STATE OF MICHIGAN

COURT OF APPEALS

In re F. REFFITT, Minor.

UNPUBLISHED
March 22, 2016

No. 327066
Ingham Circuit Court
Family Division
LC No. 14-000864-NA

Before: GLEICHER, P.J., and MURPHY and OWENS, JJ.

PER CURIAM.

Respondents mother and father appeal as of right the trial court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(g) (failure to provide proper care or custody for the child) and (j) (reasonable likelihood of harm to the child if returned to parent's home). We affirm.

The minor child at issue, respondents' son, was born on July 3, 2014, testing positive for methadone and exhibiting signs of withdrawal, and child protective proceedings were initiated with respect to the child. Respondents also had three daughters together, but respondents had previously released their parental rights to those children during pending termination proceedings initiated by petitioner Department of Health and Human Services (DHHS). Respondent-mother also has a daughter with another individual who was not a party below; said father has sole legal and physical custody of that child, who, when she was born in 2008, tested positive for opiates and amphetamines. Respondent-mother does not have any visitation rights with regard to that child.

On July 14, 2014, 11 days after his birth and while he remained hospitalized, DHHS submitted a petition in regard to the minor child, seeking court authorization of the petition, the taking of jurisdiction by the court over the child under MCL 712A.2(b)(1) and (2), and the termination of respondents' parental rights under MCL 712A.19b(3)(b)(*ii*) (parent failed to prevent physical injury or abuse to child or sibling), (g), (j), and (m) (parent's rights to another child were voluntarily terminated in a proceeding involving a serious enumerated type of abuse). See MCR 3.961 (initiating child protective proceedings). Following a preliminary hearing conducted on July 14, 2014, the referee recommended authorization of the petition on that date, and the trial court signed an order to that effect on July 16, 2014, concomitantly to the filing of the petition. See MCR 3.965 (preliminary hearing).

On July 23, 2014, DHHS submitted an amended petition (hereafter "petition"), which still sought to terminate respondents' parental rights, and a referee recommended authorization of the petition on July 31, 2014. The trial court's order authorizing the petition was signed on August 1, 2014, concomitantly to the filing of the petition.[1] The petition referenced the prior proceedings involving respondents' three daughters, alleged that it was contrary to the minor child's welfare to have him placed in respondents' home, alluded to a litany of services previously provided to respondents in connection with their daughters that were not fully engaged in or completed by respondents, and asserted that respondents never rectified the conditions that had led to the earlier removals. The petition alleged that in 2006, Child Protective Services (CPS) had substantiated allegations that respondents had failed to provide care and supervision with respect to their oldest daughter "due to both parents being arrested on 7 felony charges." The petition further alleged that CPS had substantiated claims in 2009 that respondent-mother physically neglected the two oldest girls "by staying at inappropriate homes with drug use and prostitution," had "substance abuse problems," and generally did not provide proper supervision, exposing the oldest daughter to potential sexual abuse. Additionally, DHHS alleged that in July 2012, it had filed a termination petition concerning the two oldest daughters (the third had not yet been born) "due to failure to protect from sexual abuse, chronic substance abuse by [respondent-mother], and enabling behaviors by [respondent-father]."

According to DHHS's instant petition, in September 2012, respondents had entered a plea in the previous child protection proceedings, acknowledging that they were living with a registered sex offender, whom they felt was not a risk to their daughters given the belief that the sex offender had been wrongly convicted, that respondent-mother tested positive for opiates, that respondent-mother had taken a friend's methadone, that respondent-mother's step-father had sexually abused her, yet she minimized and denied any risk to her children in exposing them to her step-father, that respondents lacked independent housing or income sufficient to meet the family's needs, and that they had not taken available steps to try and obtain employment.[2] The current petition next alleged that in January 2013, DHHS had filed a neglect petition with respect to respondents' youngest daughter, born in December 2012, which petition contained allegations, beyond those recited above, of two prior felony convictions in 2005 and 2006 by respondent-father (second-degree home invasion and felony larceny in a building) and of a 2006 felony conviction by respondent-mother (felony larceny in a building). The instant petition also indicated that in March 2013, respondents had released their parental rights to the two oldest girls, and that in March 2014, a supplemental petition to terminate respondents' parental rights as to the youngest daughter had been filed for failure to rectify the conditions leading to that child's

[1] In an order after pretrial hearing dated July 28, 2014, the trial court provided respondents with supervised parenting time. Although termination was being sought, the order directed that reasonable efforts be made to preserve and reunify the family; the orders of July 16 and August 1, 2014, were effectively silent on the matter.

[2] We note that the lower court record does not indicate that any one of the daughters was actually sexually abused.

placement into foster care. Respondents released their parental rights with respect to their youngest daughter in April 2014, approximately three months before the birth of the minor child subject to the immediate proceedings. All three girls have been adopted.

In regard to the particular allegations concerning the minor child, the petition noted that the child was born positive to methadone, that he exhibited withdrawal symptoms at birth, that he was being prescribed morphine and phenobarbital to assist with the withdrawal symptoms, that he continued to be kept at the hospital for monitoring and medication purposes, and that the minor child's anticipated release date remained unknown. The petition further contended that respondents did not have "the necessary items to properly care for their child," that they had not established or maintained a regular and legal source of financial support, with respondent-mother claiming to be disabled and unable to work, and that respondents had not established or maintained suitable housing, with both respondents identifying a potential residence for which they were awaiting an inspection connected to Section 8 housing.

On October 27, 2014, a bench trial was conducted on the issue of adjudication and the court's authority to exercise jurisdiction over the minor child, who by this time was in foster care. See MCR 3.972. The trial court heard testimony from a couple of witnesses regarding respondents' failures to comply with or benefit from services associated with the earlier proceedings concerning respondents' three daughters. The foster care worker assigned to the family and the minor child's case since its inception in July 2014, whom we shall hereafter refer to as the "caseworker," testified that respondents had finally agreed to participate in parenting classes within the last few weeks, but had not yet been contacted to start the classes. The caseworker further testified:

> I . . . asked them early on in visits to do drug screens, they refused until court ordered. I asked them if I could refer them for psychologicals, they refused until court ordered. I asked about a referral to Michigan State Extension for [a] nutrition . . . class, they refused until court ordered.

The caseworker stated that respondents had only missed two of the 38 scheduled parenting-time sessions arranged for them. There was additional relevant evidence presented that was also submitted at the termination hearing and, to avoid redundancy, we shall discuss that evidence below. We do note that respondent-mother testified briefly at the trial, stating that she had informed DHHS and the hospital where the child was born that she had been prescribed methadone by a physician. A DHHS court report indicated, "When CPS investigated they found that [respondent-mother] was prescribed Methadone for treatment of an addiction to Opiat[e]s." Respondent-mother did not testify at the termination hearing.

The trial court ruled that there existed a preponderance of evidence to support taking jurisdiction under MCL 712A.2(b)(2) (juvenile's "home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in"). Pending the dispositional

hearing, which was scheduled for late January 2015, the trial court did order DHHS to engage in reasonable efforts to preserve and reunify the family.[3] The court ordered continued supervised parenting time for both respondents. Further, the trial court, speaking from the bench, indicated that when the case returned for disposition, it would be taking into consideration whether respondents had obtained stable and suitable housing,[4] along with reasonable sources of income, whether they were clean of drugs, as reflected in mandatory drug screens, and whether they had developed sound parenting skills, including the ability and willingness to comply with the child's medical treatment as recommended by physicians.[5] The trial court concluded, stating:

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[3] As noted above, a few months earlier, on July 28, 2014, the trial court had ordered DHHS to engage in reasonable reunification efforts. However, the lower court record only contains case service and parent-agency treatment plans pertaining to the period following adjudication. That said, and as observed earlier, the testimony at the trial by the caseworker reflected that she did attempt to have respondents voluntarily take part in some services, although they refused, for the most part, on the assertion that there was no court order in place mandating participation. Again, DHHS did seek termination, and a termination petition was authorized. We note that, generally speaking, DHHS "is not required to provide reunification services when termination of parental rights is the agency's goal." *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). There does appear to have been some confusion regarding reunification services. The caseworker stated at the subsequent termination hearing, "We started out with a[] . . . termination goal, adoption goal, because the termination petition had been filed. I thought termination was taken off the table at the last hearing [trial] so they have been offered reunification services."

[4] We note that the caseworker testified that respondents had recently moved into a Section 8 apartment that she inspected and that she deemed suitable. With respect to the period between removal of the child and the renting of the apartment, respondents had resided in the home of respondent-mother's father. The caseworker had also inspected that home. And while she found the house to have been suitable, the caseworker opined that it was not appropriate housing because respondent-mother's father had previously made them leave when he wintered in Florida. The caseworker testified that respondent-mother gave her a note purportedly signed by respondent-mother's father stating that he would allow them to remain in the home for the upcoming winter, but respondent-mother refused to sign a release allowing the caseworker to speak directly with her father in order to confirm the letter.

[5] There was some testimony at the trial that respondents challenged physician recommendations and diagnoses at times. In a DHHS court report, covering approximately the period between the trial and termination hearing, the following was observed regarding the minor child's medical condition:

> Medically, [the child] struggled with Methadone withdrawal following his birth. He remained in the hospital for four weeks and was prescribed Morphine and Phenobarbital. He was discharged from the hospital on Phenobarbital and was weaned off of this medication over the following six weeks. [The child] experienced frequent diarrhea while being weaned and was treated with Nystatin

> I want cooperation with the services. I want them going to the services, I don't want to hear they missed, that they skipped . . . . That will happen.

The parent-agency treatment plan that was developed provided that respondents would only use medications as prescribed by a physician, that they would submit random drug screens at the discretion of the caseworker, that they would complete psychological testing, with a focus on evaluating their ability to protect the minor child, and participate in recommended interventions, services, or treatment resulting from the testing, that they would meet with EO (Early On), OT (occupational therapy), and PT (physical therapy) providers once a month during parenting time to assist with the child's motor development, and that respondents would stay informed of the child's medical issues and demonstrate an ability to care for him and his medical needs during parenting time. The case service plan indicated that respondents were being "offered parenting time, case[-]management services, parenting classes, psychological testing, substance abuse screenings, financial support and referrals for employment, [and] nutrition and mental health services."

The dispositional hearing – at which termination was sought – was ultimately conducted on February 10, 2015. See MCR 3.977. The trial court initially entertained testimony from foster care workers who had worked with respondents in relation to the earlier protective proceedings involving respondents' three daughters. They testified that respondents' participation in services, including parenting classes, substance abuse assessments, drug screens, and parent-infant programs was, at best, minimal. Respondents did not attend parenting classes, did not, for most of the relevant time period, acquire suitable housing, did not obtain financial support, did not benefit from the few services in which they participated, and did not rectify the conditions that had brought the three girls under the trial court's jurisdiction. According to the testimony, the only reason that respondents' parental rights were not involuntarily terminated with respect to their three daughters was that respondents chose to release their parental rights, leading to the adoption of the girls.

A therapist and parenting-class facilitator testified that respondents had started parenting classes with her on December 1, 2014, and completed seven of the ten scheduled sessions, canceling twice due to other appointments. The therapist indicated that respondents had

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> for severe diaper rash. [The child] has been diagnosed with Torticollis and Acid Reflux. Early On is providing physical therapy and support to address the Torticollis and [the child] is prescribed Zantac to treat the Acid Reflux. Most recently [the child] has been seen by a Pediatric Pulmonary Specialist . . . for a consistent cough and wheezing. Several diagnoses are being ruled out including asthma and transient wheezing. Ranitidine Syrup and Albuterol Sulfate breathing treatments have been prescribed. He was screened for vision and hearing by the Health Department and did not pass the hearing test. A referral to an Ear, Nose and Throat specialist is in process.

completed all of their homework assignments and filled in their weekly logs. When asked whether respondents had obtained the skills necessary to be better parents, the therapist testified, "I believe they are working on it." She never witnessed respondents interacting with the minor child, and she was not prepared to give an opinion on whether termination of parental rights was appropriate.

Next to testify was an occupational therapist with EO who had worked with the child, respondents, and the foster parents. She explained torticollis to respondents and the need to work on increasing the child's range of motion and having him move his head in multiple directions, which could be accomplished through the use of toys and practicing "tummy time," meaning time during which the child is placed on his belly.[6] According to the occupational therapist, failure to engage the child in such movements could delay his development.

The caseworker proceeded to testify about the services provided to respondents following adjudication, as alluded to earlier in this opinion.[7] She testified that respondents were screened for drugs four times "and it appears that they are only using the medications prescribed for them at this time." With respect to psychological testing, respondents canceled the first appointment, claiming that they were both ill. A new appointment for psychological testing was scheduled, and respondents called saying that they were running late because they had forgotten to set their alarm clock. The psychologist who was to perform the testing agreed to wait 20 minutes, but he left after respondents failed to show up within 20 minutes. The caseworker later learned that respondents had stopped at a methadone clinic instead of going straight to the appointment. The caseworker again rescheduled the psychological testing, this time with a new psychologist after the first one refused to see respondents, setting the testing in the same building used for respondents' parenting time and for a date and time immediately following a regularly scheduled visitation. On this occasion, respondents appeared and the psychological testing was started;

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[6] In general, torticollis is defined as "a twisting of the neck to one side that results in abnormal carriage of the head and is usually caused by muscle spasms[.]" *Merriam-Webster's Medical Dictionary* www.merriam-webster.com/medical/torticollis (accessed February 9, 2016). At the trial, the caseworker briefly mentioned torticollis, testifying as follows:

> [The minor child] has been diagnosed with torticollis, shortening of one muscle on one side of the head, lengthening of the other. If untreated it gets worse and you end up with somebody walking around like this. They have given exercises and shown [respondents] how to readjust his head and they have not done that in parenting time.

[7] Consistent with her testimony at the adjudicative trial, the caseworker asserted that services were offered to respondents on a voluntary basis at the onset of the minor child's case, but they were refused, with respondents claiming that no court order required their participation. At the termination hearing, the caseworker added that respondents had also refused to participate in services pre-adjudication because they did not believe that they were in need of any services.

however, continued testing was necessary and respondents failed to show up at the next scheduled appointment, claiming after the fact that their vehicle had broken down. The caseworker testified that respondents failed to alert anyone about their predicament, explaining to the caseworker afterward that they did not call her because it was her usual day off; it was not. The caseworker noted the importance of psychological testing, in that the results typically identify problem areas, guiding the choice and focus of services to address any areas of concern. At the time of the termination hearing, respondent-mother's psychological testing and evaluation had not been completed, while the psychologist's partner had been able to see respondent-father in a follow-up session and develop a partial evaluation; her testimony is discussed below. It appears that continued psychological testing had been scheduled for March of 2015.

The caseworker next addressed parenting time, testifying that it had "been challenging." She observed that at times "it goes very, very well." However, respondents had been told to place the child on the floor (tummy time) five minutes of every parenting-time session because of the torticollis diagnosis, but respondent-mother "never put him down" and respondent-father put "him down about 50 percent of the time."[8] There had been a recent issue in scheduling parenting time after DHHS mandated certain time changes that were problematic for respondents, but it appears from the caseworker's testimony that the matter had been resolved.[9] The caseworker additionally testified that, due to digestion problems suffered by the minor child, medical personnel had advised delaying the introduction of solid food into the child's diet, and the foster parents had been cooperative. Respondents, however, and especially respondent-mother, were angry about this approach, insisting that the child should be fed solid foods given his age, which they desired to do during parenting time, including one instance in which respondents started to feed the child bananas.[10] Only after pleading with them, on more than one occasion, did respondents reluctantly agree to go along with medical recommendations. On the issue of the child's food or diet, the caseworker testified, "I just don't trust them not to do something they've been asked not to do . . . ."[11] The caseworker further testified that

[8] The record reflected hesitancy by respondent-mother to engage the child in "tummy time" because the child did not like it.

[9] A case service plan covering the period of November 12, 2014, to February 3, 2015, reflected that respondents were present for most of the parenting-time sessions, missing just a few sessions due, in part, to illness and road conditions.

[10] The case service plan also noted the incident, indicating that the bananas were in the form of "organic baby food." When challenged by a worker, respondent-mother had stated, " 'no one is going to tell me what I can do with my own child.' " However, respondents did stop feeding the child the banana baby food. The caseworker had testified at the trial that respondent-mother had wanted to start feeding the child baby food at two weeks of age, with respondent-mother stating that she had done likewise with her other children, that she would first taste the baby food herself, and that "if it was yucky she put salt and pepper in it."

respondents had obtained suitable housing in an apartment complex – apparently the same Section 8 housing referred to at the trial – and that they had acquired some items necessary to care for a baby, such as a crib. With respect to respondents' income, the caseworker stated that respondent-father made a little bit of money, perhaps enough to buy diapers, at the local plasma clinic donating plasma, and that respondent-mother did not work, claiming a disability, which had been rejected a couple of times for purposes of disability benefits.[12] The caseworker testified that respondent-father was unwilling to seek employment, because it would negatively impact a worker's compensation case in which he was involved. Respondents both rejected employment referrals offered by the caseworker.

The caseworker next testified that respondents refused to identify any relatives for potential custody or placement of the minor child, indicating that there was no appropriate relative available. As reflected in a DHHS court report, respondent-mother had stated that she did not want the child placed in the care of her relatives, given that they had turned on her in the past. The caseworker believed that there was more potential for respondent-father to perhaps be able to provide proper care or custody in the future than respondent-mother, given that he, on his own, was more agreeable and less reluctant when given direction about the child's care. However, respondent-father would often be swayed by respondent-mother, resulting in both of them aggressively challenging DHHS. The caseworker testified that because of the child's medical needs and her fear that respondents would not comply with medical recommendations and treatment plans, the child would be harmed if left in respondents' care. The caseworker believed that the child had bonded with and was well cared-for by his foster parents and that it was in the child's best interests to terminate respondents' parental rights. She then made the following observation:

> [There] has been a pattern of behavior. The services that they have participated in had to be court ordered before they would participate, they had to be forced to participate. . . . [I]f its inconvenient for them they either don't do it, they give me a hard time about it expecting me to change everything around[.] . . . I would say on this case I have been working harder than they have.

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[11] She also testified that the child required a nightly breathing treatment and that, given respondents' tendencies to challenge medical advice, she would be worried about them doing the treatments if the child were placed in their care. The caseworker did acknowledge that it had been respondent-mother who brought the subject of the child's breathing problems to the caseworker's attention; it is unclear whether others had also raised concerns. The caseworker indicated that each time that she had to inform respondents about medical directives or recommendations concerning the child, she spent a lot of time beforehand planning her presentation to them, considering that they regularly became argumentative or combative in the face of new medical advice.

[12] At the trial, respondent-mother had testified that her claimed disabilities were severe anxiety, "three ruptured discs[,] and degenerative disc disease." She indicated that she was in the process of appealing a disability denial.

The next witness presented by DHHS was the psychologist who saw respondent-father for purposes of psychological testing and evaluation. The psychologist testified that she had met with respondent-father once and had only been able to interview him. According to the psychologist, respondent-father was scheduled to come in again the day after her meeting with him in order to complete actual testing, but, as far as she was aware, he never returned. Under the circumstances, her evaluation of respondent-father was very limited. The psychologist opined that respondent-father had difficulty taking responsibility, believed that he was being treated unfairly, did not think that he had done anything wrong, and had a victim's mentality. The only recommendation that she could make was for respondent-father to engage in and finish psychological testing; she could not answer whether the minor child would be placed in harm's way if placed with respondent-father.

The final witness at the termination hearing was respondent-father, who referred to respondent-mother as his fiancée. He testified that when the case began in July 2014, respondents were staying with respondent-mother's father in his two-bedroom home, which would have provided more than enough room for them and the minor child. Respondent-father asserted that DHHS had inspected the home and found it suitable. According to respondent-father, respondents had moved into Section 8 housing, an apartment, at the end of October 2014, which was their current residence. He testified that respondents had attended all but three of the ten parenting classes. He did acknowledge that respondents had not participated in services initially because participation in services had not been ordered. Respondent-father further indicated that respondents had missed the initial psychological testing session because they did not feel well[13] and were late for the rescheduled session because their alarm clock did not go off – the battery died. He explained that after awaking and leaving home for the rescheduled testing, they had stopped at the methadone clinic first because otherwise it would have been closed by the time the testing ended, and respondent-mother needed her medication. By the time they arrived for the psychological testing, the psychologist had left. Respondent-father's testimony seemed to suggest that the psychologist had only waited 10 minutes for respondents and not the 20 minutes testified to by the caseworker. After the first round of psychological testing or information-gathering was completed, respondents missed the next appointment due to respondent-father's truck breaking down; he blew a cooling system hose. Contrary to the caseworker's testimony, respondent-father claimed that he called the caseworker and the psychologist to let them know what had transpired relative to his truck.

He next testified that he had suffered an injury at his place of employment in August 2013, while working on a vehicle's dashboard, resulting in a herniated disc and a hernia. Respondent-father asserted that he underwent hernia-repair surgery and was currently waiting to be seen by an orthopedic surgeon regarding his back. A worker's compensation claim was pending. Respondent-father testified that he was earning just over $300 per month donating plasma. On cross-examination, respondent-father essentially testified that, because of his

[13] On cross-examination, respondent-father testified that they had upset stomachs and diarrhea; they did not see a doctor.

injuries, he could not do any kind of job whatsoever, nor could he lift anything at all, but then claimed that he was able to pick up the minor child. On cross-examination, respondent-father also alluded to a wrongful termination and retaliation action that he had filed against a previous employer, a temporary agency, which apparently remained pending. It appears that the worker's compensation claim arose from that same employment.

With respect to whether respondents had items in their home adequate to meet the needs of the child, respondent-father testified that they had acquired diapers, a crib, a car seat, baby bottles, and baby food; they were receiving state food assistance. In regard to drug screens, respondent-father testified that they had all been clean. As to the minor child's health issues, respondent-father indicated that he had raised concerns and awareness about the child's health problems and that he would not be satisfied until those problems were dealt with in a proper and timely manner. Regarding the child eating solid foods and the "banana" incident, respondent-father testified on cross-examination that the child had been "at the appropriate age where children start eating baby food."

In closing argument, DHHS dropped any request for termination under MCL 712A.19b(3)(b)(*ii*) (parent failed to prevent physical injury or abuse to child or sibling), and pursued termination under MCL 712A.19b(3)(g) (failure to provide proper care or custody for the child), (j) (reasonable likelihood of harm to the child if returned to parent's home), and (m) (parent's rights to another child were voluntarily terminated in a proceeding involving a serious enumerated type of abuse).[14] The trial court took the case under advisement after the close of proofs. On April 2, 2015, about two months after the hearing had concluded, the trial court issued its written opinion. After summarizing the testimony of each of the witnesses, the trial court ruled:

> In reviewing the facts of this case the Court finds that there have been times when the parents demonstrate the appropriate use of services but more often than not they fail to continue on in showing appropriate parental skills. I am bothered by the fact that there always seems to be excuses why certain things were not complied with and why they didn't complete programs that had been arranged for them. There is a concern that the parents never seem to put the child first and place their own needs in front of the child. The request has been made of the Court to offer additional time to these parents to show that they can parent [the minor child] in the appropriate fashion. The problem becomes that time is too precious and this child cannot wait any longer for the parents to be in the appropriate position to parent. The request by the parents to offer them more time is a luxury this child cannot afford.

[14] Counsel for respondent-father argued, in part, that § 19b(3)(m) was inapplicable because none of the enumerated types of abuse had been shown. Ultimately, the trial court, in not ruling on § 19b(3)(m), effectively rejected the ground as a basis for termination.

> The Court finds by clear and convincing evidence that . . . sub paragraph[s] (g) [and] (j) have been shown to the Court and the Court further finds that it is in the best interest of this child to allow him to have the stability and care that every child needs. The best interest of this child favors the termination of the parental rights of these parents.

An order terminating respondents' parental rights was issued on April 2, 2015, and respondents appeal as of right, challenging the grounds for termination and the court's best-interests determination.

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Moss,* 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). In applying the clear error standard in parental termination cases, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

MCL 712A.19b(3)(g) and (j) authorize termination of parental rights under the following circumstances:

> (g) The parent, without regard to intent, fails to provide proper care or 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.
>
> * * *
>
> (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.

With respect to both § 19b(3)(g) and (j), respondents present the same underlying arguments. They initially maintain that the testimony of the foster care workers who spoke solely in regard to the prior protective proceedings regarding respondents' daughters was irrelevant and "should be discarded." We disagree. This case was driven, to a significant degree, by the earlier proceedings, which indisputably showed that respondents' compliance with and benefit from proffered services were minimal at best. In general, a parent's failure to comply with services constitutes evidence of an inability to provide proper care or custody for a child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Respondents' conduct in the instant

case cannot be viewed in a vacuum, and the history of neglect and failed beneficial participation in prior services were relevant in evaluating respondents' capacity to avoid harming the minor child through neglect and their ability to provide proper care or custody within a reasonable time frame. We take note of the doctrine of anticipatory neglect, which provides that the manner in which a parent treats one child is probative of how that parent may treat other children. *In re LaFrance Minors*, 306 Mich App 713, 730; 858 NW2d 143 (2014). Evidence concerning the earlier proceedings and respondents' shortcomings was relevant, MRE 401-402, in regard to properly assessing § 19b(3)(g) and (j), and its probative value was not substantially outweighed by the danger of any unfair prejudice, MRE 403.

Respondents next contend that the trial court clearly erred in relying on § 19b(3)(g) and (j) to terminate their parental rights, given the evidence showing that respondents had attended most of their parenting classes, completing all of the homework assignments and weekly logs, that the occupational therapist had met only once with respondents and gave no opinion on their parenting skills, and that the psychologist's evaluation of respondent-father was severely limited and her testimony simply indicated a need for further testing and not that respondent-father was a danger to the child. And with respect to the caseworker, respondents point out that she testified to negative drug screens, to suitable housing and baby items, to respondent-father's income from donating plasma, to mostly appropriate behavior during visitations, and to respondent-father engaging the child in some "tummy time."[15] According to respondents, on the issue concerning the child's medical care and treatment, it was respondent-mother who had first raised the matter of his breathing problems, and respondents' challenges, questioning, and demands simply reflected the concerns of good parents who wanted to make sure that their child received the best medical care available. Furthermore, respondents maintain that the caseworker's concern that respondents would not continue the child's medical treatment and care, such as the breathing treatments, was entirely speculative, making termination premature. Also, relative to the missed psychological testing, respondents argue, accurately so, that the caseworker had testified that there would be no harm to the child if the court awaited completion of the testing before pondering termination. Next, respondents contend that the caseworker had opined that respondents had not been given the opportunity to provide the child with proper care or custody. On the preceding point, we note that the caseworker's testimony was clearly alluding to the fact that the child had been removed shortly after birth and had never actually gone home with respondents. We also note that proper care or custody can be measured or evaluated on the basis of parenting-time behaviors. In sum, respondents argue that DHHS did not prove by clear and convincing evidence that they failed to provide proper care or custody for the child and that there was no reasonable expectation that they would be able to do so within a reasonable time considering the child's age, § 19b(3)(g), or that there was a reasonable likelihood, based on respondents' conduct or capacity, that the child would be harmed if he were placed in respondents' home, § 19b(3)(j).

[15] Respondents also assert that governmental assistance would be available to them to defray the costs of food and other necessities if the child were placed with them.

As recognized by the trial court, there can be no doubt that respondents made some strides between the adjudication and disposition, and we applaud them for those efforts; however, substantial problems continued to persist, and when viewed in conjunction with the failures in the previous proceedings, we cannot conclude that the trial court committed clear error in ruling that § 19b(3)(g) and (j) were established by clear and convincing evidence. Initially, we feel it necessary to speak to the pre-adjudication period and respondents' choice not to voluntarily engage in reunification services. Had they done so, it certainly would have reflected favorably on and benefited their attempt to maintain their parental rights. That said, their decision not to participate in services at that time due to a lack of a court order plays no role in our ruling to affirm, as it is true, as best we can glean from the record, that while the trial court ordered DHHS to make reasonable efforts at reunification a couple of weeks into the case, no parent-agency treatment plan, case service plan, or order requiring respondents' participation in services was entered until after adjudication. However, the caseworker testified that respondents had also indicated that they would not voluntarily participate in services because they were not in need of services. This view showed that, even after having their daughters and now their son removed from their care, they still did not appreciate or grasp the problems with their parenting abilities and skills. Indeed, their position that they were not in need of services was emblematic of all the protective proceedings – respondents did not take the proceedings seriously, nor truly make the full effort necessary to one day properly parent their children.

Although respondents adamantly direct our attention to and herald their participation in parenting classes following adjudication, we cannot help but note that they still missed three of the ten classes, which is not a stellar percentage, especially considering their failed participation in parenting classes in the previous proceedings, along with the trial court's strong admonition at the conclusion of the trial not to miss any services. Next, respondents' abysmal efforts regarding the required psychological testing, which was never fully completed, cannot be ignored. It was the psychological testing that was going to be used to pinpoint other services that respondents might be in need of during the proceedings. And the limited psychological evaluation that was the subject of trial testimony did not reflect favorably on respondent-father. It is evident that the trial court did not find credible respondents' excuses for missing most of the scheduled psychological testing sessions, i.e., illness, inoperative alarm clock, and vehicle breakdown, and we will not disturb the trial court's credibility determinations. *In re Miller*, 433 Mich at 337. The trial court could not have made it any clearer at the close of the trial that it was not going to tolerate any excuses for missed services. By the time of the termination hearing, the trial court recognized, rightfully so, that respondents' familiar pattern of failing to comply with services had not been sufficiently corrected, and, given their history, the court's refusal to provide respondents even more time did not constitute clear error.

With respect to the minor child's diet, as recommended by medical professionals, and respondents' readiness to comply with the recommendation to avoid solid foods, it would appear that had parenting time not been supervised, respondents probably would have fully fed the child solid foods. Even as late as the termination hearing, respondent-father still proclaimed that the child had been at an age where children start eating solid foods, apparently oblivious to his child's special needs, and the record revealed that respondent-mother was even more insistent that the child eat solid foods. Also, respondent-mother's reluctance to engage the child in

"tummy time" relative to addressing the child's torticollis, because the child did not like it, showed a gross misunderstanding of a parent's duty and role in caring for a child's medical needs; children generally do not like medicine, but it still must be given to them. The record reflected a willingness by respondents to defy medical treatment plans and directives, which is troubling, especially given the child's significant health issues and needs. The caseworker's concern that respondents might not be compliant with respect to the child's medical care was not speculative; rather, it represented a reasonable inference arising from respondents' conduct.[16]

We conclude, for the reasons recited above, that the trial court did not commit clear error in finding that § 19b(3)(g) and (j) were proven by clear and convincing evidence.

Lastly, respondents contend, essentially on the basis of the same arguments posed with respect to § 19b(3)(g) and (j), that the trial court clearly erred in concluding that termination of their parental rights was in the child's best interests. Respondents maintain that termination was simply premature. Factors to be considered regarding a child's best interests include "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 Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). Here, for the reasons discussed above in relation to respondents' unwillingness to properly attend to the child's medical care and treatment, their failed participation in psychological testing, and respondents' inability to recognize their parenting deficiencies, along with the evidence showing that the child was bonding with his foster parents and improving in their care, the trial court did not clearly err in finding by a preponderance of the evidence that termination was in the child's best interests.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ William B. Murphy
/s/ Donald S. Owens

[16] With respect to the child testing positive to methadone at birth, the matter was not developed at the trial or termination hearing in the context of using the evidence against respondent-mother. And the record, while indicating that the methadone was prescribed by a physician, did not provide any elaboration as to the prescription period in relationship to the pregnancy or the medical judgments that are made when a woman seeking to overcome an opioid addiction through the use of methadone seeks to use it during a pregnancy.