# STATE OF MICHIGAN

# COURT OF APPEALS

*In re* SMITH-TAYLOR, Minors.

FOR PUBLICATION
October 14, 2021
9:00 a.m.

No. 356585
Wayne Circuit Court
Family Division
LC No. 2019-002165-NA

Before: CAVANAGH, P.J., and K. F. KELLY and REDFORD, JJ.

K. F. KELLY, J.

Respondent appeals as of right the order terminating her parental rights to her children, DL, DE, and DS under MCL 712A.19b(3)(g) and (j). Respondent's children were removed from her care following an incident of domestic violence with the children's father and respondent's mental health episode that required police assistance. While respondent was receiving mental health treatment, the children were in the care of their father, and DE sustained serious injuries. Ultimately, a petition was filed seeking termination of respondent's parental rights, and a case service plan was not prepared for respondent in light of aggravated circumstances, MCL 712A.19a(2)(a). On appeal, respondent submitted that aggravated circumstances did not apply to her because she did not personally commit the abuse and she was not present for the abuse. However, respondent allowed the father to reside with the children, and he committed severe physical abuse upon DE, MCL 722.638(1)(a)(*iii*). Further, respondent subjected her children to an unreasonable risk of harm by her failure to eliminate the possible abuse of the children in light of her knowledge that the father's parental rights to other children had been terminated, MCL 722.638(2). MCL 722.638(2) does not limit the request for termination of parental rights at the initial dispositional hearing without the provision for services to the suspected perpetrator of abuse, but also applies to a parent suspected of placing the child at an unreasonable risk of harm by failing to take reasonable steps to eliminate the risk. Finding no errors warranting reversal, we affirm.

## I. BASIC FACTS AND PROCEDURAL HISTORY

On December 11, 2019, petitioner, the Department of Health and Human Services (DHHS), requested temporary custody of DL and DE in regard to respondent, but DHHS requested that the parental rights of the children's father be terminated. At the time this petition was filed,

DS was not yet born. The petition alleged that it was contrary to the welfare of the children to be in their parents' care because of physical abuse, unstable mental health, and threatened harm. It was asserted that, on October 30, 2019, Children's Protective Services (CPS) received a complaint indicating that respondent had been exhibiting erratic behaviors. Specifically, on October 26, 2019, respondent smoked marijuana and then threatened the children's father with a knife. Authorities were called and respondent was transferred to Kingswood Hospital by ambulance, but she ran away from the ambulance once it arrived at the hospital. On October 30, 2019, respondent was found incoherent on the freeway with DE in the backseat of her car. As a result, she was admitted to Stonecrest Hospital from October 30, 2019 to November 19, 2019, and while there, she was diagnosed with bipolar disorder. On November 6, 2019, respondent was still hospitalized when DE was admitted to the Children's Hospital with severe injuries, including a skull fracture, subdural hematoma, and liver lacerations. DL also had injuries, including bruising on her face, leg, and abdomen. The children were injured while in the care of their father. He denied knowing the cause of DE's severe injuries. Later, he proffered that DE suffered the injuries in a fall from a couch, an explanation rejected by treating physicians. At the time that the children's father became their safety plan, the protective services worker was unaware that the father had his parental rights terminated to other children that he shared with a different mother.[1] However, respondent knew of the prior terminations of the father's parental rights.

On January 21, 2020, DHHS filed an amended petition to terminate respondent's parental rights at the initial disposition on the basis of a history of mental illness as well as respondent's own statements that she would not separate from the children's father. The court authorized the petition. On February 27, 2020, respondent and the father pleaded no contest to certain allegations stipulated to by the parties. The court assumed jurisdiction over DL and DE. Over the next several months, the court held termination hearings. Prior to terminating respondent's parental rights, respondent gave birth to DS in August 2020, her third child with the father. During her pregnancy, respondent declined to take medication for her mental condition, yet DS was born with the active ingredient for marijuana in her system.[2] DHHS filed a petition to terminate the parental rights of respondent and the father to DS, and the court authorized the petition. Although a case service plan was not executed because of aggravated circumstances, respondent did submit to a mental health evaluation, was prescribed medications, and was allowed to participate in visitation with the children. However, it was reported that respondent was combative with her children's caregivers and the CPS workers and had police contacts as a result. On December 2, 2020, during a combined adjudicative and dispositional hearing, respondent and the father pleaded no contest to allow the court to assume jurisdiction of DS. Thereafter, the court continued the termination hearing in regard to all three children and ultimately terminated respondent's parental rights on February 26, 2021. Respondent now appeals.[3]

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[1] Apparently, the safety plan was handled by a worker in a different county.

[2] Respondent had asserted that she threatened the children's father with a knife after she smoked marijuana that was "laced" with something.

[3] The children's father did not appeal the termination of his parental rights. This appeal concerns only respondent.

## I. COMBINING THE ADJUDICATIVE AND INITIAL DISPOSITIONAL HEARINGS

Respondent alleges that the trial court erred by combining the adjudication phase and the dispositional hearing. We disagree.

Respondent did not object to the trial court allegedly combining the adjudicative hearing and the dispositional hearing. Therefore, this issue is not preserved for appellate review. See *In re Mota*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 351830); slip op at 5.

"[F]amily division procedure under the court rules . . . [is] reviewed de novo." *Id.* (citation and quotation marks omitted). However, unpreserved claims are reviewed for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich App at 9.

"Child protective proceedings are governed by the juvenile code, MCL 712A.1 *et seq*., and Subchapter 3.900 of the Michigan Court Rules." *In re Ferranti*, 504 Mich 1, 14; 934 NW2d 610 (2019). "The DHHS, following an investigation, may petition a court to take jurisdiction over a child." *In re Mota*, ___ Mich App at ___; slip op at 6. "The petition must contain essential facts that if proven would permit the court to assume and exercise jurisdiction over the child." *Id*. "If a petition is authorized, the adjudication phase of the proceedings takes place, and the question at adjudication is whether the court can exercise jurisdiction over the child (and the respondents-parents) under MCL 712A.2(b) so that it can enter dispositional orders, including an order terminating parental rights." *Id*.

"If a trial is held regarding adjudication, the respondent is entitled to a determination of the facts by the jury or judge; the rules of evidence apply, and the burden of proof is a preponderance of the evidence." *Id*. "The dispositional phase involves a determination of what action, if any, will be taken on behalf of the child." *Id*. (citation and quotation marks omitted). "Unlike the adjudicative [trial], at the initial dispositional hearing the respondent is not entitled to a jury determination of the facts and, generally, the Michigan Rules of Evidence do not apply, so all relevant and material evidence is admissible." *Id*. (citation and quotation marks omitted). "If permanent termination of parental rights is sought, the petitioner bears the burden of proving the statutory basis for termination by clear and convincing evidence." *Id*. (citation and quotation marks omitted).

In *In re Mota*, this Court recently held that it is permissible for a trial court to combine the adjudicative hearing and the dispositional hearing. *Id*. at 8. However, the trial court must clearly bifurcate the proceedings by conducting the adjudicative hearing and determine whether there is sufficient evidence to take jurisdiction before proceeding to the dispositional phase. *Id*. at 7-8. MCR 3.973 and MCR 3.977(E) are relevant to this Court's analysis in *In re Mota*. MCR 3.973 provides in relevant part:

> **(B) Notice**. Unless the dispositional hearing is held immediately after the trial, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with MCR 3.920.
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> **(C) Time**. The interval, if any, between the trial and the dispositional hearing is within the discretion of the court. When the child is in placement, the interval may not be more than 28 days, except for good cause.

MCR 3.977(E) provides, in relevant part:

> **(E) Termination of Parental Rights at the Initial Disposition.** The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 3.973, and shall order that additional efforts for reunification of the child with the respondent shall not be made, if
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> (1) the original, or amended, petition contains a request for termination;
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> (2) at the trial or plea proceedings, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2(b) have been established;
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> (3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:
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> > (a) are true, and
> >
> > (b) establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), or (m);
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> (4) termination of parental rights is in the child's best interests.

Relying on MCR 3.973 and MCR 3.977(E), this Court set forth the following procedural guidelines that a trial court must follow when the adjudication trial and the initial dispositional hearing are held during the same proceeding:

> First, an adjudication trial is to be conducted with the court allowing the introduction of legally admissible evidence that is relevant to the exercise of jurisdiction under MCL 712A.2(b). At the conclusion of the adjudication trial, the court, in a bench trial, is to determine whether the DHHS established by a preponderance of the evidence a basis for jurisdiction under MCL 712A.2(b). If jurisdiction is not established, the proceeding is, of course, concluded. If the trial court finds that it has jurisdiction, the dispositional hearing in which termination is sought may immediately be commenced. At the termination hearing, the trial court, in rendering its termination decision under MCL 712A.19b, may take into consideration any evidence that had been properly introduced and admitted at the adjudication trial, MCR 3.977(E), along with any additional relevant and material

> evidence that is received by the court at the termination hearing, MCR 3.977(H)(2). [*In re Mota*, ___ Mich App at ___; slip op at 8 (footnote omitted).]

Therefore, it is proper for a court to combine the adjudicative and initial dispositional hearing. Accordingly, the next issue is whether the court properly bifurcated the proceedings.

Respondent contends that the proceedings became confusing because the trial court failed to differentiate the proceedings, but rather, heard testimony for both the adjudicative and dispositional hearings. This argument lacks merit. On February 27, 2020, respondent pleaded no contest to the allegations and the court took jurisdiction of DL and DE. DS was not yet born. Respondent stipulated that DE was severely injured while in his father's care, respondent was admitted to Stonecrest Hospital for almost a month as a result of having a psychotic episode, the children's father had given inconsistent reports as to what occurred to DE, and the injuries sustained by DE were consistent with abuse. In support of the stipulation, excerpts from DE's medical records, respondent's medical records from Stonecrest Hospital, and a DHHS investigative report were admitted into evidence. No further testimony was taken on that day. The termination hearing commenced on June 23, 2020, at which time the initial dispositional phase started in regard to DL and DE. There was a clear differentiation between the adjudicative phase and the dispositional phase.

DS was born on August 2, 2020. On December 2, 2020, the court held an adjudication hearing in regard to DS and a continued termination hearing for DL and DE. Both respondent and the father made admissions for the court to take jurisdiction of DS. Respondent admitted that DL and DE were removed from her care because of physical abuse, which occurred while respondent was hospitalized for mental health issues. Respondent also admitted that DS was born with marijuana in her system. After taking jurisdiction of DS, the court proceeded with the termination hearing for all three children, at which time testimony was taken regarding the termination of respondent's parental rights. Thus, the adjudicative phase in regard to DS was clearly separate from the continued termination hearing. Accordingly, the court employed the proper procedure and respondent's due process rights were not violated.

## II. REASONABLE EFFORTS

Respondent also contends that the trial court erred by terminating her parental rights at the initial dispositional hearing without providing her reasonable efforts because her case did not involve aggravated circumstances. We disagree.

Issues of statutory construction are reviewed de novo. *In re Ballard*, 323 Mich App 233, 235; 916 NW2d 841 (2018). When interpreting a statute, our primary goal is to give effect to the intent of the Legislature. *In re England*, 314 Mich App 245, 255; 887 NW2d 10 (2016). If the language of the statutory is clear and unambiguous, this Court must enforce it as written. *In re Beers*, 325 Mich App 653, 662 n 4; 926 NW2d 832 (2018).

In order to preserve the issue of whether reasonable efforts for reunification were made, a respondent must raise the issue at the time the services are offered. See *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Respondent failed to preserve this issue. Therefore, it is reviewed for plain error affecting substantial rights. *VanDalen*, 293 Mich App at 135.

"In general, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Sanborn*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket Nos. 354915; 354916); slip op at 2. " 'Reasonable efforts to reunify the child and family must be made in all cases except those involving aggravated circumstances under MCL 712A.19a(2).' " *In re Sanborn*, ___ Mich App at ___; slip op at 2, quoting *In re Rippy*, 330 Mich App 350, 355; 948 NW2d 131 (2019). "MCL 712A.19a(2)(a) states that reasonable efforts to reunify the child and family are not required if '[t]here is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638.' " *In re Rippy*, 330 Mich App at 355. Section 18, MCL 722.638, of the Child Protective Law, MCL 722.621 *et seq*., provides, in relevant part:

> (1) The department shall submit a petition for authorization by the court under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, if 1 or more of the following apply:
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> (a) The department determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling of the child and the abuse included 1 or more of the following:
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> * * *
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> (*iii*) Battering, torture, or other severe physical abuse.
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> * * *
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> (2) In a petition submitted as required by subsection (1), if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the department shall include a request for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIIA of 1939 PA 288, MCL 712A.19b.

Respondent submits that aggravated circumstances did not pertain to her case because she did not inflict the injuries upon DE, was receiving treatment in a facility at the time of the injuries, and once she became aware of the injuries to DE, she separated from the children's father and suspected abuser. Therefore, respondent contends that she should have been offered services. However, the record reflects that the children's father lived in the home. After respondent suffered mental health issues that required hospitalization, respondent allowed the children's father to become the children's caregiver. Although she was aware that the children's father had his parental rights to other children terminated, respondent did not take steps to ensure that the children were safe while she received treatment. Thereafter, while in the care of their father, DL was hospitalized for failure to thrive issues, and DE suffered severe abuse and injuries to his brain that caused him to become legally blind. Thus, the children's father severely abused DE, MCL 722.638(1)(a)(*iii*), and respondent placed DE "at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk," MCL 722.638(2). The plain

language of MCL 722.638(2) did not limit its application to the suspected perpetrator of the abuse. *Beers*, 325 Mich App at 662 n 4. Rather a parent suspected of placing the child at an unreasonable risk of harm due to a failure to take steps to eliminate a risk of harm is also subject to termination of parental rights at the initial dispositional hearing, MCL 722.638(2). Thus, respondent was not required to commit the abuse herself in order for the aggravating circumstances to apply. Moreover, at the first hearing on the original petition, respondent volunteered on the record that she was only separated from the children's father until their case concluded, and she did not intend to divorce him. Accordingly, the record supports the trial court's finding that DHHS did not need to provide reasonable efforts to reunify respondent and her children because of the existence of aggravated circumstances.

## III. STATUTORY GROUNDS

Respondent contends that the trial court erred in finding statutory grounds to terminate her parental rights to her three children under MCL 712A.19b(3)(b)(*i*) and (*ii*), (g), and (j).[4] We disagree.

In order to terminate parental rights, a trial court must find that a statutory ground has been established by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). The trial court's findings regarding statutory grounds are reviewed for clear error. *Id*. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id*. (citation and quotation marks omitted).

Parental rights can be terminated if the trial court finds by clear and convincing evidence that "[t]he parent, although, in the court's discretion, financially able to do so, fails to provide proper care and custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." MCL 712A.19b(3)(g).

The trial court did not err in terminating respondent's parental rights under MCL 712A.19b(3)(g). The court found that respondent could not provide proper care and custody for the children and would not be able to because of a continued failure to adequately address her mental health needs and the court had not seen any improvement. The court noted that the clinic for child study assessment reflected that the prognosis for returning the children to respondent was not particularly good. The court also found that respondent continued to display combative behavior and there was no indication that she had improved to negate harm to the children.

The trial court's findings are supported by the evidence. The record illustrated that respondent suffered from mental health issues and displayed unstable and erratic behavior throughout the proceedings. In October 2019, respondent was taken to Kingswood Hospital after threatening the children's father with a knife. Upon arrival at Kingswood Hospital by ambulance,

[4] Although respondent contends that the trial court erred in terminating her parental rights under MCL 712A.19b(3)(b)(*i*) and (*ii*), the trial court only terminated her rights under MCL 712A.19b(3)(g), and (j).

she fled the hospital on foot. A few days later, the police found respondent in an incoherent state on the freeway with DE in the car, after which she was hospitalized for a three-week period for mental health services. During this time, respondent was diagnosed with bipolar disorder. Further, respondent was offered after-care services upon discharge from the hospital, but she did not attend those services or take the prescribed medications. Moreover, respondent's continued erratic behavior indicated that she was mentally unstable throughout the proceedings. Evidence admitted in August 2020, indicated that respondent had been arrested on several occasions and had been involved in several altercations with family members. Testimony also illustrated that respondent was aggressive with providers during her parenting visits.

Further, respondent appeared to continue to have a relationship with the children's father throughout the proceedings. DE suffered severe injuries consistent with abuse while in the care of the father, but at the preliminary hearing, respondent made it clear to the court that she would separate from the father only until the completion of the proceedings and she would not divorce him. Although she testified that she was not planning on living with the father, respondent's desire to continue their relationship after DE and DL were injured called into question respondent's ability to provide proper care and custody. Further, evidence admitted in August 2020, indicated that respondent and the father lived together when they were not having a dispute. Moreover, a CPS worker testified that, in October 2020, respondent contacted her about the father pulling a knife on respondent. Thus, the evidence indicated that respondent and the father continued to have contact as of October 2020 and their relationship continued to exhibit signs of domestic abuse.

Finally, the evidence indicated that respondent did not have a full understanding of DE's injuries or the care he would need. Respondent's testimony that she believed DE to be "perfectly fine" despite testimony that he was legally blind as a result of his severe injuries indicated a failure to acknowledge DE's extensive injuries and the long-term effects of those injuries. On the basis of the above evidence, the trial court did not err in finding that respondent had not provided proper care and custody for the children and would not be able to within a reasonable time.[5]

## IV. BEST INTERESTS

Respondent contends that the trial court erred in concluding that it was in the children's best interests to terminate her parental rights. We disagree.

[5] The trial court also terminated parental rights pursuant to MCL 712A.19b(3)(j) by finding clear and convincing evidence that "[t]here 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." Because only a single statutory ground needs to be established to support termination of parental rights under MCL 712A.19b(3), *In re Martin*, 316 Mich App 73, 90; 896 NW2d 452 (2016), we need not address MCL 712A.19b(3)(j). Moreover, respondent abandoned any challenge to MCL 712A.19b(3)(j) by failing to raise any argument pertaining to this subsection. *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008). Nonetheless, the trial court properly terminated respondent's parental rights on this basis because respondent failed to address her mental health issues, her anger issues, and her toxic relationship with the father and its impact on her children.

"[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App at 90 (footnote omitted). This Court reviews the trial court's ruling that termination is in the child's best interests for clear error. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

The trial court did not err in concluding that it was in the best interests of the children to terminate respondent's parental rights. Respondent's failure to significantly address her mental health, her erratic behavior throughout the proceedings, her continued relationship with the father, and her failure to acknowledge the severity of DE's injuries demonstrated that she did not have the ability to properly care for the children and that it was in the best interests of the children to terminate respondent's parental rights.

Further, the children were all placed in relative placements, which the trial court considered. The children's paternal great aunt had cared for DE and DL since they were released from the hospital, and she wanted to adopt the children. The children's maternal aunt had cared for DS since she was born in September 2020, and was willing to adopt DS. Although there was evidence that respondent was bonded to the children, the trial court found that the bond between respondent and the children was outweighed by the risk of harm to the children upon reunification.

The court must consider each child's best interests individually. *In re Olive/Metts*, 297 Mich App at 42. However, a court does not err if it fails to explicitly make individual and redundant findings concerning each child's best interests when the best interests of the children do not significantly differ. *In re White*, 303 Mich App at 715-716. The interests of the children do not differ significantly. The children are all very young. DL, the oldest child, was under three years old at the time respondent's parental rights were terminated. DL and DE had been placed with their paternal great aunt for nearly a year, which is a significant portion of their lives considering their ages. DS had been placed with her maternal aunt since she was born.

Although DE has particular needs that the other two children do not have being that he was deemed legally blind as a result of his injuries, this supports the termination of respondent's parental rights to DE. The record indicates that respondent did not fully comprehend the severity of his injuries and did not believe he was blind. Further, respondent had not been permitted to attend DE's medical appointments because of an altercation with the children's paternal great aunt. Given the children's ages, how long they had been in care, and DE's particular medical needs, all of the children were in need of finality, stability, and permanency. For those reasons, the trial

court did not err in concluding that it was in the best interests of all of the children to terminate respondent's parental rights.

## V. RIGHT TO IN-PERSON HEARINGS

Respondent submits that the trial court erred by failing to inform her of her right to have in-person court hearings. We disagree.

In the trial court, respondent specifically consented to the video conference hearings. To the extent respondent alleges that the trial court was specifically required to inform respondent of a right to be present in-person separate from asking whether respondent agreed to a hearing by video conference, this argument is not preserved for appellate review.

"Whether child protective proceedings complied with a parent's right to procedural due process presents a question of constitutional law, which we review de novo." *In re Sanders*, 495 Mich 394, 403-404; 852 NW2d 524 (2014). "The interpretation and application of statutes and court rules are also reviewed de novo." *Id*. at 404. However, unpreserved issues are reviewed for plain error affecting substantial rights. *In re Utrera*, 281 Mich App at 8.

MCL 3.904(B) governs the use of video conferencing in child protective proceedings and provides:

> **(B) Child Protective and Juvenile Guardianship Proceedings.**
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> (1) Except as provided in subrule (B)(2), courts may allow the use of videoconferencing technology by any participant, as defined in MCR 2.407(A)(1), in any proceeding.
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> (2) As long as the respondent is either present in the courtroom or has waived the right to be present, on motion of either party showing good cause, the court may use videoconferencing technology to take testimony from an expert witness or any person at another location in the following proceedings:
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> (a) removal hearings under MCR 3.967 and evidentiary hearings; and
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> (b) termination of parental rights proceedings under MCR 3.977 and trials, *with the consent of the parties*. A party who does not consent to the use of videoconferencing technology to take testimony from a person at trial shall not be required to articulate any reason for not consenting. [Emphasis added.]

The court held all of the termination hearings over Zoom because of COVID-19. On August 11, 2020, the trial court asked the parties whether they consented to holding the termination hearing over video conference, to which counsel for respondent answered, "[n]o objection." For the next three hearing dates, respondent's counsel consented to video hearings on behalf of respondent.

Thus, during every hearing in which testimony was taken, respondent consented to a hearing by video conference. Moreover, respondent failed to provide any support for the argument

that the trial court was required to specifically articulate respondent's right to an in-person hearing separate from asking her whether she consented to a hearing over videoconference. In addition, respondent failed to set forth any argument as to how the outcome of the proceedings would have been different had they taken place in-person. Accordingly, respondent has failed to establish that her due process rights were violated.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Mark J. Cavanagh
/s/ James Robert Redford