The fact that certain witnesses were called upon to testify more than once does not suggest a violation of due process nor even a departure from the procedure employed in a typical child protective proceeding.

We also observe that, unlike criminal proceedings[2] in which under certain circumstances a mistrial might lead to the dismissal of charges, child protective proceedings do not involve criminal

[2] We also observe that substitution of a judge occurs in other types of cases and that judicial substitution sometimes requires a new trial. Although not controlling here, we note that in civil cases, MCR 2.630 provides that a substitute judge may be assigned to a case in certain circumstances and that "if the substitute judge is not satisfied that he or she can do so, the substitute judge may grant a new trial." Similarly, reassignment of a criminal case to a different judge at certain stages of the proceedings may result in the new judge granting the defendant a new trial "if that judge is not satisfied of an ability to perform [posttrial] duties because of not having presided at the trial or determines that it is appropriate for any other reason . . . ." MCR 6.440(C). In neither

charges against a parent for alleged wrongful behavior, but rather concern the safety, wellbeing, and custody of children. The trial court having jurisdiction of a child whose safety is at stake is charged with ascertaining whether a statutory basis exists to terminate parental rights and whether doing so is in that child's best interests based on the evidence presented. Regardless of circumstances, the trial court is obligated to resolve the matter before it while considering foremost the wellbeing of the child. Moreover, when a respondent parent is not provided procedural due process, the remedy typically is a new trial, which the trial court in this case provided to ensure a proper determination of the children's custody. Because respondent in this case has not demonstrated that a new trial deprived him of due process, he is not entitled to relief on that basis.

B. STATUTORY BASIS

Respondent also contends that the trial court erred by finding that sufficient evidence was presented to establish a statutory basis for termination. We disagree.

To terminate parental rights, a trial court must find that at least one of the statutory bases for termination set forth in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Jackisch/Stamm-Jackisch*, 340 Mich App 326, 333; 985 NW2d 912 (2022); see also *In re Atchley*, 341 Mich App 332, 346 n 6; 990 NW2d 685 (2022) ("[O]nly one statutory ground for termination of a respondent's parental rights need be established"). We review for clear error both the trial court's factual findings and the trial court's determination that a statutory basis for termination has been proven by clear and convincing evidence. *In re Keillor*, 325 Mich App 80, 85; 923 NW2d 617 (2018). The decision whether to terminate parental rights is clearly erroneous if "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Here, the trial court found that statutory grounds for terminating respondent's parental rights were established under MCL 712A.19b(3)(b)(*i*), (g), (j), and (k)(*ii*), which authorize termination under the following circumstances:

> (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.
>
> * * *
>
> (g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable

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instance is a new trial considered to be a violation of due process by virtue of witnesses testifying a second time.

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 the child is returned to the home of the parent.

* * *

(k) The parent abused the child or a sibling of the child, the abuse included 1 or more of the following, and there is a reasonable likelihood that the child will be harmed if returned to the care of the parent:

* * *

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

We conclude that the trial court did not clearly err by determining that at least one of the statutory bases for termination set forth in MCL 712A.19b(3) had been established by clear and convincing evidence. LA testified that respondent sexually abused her on numerous occasions and the abuse included digital vaginal penetration. Her testimony was consistent with the disclosures she made during the Care House interview. LA's therapist testified that LA made spontaneous disclosures in therapy that respondent touched her vagina. The trial court found credible LA's consistent, detailed accounts of sexual abuse in contrast to respondent's denials and unsupported allegations of coaching. We conclude that the record supports the trial court's findings and we give due regard to the trial court's credibility determinations. See *In re Miller*, 347 Mich App 420, 425; 15 NW3d 287 (2023).

The trial court also did not err when it concluded that GA and LA would be at risk of future harm if returned to respondent's care. Based on LA's credible disclosures of sexual abuse, the court appropriately concluded that she would be at risk of further abuse if returned to the home. In addition to physical harm, the court may also consider the risk of emotional harm if returned to respondent's care. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). GA disclosed to Smith that he witnessed respondent abusing LA, and GA had trouble managing his guilt, sadness, and self-blame as a result. Smith testified that both children have symptoms consistent with trauma and that the children were in the beginning stages of treatment plans to address these issues. The trial court appropriately considered that the children may be at risk of future emotional harm if returned to respondent's care. Accordingly, respondent has not demonstrated that the trial court clearly erred when it found that termination was warranted under MCL 712A.19b(3)(b)(*i*), (g), (j), and (k)(*ii*).

C. BEST INTERESTS

Respondent also contends that the trial court erred by finding that termination was in the children's best interests. We disagree.

When a trial court finds that a statutory basis for termination of a respondent's parental rights has been established, the trial court must terminate the parent's rights if a preponderance of the evidence demonstrates that termination is in the child's best interests. MCL 712A.19b(5); *In re Medina*, 317 Mich App 219, 236-237; 894 NW2d 653 (2016). We review for clear error the trial court's decision regarding a child's best interests, *In re Sanborn*, 337 Mich App at 276, focusing on the child, not the parent. *In re Atchley*, 341 Mich App at 346.

When determining the best interests of a child in a termination proceeding, the trial court must weigh the available evidence and should consider a wide variety of factors, including the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, the advantages of the foster home over the parent's home, the likelihood that the child could be returned to the parent's home in the foreseeable future, and the parent's compliance with the case service plan. See *In re Sanborn*, 337 Mich App at 276-277. The trial court also should consider the child's safety and well-being and any risk a child might face if returned to the parent's care. *In re VanDalen*, 293 Mich App at 141-142.

Here, a preponderance of the evidence supports the trial court's determination that termination of respondent's parental rights was in the children's best interests. The trial court considered each child's emotional bond to respondent and their preferences as to whether they wanted to remain in his care. GA expressed hatred toward respondent for abusing LA. Although LA expressed forgiveness toward respondent, her therapy sessions revealed the deep trauma she suffered at respondent's hands, and the trial court found that there was credible evidence of "grooming, secrecy instructions, [and] bribery with toys that's fundamentally incompatible with healthy guidance." In contrast, both children had a healthy and stable bond with their foster parent, and the foster parent was providing the children with structure, therapy, and the tools they needed to heal and move forward.

In addition, the children's need for stability favored termination. A review of the record indicates that both children had truancy issues while in their father's care, which led to LA being required to repeat the second grade. GA needed leg braces for chronic toe-walking, which respondent refused to use for the child. After GA was returned to foster care, he also was diagnosed with autism. In contrast, the children's educational needs were being met with specialized services in foster care. The trial court also observed that the children's trauma symptoms, which were not acknowledged or treated in respondent's care, were being addressed by their foster parent.

We conclude that the trial court appropriately considered the relevant factors and its findings are supported by the evidence. The credible evidence of sexual abuse led the trial court appropriately to conclude that the children would not be safe in respondent's care. Respondent has not demonstrated that the trial court clearly erred when it determined that termination was in the children's best interests.

Affirmed.

/s/ Michael F. Gadola
/s/ Mark T. Boonstra
/s/ Thomas C. Cameron