# STATE OF MICHIGAN

# COURT OF APPEALS

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In the Matter of CRYSTAL ELANE SACKETT and TORI R SACKETT, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

WILLIAM A SACKETT,

Respondent-Appellant.

UNPUBLISHED
December 17, 2009

No. 291676
Mecosta Circuit Court
Juvenile Division
LC No. 07-005202-NA

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHARITY MATHEWS,

Respondent-Appellant.

No. 291678
Mecosta Circuit Court
Juvenile Division
LC No. 07-005202-NA

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Before: Talbot, P.J., and O'Connell and Davis, JJ.

MEMORANDUM.

In these consolidated appeals, father William Sackett and mother Charity Mathews appeal as of right an order terminating their parental rights to the minor children. We affirm.

In termination cases, we review the trial court's findings of fact for clear error. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). In general, a trial court's conclusions of law are reviewed de novo. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). Ultimately, however, we will not disturb a lower court's order unless "failure to do so would be inconsistent with substantial justice." *In re TC*, 251 Mich App 368, 370-371; 650 NW2d 698 (2002), citing MCR 2.613(A).

The children came to the attention of the Department of Human Services when the parents were arrested for sexually assaulting two girls who had been babysitting the children.

The children were approximately one and two years old at the time. At a preliminary examination involving the babysitters, one of the victims testified fairly graphically about assaults that occurred that evening. She was thirteen years old at the time of the incident, and the other victim, who did not testify, was twelve. Suffice to say that the trial court accurately summarized that "William Sackett and Charity Mathews sexually molested two unrelated minor children while [the children at issue] were present in the home." Sackett and Mathews also provided alcohol to the babysitters. Child sexually abusive material was found on the parents' computer. Sackett and Mathews were nevertheless allowed a plea agreement under which they pleaded guilty to gross indecency, MCL 750.338b.

The children who are the object of this appeal, meanwhile, were placed with the father's sister.[1] As the trial court found, the children initially displayed compelling – if circumstantial – evidence that they had been physically and sexually abused. The children were afraid of men and were physically aggressive toward each other, one child was also afraid of some women, and the other was also afraid of "anyone wiping or taking her to the potty." A medical examination found no medical evidence of sexual abuse, but a doctor testified that it could not be medically ruled out, either. The children were described as grabbing at men's crotches, lifting up their shirts and attempting to lick their breasts, "looking for private parts and breasts," injuring themselves and each other, and rubbing their fingers on a doll's crotch area and then trying to get others to lick their fingers. They also hoarded food. After spending almost a year with the father's sister's family, during which time they received therapy, their behavior and development had improved significantly. Furthermore, there was evidence that the children generally did better during periods when no visitation took place, such as when the parties were incarcerated.

In short, the trial court's findings that the children had been abused while living with the parents, and that they would continue to suffer harm if returned to the parents, is amply supported by the record, as is the trial court's finding that terminating the parents' parental rights is not clearly contrary to the children's best interests. It was clear that the parents were simply not capable of providing a safe environment for their children and would not become capable of doing so.

The parties argue that the trial court erred in relying on the preliminary examination transcript from the criminal matter. We disagree. The transcript shows that the parties *were* afforded ample opportunity to cross-examine the witnesses; the fact that a different attorney represented the parties at the criminal matter is irrelevant. MCR 3.977(G)(2). Furthermore, we cannot conclude that the evidence was unreliable solely because the prosecutor decided to offer the parties a generous plea agreement. We note that there are any number of reasons other than proof problems why the prosecutor might have offered that agreement. We further observe that the agreement specified that the prosecutor would work for reunification "at that time." The decision later to pursue termination did not violate the agreement, and the fact that the DHS

[1] The parties object to the trial court's reliance on her testimony, and they argue that the only evidence of the children's sexualized behavior came from her. We disagree that her testimony contains the only evidence of the children's abuse, and we defer to the trial court's superior position to evaluate witness's credibility.

initially supported reunification rather than termination is not evidence that termination was inappropriate.[2]

The father claims that he received ineffective assistance of counsel because his counsel in this matter did not object to the admission of the preliminary examination transcript. We disagree. Because any such objection would have been properly denied, the father did not receive ineffective assistance on this basis. Counsel is not ineffective for failing to make a futile objection. *People v Petri*, 279 Mich App 407, 415; 760 NW2d 882 (2008).

The mother claims that her due process rights were violated because when she pleaded no contest to the trial court assuming jurisdiction, the trial court did not explicitly state, in so many words, that her plea could be used as evidence in a subsequent proceeding to terminate her parental rights. MCR 3.971(B)(4). While those precise words were not used, the trial court took great care to ensure that both parents understood that a termination petition could be filed at any time, and that parental rights could e terminated, as a consequence of the pleas entered. Furthermore, Ms. Mathews was represented by counsel at all times. While it would have been better for the trial court to make the warning explicit, this case does not feature the numerous additional errors that occurred in *In re Hudson*, 483 Mich 928; 763 NW2d 618 (2009). Because the mother was represented by counsel and warned that her parental rights could be terminated because of her plea, and because her real complaint appears to be the trial court's entirely proper reliance on the criminal preliminary examination, the error, if any, is not sufficient to warrant reversal. *In re TC, supra* at 370-371.

The parties finally argue that the trial court erred in terminating their parental rights because 182 days had not yet elapsed between the date of an initial dispositional order and the termination order. MCL 712A.19b(3)(c). The parties argue that the initial dispositional order was entered on October 16, 2008, and the termination order was entered on April 14, 2009; thus, only 180 days had elapsed. The record is not entirely clear as to this issue, because almost a month earlier, on September 18, 2008, an initial dispositional hearing was held, and the trial court entered an order adjourning the dispositional hearing and further including some dispositional orders pertaining to the parents and the children. It is therefore at least arguable that more than 182 days had passed.

However, we need not determine which order constitutes "an initial dispositional order" under MCL 712A.19b(3)(c). Presuming the parties' position is correct, and further presuming the highly unlikely conjecture that two more days would have made a difference in the parties' ability to rectify their problems, the error would still be harmless. The trial court is only required to find *one* statutory basis for termination, and if that basis was properly established, an error as to another basis is harmless. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). The trial court also relied on MCL 712A.19b(3)(g) and (j). The trial court's findings of fact are, again, amply supported by the record, and they support termination under either of those

[2] Indeed, the testimony showed that the DHS reversed its position to support termination after being chastised by the trial court about failing to read the preliminary examination transcript, and the DHS changed its position on the basis of conducting further investigation.

provisions. Consequently, termination was warranted even if the trial court made a two-day miscalculation under MCL 712A.19b(3)(c).

We conclude that, even considering two possible technical errors, the trial court did an exemplary job adjudicating and resolving this difficult and disturbing matter.

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis