STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MICHAEL RAY FOSTER, JUSTIN LLOYD FOSTER, MARTIN JOSEPH JAMES FOSTER, and AUSTIN JAMES FOSTER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

HEATHER FOSTER,

Respondent-Appellant,

and

CHRISTOPHER FOSTER,

Respondent.

UNPUBLISHED
November 19, 2009

No. 291004
Ingham Circuit Court
Family Division
LC No. 08-001544-NA

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HEATHER FOSTER,

Respondent.

Before: Borrello, P.J., and Whitbeck and K.F. Kelly, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother Heather Foster and respondent-father Christopher Foster each appeal as of right from the trial court's order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j) with respect to both respondents, and also pursuant to MCL 712A.19b(3)(k)(ii) and (m) with respect to respondent-father. For the reasons set forth in this opinion, we affirm.

I. Standard of Review

This Court reviews under the clearly erroneous standard a trial court's findings of fact in support of its decision that a statutory ground for termination under MCL 712A.19b(3) has been established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). 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. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). To be clearly erroneous, the trial court's finding must strike this Court as more than just maybe or probably wrong. *In re Trejo, supra*, 462 Mich at 357. Regard is given to the trial court's special opportunity to judge the credibility of witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Once a statutory ground for termination has been established, MCL 712A.19b(5) requires that the court additionally find that termination of parental rights is in the child's best interests before it can order termination of parental rights. The trial court's best interests decision is also reviewed for clear error. *In re Trejo, supra* at 356-357.

II. Docket No. 291004

Respondent-mother first argues that the trial court erred in admitting at the adjudicative jury trial an eight-minute portion of a videorecorded interview of one of the children. Respondent-mother argues that this evidence was inadmissible as a matter of law under MCL 712A.17b(5).[1] Because respondent-mother did not object to the videorecording on the ground

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[1] We disagree with petitioner's argument that respondent-mother is precluded from raising this issue because it constitutes an impermissible collateral attack on the trial court's exercise of jurisdiction, contrary to the rule set forth in *In re Hatcher*, 443 Mich 426; 439, 444; 505 NW2d 834 (1993). Because respondent-mother's parental rights were terminated at the initial dispositional hearing, the order terminating her parental rights was the first dispositional order from which an appeal by right could have been filed, see MCR 3.993(A)(1), and respondent-mother's attack on the adjudication is a direct one, not an impermissible collateral attack. See *In re SLH, AJH, and VAH*, 277 Mich App 662, 668-669; 747 NW2d 547 (2008).

that it was barred by MCL 712A.17b(5), this issue is not preserved.[2] *City of Westland v Okopski*, 208 Mich App 66, 72; 527 NW2d 780 (1994). We review unpreserved claims of error for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

MCL 712A.17b(5) states, in pertinent part:

> A custodian of the videorecorded statement may take a witness's videorecorded statement. The videorecorded statement shall be admitted at all proceedings *except the adjudication stage* instead of the live testimony of the witness. [Emphasis added.]

A "videorecorded statement" is "a witness's statement taken by a custodian of the videorecorded statement as provided in subsection (5)." MCL 712A.17b(1)(c). A "custodian of the videorecorded statement" means "the family independence agency, investigating law enforcement agency, prosecuting attorney, or department of attorney general or another person designated under the county protocols established as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628." MCL 712A.17b(1)(a).

In this case, MCL 712A.17b(5) clearly prohibited the child's videorecorded statement from being introduced at the adjudicative jury trial. Clear statutory language is to be enforced as written. *Fluor Enterprises, Inc v Dep't of Treasury*, 477 Mich 170, 174; 730 NW2d 722 (2007). Thus, respondent-mother has established that the trial court committed plain error.[3] When plain error has occurred, "[r]eversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant *or* when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *In re Utrera*, *supra* at 9. (internal quotation marks and citations omitted.)

Considering the evidence as a whole, the playing of the DVD was not so prejudicial as to "seriously affect the fairness, integrity, or public reputation of judicial proceedings." *Id*. In addition to the allegations that one of the minors made through Detective Reust, the jury also heard testimony regarding respondent-mother's failure to keep the children away from respondent-father after the allegations surfaced. This testimony alone was for the jury to find that the children were within the trial court's jurisdiction. Accordingly, we conclude that admission of the portion of the DVD at the jury trial, although plain error, did not affect respondent-mother's substantial rights such that reversal is required.

We further note that the purpose of the adjudicative phase is to determine whether there is a statutory basis for the court to exercise jurisdiction over a child. *In re Archer*, 277 Mich App

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[2] An objection on one ground is insufficient to preserve an appellate attack on a different ground. *City of Westland v Okopski*, *supra*.

[3] Respondent-mother also argues that the videorecorded statement was improperly introduced at the adjudicative jury trial because the trial court failed to articulate whether the circumstances surrounding the giving of the child's statements provided adequate indicia of trustworthiness, as required by MCR 3.972(2)(a). It is unnecessary to reach this issue in light of our conclusion that the videorecorded statement was inadmissible as a matter of law under MCL 712A.17b(5).

71, 79-80; 744 NW2d 1 (2007). Respondent-mother does not argue that the eight-minute videorecording affected the jury's finding that a statutory basis for jurisdiction existed. Instead, she only argues that the videorecorded statement should not have been considered by the trial court. Although the trial court did consider the videorecorded statement, it did so only pursuant to the later introduction of the videorecording at the dispositional hearing. The trial court did not decide the issue of jurisdiction at the adjudicative phase, and MCL 712A.17b(5) did not preclude the videorecording from being introduced at the subsequent dispositional hearing. See *In re Archer*, *supra* at 81 ("MCL 712A.17b(5) permits the introduction of a child's videorecorded statement . . . at proceedings that take place either before or after the adjudicative stage"). Therefore, respondent-mother has not shown that her substantial rights were affected.

Respondent-mother next argues that the trial court erred in finding that the statutory grounds for termination, §§ 19b(3)(g) and (j), were both established by clear and convincing evidence. The trial court found that there was credible evidence that respondent-father sexually abused the children, and that respondent-mother had actual knowledge of the abuse against at least one child, yet she continued to allow the children to have contact with respondent-father, was in complete denial that the abuse occurred, and continued to associate with respondent-father. Giving due regard to the trial court's credibility determinations, the trial court's findings are not clearly erroneous. Further, they demonstrate that respondent-mother cannot reasonably be expected to provide proper care and custody within a reasonable time, and that there is a reasonable likelihood that the children will be harmed if returned to respondent-mother's home. Therefore, the trial court did not err in finding that §§ 19b(3)(g) and (j) were both proven by clear and convincing evidence.

Respondent-mother lastly argues that termination of her parental rights was not in the children's best interests. The evidence clearly revealed that the children were traumatized by the abuse they experienced from respondent-father. Respondent-mother provided no indication that she would keep the children away from respondent-father or would seek necessary treatment for the children. The children were receiving, in foster care, the treatment and services they needed to deal with their trauma and to resolve their related behavioral issues. They had made marked improvement since their removal. The trial court did not clearly err in finding that termination of respondent-mother's parental rights was in the children's best interests.

III. Docket No. 291005

Respondent-father argues that the trial court violated his right to due process, but he does not present any substantive argument in support of this claim. An appellant may not merely announce his position and leave it to this Court to discover and the basis for his claims. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Therefore, this issue is abandoned. *Id.*

Respondent-father also argues that the trial court erred in terminating his parental rights under §§ 19b(3)(k)(ii) and (m). However, because termination of parental rights need only be supported by a single statutory ground, *In re Trejo*, *supra* at 360, and respondent-father does not challenge the trial court's determination that termination of his parental rights was also warranted under §§ 19b(3)(g) and (j), it is unnecessary to consider this issue. Moreover, respondent-father concedes that the evidence supports the trial court's decision to terminate his parental rights under § 19b(3)(m). He merely argues that the trial court could have declined to

terminate his parental rights under § 19b(3)(m), based on the children's best interests. But because respondent-father does not present a separate best interests argument, any claim of error in that regard is abandoned. *Peterson Novelties, Inc, supra* at 14. Regardless, in light of the trial court's findings that respondent-father sexually abused his children and that the abuse included sexual penetration, and the undisputed evidence that respondent-father previously released his parental rights to another child, we find no clear error in the trial court's findings that the statutory grounds for termination were established by clear and convincing evidence with respect to respondent-father, or that termination of respondent-father's parental rights was in the children's best interests.

Affirmed.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly