STATE OF MICHIGAN

COURT OF APPEALS

In re A. NOFFSINGER, Minor.

UNPUBLISHED
November 29, 2016

No. 331108
Livingston Circuit Court
Family Division
LC No. 2014-014680-NA

Before: RONAYNE KRAUSE, P.J., and O'CONNELL and GLEICHER, JJ.

PER CURIAM.

After nearly two years of reunification services, the circuit court terminated respondent-father's parental rights to his young daughter. Respondent raises an interesting challenge to the court's jurisdiction in this case: that the court failed to advise him of his right to appeal its adjudication decision. Addition of this information to the pertinent court rule may be warranted, but even were we to review his adjudication challenge we would find it meritless. Respondent also challenges the statutory factors supporting the termination decision and the court's determination that termination of his rights was in his child's best interests. Although the court improperly relied upon respondent's prior termination of parental rights to support its decision, we otherwise find no error. We affirm.

I. PRE-ADJUDICATION BACKGROUND

AN was born in 2010 to respondent and his then-girlfriend, Leah Houghtaling. Respondent and Houghtaling's relationship ended shortly thereafter; AN remained in Houghtaling's custody and respondent exercised unsupervised parenting time. Houghtaling abused heroin and AN experienced withdrawal symptoms after birth. After her relationship with respondent ended, Houghtaling often left AN in the care of the child's maternal grandmother for extended periods while she continued to abuse substances. Houghtaling also embarked on a new relationship with a drug-addicted partner. On December 2, 2013, Child Protective Services (CPS) substantiated a neglect complaint and began to provide services to Houghtaling and AN. But on January 29, 2014, Houghtaling was arrested for shoplifting while AN was with her, activating enhanced CPS intervention.

The Department of Health and Human Services (DHHS) initially planned to place AN with her noncustodial parent—respondent. However, Houghtaling "refused to safety plan with [respondent] and allow him to care for the child." The DHHS placed AN with her maternal grandmother. AN was later moved into an unrelated foster care placement.

The DHHS filed its initial petition on February 28, 2014. In relation to respondent, the DHHS alleged that his rights to his three older children were terminated on December 21, 2009 based on his failure to benefit from services to rectify his alcohol abuse and violent tendencies. A July 23, 2008 substance abuse assessment categorized respondent as suffering from "Alcohol Dependence." In January 2014, respondent admitted that he continued to abuse alcohol. The petition described respondent's 2009 plea-based conviction for domestic violence against Houghtaling, as well as his historic criminal background for alcohol-related offenses and violent offenses committed while under the influence. The petition concluded with an allegation that respondent informed a caseworker that day that he "would not do any service plan."

Respondent immediately sought to be dismissed as a named respondent and have AN placed in his care. He challenged the adequacy of the allegations against him, claiming he had done nothing to harm his child and that the allegations all stemmed from his prior child protection case. According to respondent, the prosecutor added the allegations against him just before the February 28 hearing. Prior to that, respondent alleged, the DHHS advised respondent he could take AN home that day. The court rejected respondent's procedural challenges and requested further information on the substance of the allegations.

Respondent filed a subsequent motion for court review of AN's placement. He presented a March 6, 2014 email from DHHS caseworker Rebecca Robydek to respondent's counsel admitting that respondent provided a clean drug screen on December 4, 2013, a home study established his residence was appropriate for AN, and respondent was up-to-date on his child support obligations. The worker continued:

> To date, [respondent] has been added as a respondent to the petition and while there is no doubt that he can benefit from future services, this child has a parent who is capable and willing to care for her and she is placed outside of her father's care. I have spoken to [respondent] who indicated that he is willing to participate in any services with the hopes that his daughter is placed in his care. DHS was ready to place the child with this father in a "safety plan" at the [family team meeting] and respondent mother refused this idea, stating she would rather the child be in a substance abuse recovery program with her. However, the recovery program was not a concrete plan and had not been arranged and the child's safety was intensive risk [sic] with the mother. Therefore, DHS filed this petition with the plan that the minor child would be placed with her father as an in-home ward.

At the March 21, 2014 hearing, respondent's counsel agreed to withdraw the motion to review AN's placement and adjourn the date of the adjudicative trial. Respondent agreed to participate in a substance abuse assessment and psychological evaluation in the interim to assist the court's decision. A March 31 substance abuse assessment indicated that respondent "meets the . . . criteria for alcohol dependence." The evaluator noted respondent's historical alcohol use and alcohol-use-related criminal history. Despite this history, the assessor noted, "[respondent] continues to drink alcohol when CPS is drug and alcohol testing him." The assessor further emphasized that respondent had increased his alcohol consumption over time, demonstrating higher tolerance associated with dependence.

Dr. Harold Sommerschield conducted respondent's psychological evaluation in April 2014. Dr. Sommerschield had also evaluated respondent in 2008 in connection with his earlier child protective proceeding. Dr. Sommerschield described respondent as "exceptionally defensive" during the 2014 interview and testing and as giving a skewed and partial recitation of the facts. Additional testing was required before an evaluation could be completed and finalized.

Additional testing was not conducted. Instead, the DHHS presented a plea agreement in which respondent admitted that his rights to his older three children were terminated in a previous case. He acknowledged his recent assessment of alcohol dependence and conceded that he was not currently in treatment or attending Alcoholics Anonymous (AA). Respondent also admitted his 2009 domestic violence conviction for assaulting Houghtaling. Respondent entered his plea with the understanding that AN would remain in her maternal grandmother's care. He also promised to follow through with psychological and psychiatric evaluations, as well as substance abuse treatment.

Before accepting respondent's plea, the court elicited testimony regarding respondent's age, literacy, and sobriety at that moment. Respondent acknowledged that he had reviewed his proposed plea agreement and intended to admit its allegations. The court then placed the following colloquy on the record:

> *The Court*. And do you understand if I accept your plea I will take jurisdiction over your child and order you to do certain specific things such as comply with a parent agency agreement which will be prepared and possibly be amended?
>
> *Respondent Father*. Yes.
>
> *The Court*. Do you understand the failure to do those things ordered by the Court may result in the termination of your parental rights to [AN]?
>
> *Respondent Father*. Yes.
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> * * *
>
> *The Court*. Do you understand that you have a right to have a lawyer represent you during all proceedings including trial, disposition and appeal and that if you cannot afford a lawyer the court would appoint one for you?
>
> *Respondent Father*. Yes.
>
> *The Court*. Do you understand that you have a right to a jury trial in this case?
>
> *Respondent Father*. Yes.
>
> *The Court*. And that you would be presumed innocent of the allegations until proven by a preponderance of evidence . . . ?

* * *

Respondent Father. Yes.

The Court. Do you understand that the petitioner, the prosecutor and the [DHHS] would have the burden of proof and that you would not have to prove anything or present any evidence at time of trial if you did not wish to.

Do you understand that?

Respondent Father. Yes.

The Court. Do you understand that you would have the right through yourself or your counsel to examine all witnesses that would appear at the trial and have your lawyer cross-examine them?

Respondent Father. Yes.

The Court. On the other hand if you wish to present evidence and have witnesses come and testify in court the court would issue and authorize subpoenas so you could have people come in and testify on your behalf if you wanted to.

Do you understand that?

Respondent Father. Yes.

The Court. Do you understand that if I accept your plea you're not going to have a trial of any kind; you'd be giving up all rights you would have at a trial and the rights that I've explained to you?

Respondent Father. Yes.

The Court. Do you understand that these proceedings will be one continuous proceeding which includes the trial disposition and any pleas instead of a trial?

Respondent Father. Yes.

The Court. Do you understand that this plea will result in the Court taking jurisdiction over your child and that the Court could make decisions about you and your child and order you to comply with certain things under a treatment plan or services agreement?

Respondent Father. Yes.

The Court. Do you understand that your plea today may result and actually is going to result in temporary removal of your child?

Respondent Father. Yes.

The court then inquired into the voluntariness of respondent's plea and proceeded to question respondent regarding the allegations underlying his plea agreement.

II. ADJUDICATION CHALLENGES

Respondent waited until the conclusion of the termination proceedings to challenge the propriety of court jurisdiction. On appeal, respondent contends that his adjudication was invalid because the court failed to advise him of his right to appeal the first order of disposition placing the child under the court's jurisdiction and because the allegations against him were insufficient to warrant court supervision of his parent-child relationship.

"In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase." *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). "Generally, a court determines whether it can take jurisdiction over the child in the first place during the adjudicative phase." *Id.* As relevant to this case, MCL 712A.2(b) provides that a trial court has jurisdiction over a child under 18 years of age under the following circumstances:

> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship . . . . [or]
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> * * *
>
> (2) Whose 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.

As a general rule, a court's exercise of jurisdiction over a child cannot be collaterally attacked; it must be challenged in a direct appeal. *In re Hatcher*, 443 Mich 426, 439; 505 NW2d 834 (1993). In *Hatcher*, 443 Mich at 433, the Supreme Court described that the Michigan Constitution vests courts with jurisdiction over juvenile protection cases and the courts can neither enlarge nor diminish this jurisdiction. Courts also may not accept jurisdiction based on agreement of the parties, but "must make [their] own determination[s] regarding the existence of a statutory basis for jurisdiction." *Id.* As noted, the Legislature has elucidated the circumstances under which a juvenile court may exercise its jurisdiction in MCL 712A.2 and this decision is made in the adjudicative phase. *Hatcher*, 443 Mich at 433-436.

> When the probate court has established temporary jurisdiction over a child, an erroneous exercise of that jurisdiction may be challenged at any of the mandatory review hearings. MCL 712A.19. A parent is also entitled to request a rehearing not later than twenty days after an order terminating parental rights and removing the child from parental custody, or at any time the court has jurisdiction over the child. MCL 712A.21. A probate court can also enter an order for supplemental disposition as long as the child remains under the court's jurisdiction. *Id.* These statutory safeguards ensure the parent, guardian, or

> custodian time to review and even challenge a court's exercise of its jurisdiction. [*Hatcher*, 433 Mich at 436.]

In *Hatcher*, the respondent-father attacked the lower court's subject matter jurisdiction following the court's termination decision. *Id.* at 436. The father consented to the creation of a state wardship, but argued that the court failed to find sufficient facts to support court jurisdiction thereby voiding the termination proceeding ab initio. *Id.* at 436-437. The Supreme Court held

> that the probate court's subject matter jurisdiction is established when the action is of a class that the court is authorized to adjudicate, and the claim stated in the complaint is not clearly frivolous. The valid exercise of the probate court's statutory jurisdiction is established by the contents of the petition after the probate judge or referee has found probable cause to believe that the allegations contained within the petitions are true. Here, the petition alleged neglect, criminality, drunkenness, and a failure to maintain proper custody and guardianship of the infant. When the referee considered the facts alleged in the petition and the testimony presented, he found probable cause that the allegations were true. Consequently, it was proper for the court to invoke its jurisdiction, assuming the court also had jurisdiction of the parties, a fact not here in dispute. Procedural errors that may have occurred did not affect the probate court's subject matter jurisdiction. [*Id.* at 437.]

Hatcher concluded that although neither parent "stipulated facts that supported the court's jurisdiction," jurisdiction was "established by the pleadings, such as the petition, rather than by later trial proceedings that may establish by a preponderance of the evidence that a child is within the continued exercise of the probate court's subject matter jurisdiction." *Id.* at 437-438.

Ultimately, *Hatcher* recognized that "a party may attack subject matter jurisdiction at any time," and that a lack of subject matter jurisdiction voids a judgment. *Id.* at 438. However, the Court concluded, "the respondent confuses the distinction between whether the court has subject matter jurisdiction and whether the court properly exercised its discretion in applying that jurisdiction." *Id.* Once jurisdiction has attached, "mere errors or irregularities in the proceedings, however grave, although they may render the judgment erroneous and subject to be set aside in a proper proceeding for that purpose, will not render the judgment void, and until set aside it is valid and binding for all purposes and cannot be collaterally attacked." *Id.* at 439 (quotation and citation omitted). The lack of subject matter jurisdiction could only be attacked on direct appeal. *Id.* In making this decision, the Court overruled caselaw allowing termination decisions to "be collaterally attacked on the basis of a lack of subject matter jurisdiction if a legally sufficient petition created a permanent wardship with no evidentiary basis to support the decision." *Id.* at 440, 444, citing *Fritts v Krugh*, 354 Mich 97; 92 NW2d 604 (1958). Instead, the Court explained, "a court's subject matter jurisdiction is established when a proceeding is of a class the court is authorized to adjudicate and the claim stated in the complaint is not clearly frivolous." *Id.* at 444.

For many years, this Court relied upon *Hatcher* to preclude nearly all post-termination attacks on court jurisdiction in child protective proceedings. See *In re SLH*, 277 Mich App 662, 668-669; 747 NW2d 547 (2008); *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708

(2005), superseded in part on other grounds as stated in *In re Hansen*, 285 Mich App 158, 163-164; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010). However, in recent years, this Court and the Supreme Court have whittled away at the prohibition.

For example, in *In re Kanjia*, 308 Mich App 660, 669; 866 NW2d 862 (2014), this Court held that a parent may attack, even after termination, a circuit court's exercise of jurisdiction if obtained in contravention of *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014). Following *Sanders*' abolition of the "one-parent doctrine," a parent who has never been adjudicated unfit may appeal a jurisdictional order after termination.[1]

In *In re Jones*, unpublished opinion per curiam of the Court of Appeals, issued October 27, 2015 (Docket No. 326252), unpub op at 2, this Court acknowledged that the circuit court failed to ensure that the respondent-mother's jurisdictional plea was voluntary and accurate before accepting it as mandated by MCR 3.971(C). The respondent-mother challenged the adjudication, but this Court treated it as a collateral attack and declined to consider it. *Id.*, unpub op at 3. The Supreme Court vacated this Court's order, as well the lower court's adjudicative order, and remanded "for a new adjudication determination." *In re Jones*, 499 Mich 862; 874 NW2d 129 (2016). In the wake of *Jones*, it appears that a respondent may attack a circuit court's efforts to establish the voluntariness and accuracy of a jurisdictional plea following termination.

In *In re Hudson*, unpublished opinion per curiam of the Court of Appeals, issued August 26, 2008 (Docket No. 282765), unpub op at 12, the trial court failed to warn the respondent-mother that her plea to jurisdiction could be used against her at termination in violation of MCR 3.971(B)(4). The trial court also failed to appoint counsel to represent the respondent-mother following the filing of the original petition. *Id.*, unpub op at 12-13. This Court reversed the termination decision because clear and convincing evidence did not support the statutory grounds for termination, not based on errors in the adjudicative phase. *Id.*, unpub op at 18. The Supreme Court affirmed, but also determined that the court's adjudicative errors "compounded the errors committed by the trial court in terminating the respondent's parental rights." *In re Hudson*, 483 Mich 928, 928-929; 763 NW2d 618 (2009).

In *In re Mitchell*, unpublished opinion per curiam of the Court of Appeals, issued March 24, 2009 (Docket No. 286895), the circuit court affirmed the lower court's determination that statutory grounds supported termination. The Supreme Court disagreed with that assessment. Moreover, the Supreme Court held that the trial court committed plain error during the adjudicative phase by failing to timely appoint counsel for the respondent-father and failing to advise the respondent that his plea to jurisdiction could be used against him at a termination hearing. *In re Mitchell*, 485 Mich 922; 773 NW2d 663 (2009). *Hudson* and *Mitchell* now permit a parent to challenge after termination a circuit court's failure to timely appoint counsel and advise "of the consequences of the plea." MCR 3.971(B)(4).

[1] In this regard see also *In re Farris*, 497 Mich 959; 858 NW2d 468 (2015); *In re Reginier*, 497 Mich 975; 860 NW2d 131 (2015).

Here, the circuit court failed to advise respondent of his appellate rights. Respondent contends that the Supreme Court's recent activity sets a trend, permitting his appellate challenge to jurisdiction on this ground after termination. MCR 3.971(B) does not require the court to advise a parent of his or her appellate rights before accepting a plea to grounds supporting jurisdiction. MCR 3.972 does not provide for such advice of rights at an adjudicative trial. And neither MCR 3.973 nor MCR 3.974 requires such notification at the first dispositional hearing following adjudication. Rather, the rules only require courts to advise respondents of their right to appellate review "after entry of an order terminating parental rights." MCR 3.977(J)(1)(a).

Respondent suggests that the court rules regarding advice of rights at the adjudicative phase are insufficient. MCR 3.993(A)(1) provides that "an order of disposition placing a minor under supervision of the court" is appealable by right to this Court. Accordingly, after a parent enters a plea to jurisdictional grounds under MCL 712A.2 or is adjudicated unfit at trial and the court enters its first dispositional order, the parent is entitled to appeal. This right can be lost if the parent forgoes an appeal until termination is ordered. In the meantime, if the child is placed outside the parent's custody, the parent-child bond is weakened by limited contact and the case for termination is strengthened. As such, respondent urges that courts should be required to notify parents of their appellate rights at adjudication.

Respondent also compares this case to criminal plea proceedings. In relation to jurisdictional plea proceedings, this Court has held instructive "by analogy" criminal law rules and precedent. *In re Zelzack*, 180 Mich App 117, 125; 446 NW2d 588 (1989). Under the criminal procedure court rules, when a trial court accepts a plea in a criminal proceeding, the court must advise the defendant that "any appeal from the conviction and sentence pursuant to the plea will be by application for leave to appeal and not by right." MCR 6.302(B)(5). The court must repeat this notification following sentencing. MCR 6.425(F).

Ultimately, we find insufficient ground to extend the law to nullify a circuit court's jurisdiction in a child protective proceeding when the court fails to notify the parent that the jurisdictional order must be directly appealed. To date, there is no Supreme Court decision declaring a constitutional right to such notice. Accordingly, *Kanjia* is not on point. Moreover, *Jones*, *Hudson*, and *Mitchell* permit collateral attacks in the face of a violation of an *existing* court rule mandate. The Supreme Court may wish to consider amending MCR 3.971(B) and MCR 3.972 to require appellate right notifications at the adjudicative phase. But we decline to impose a duty on all courts in this opinion. Respondent pleaded to jurisdiction and in the absence of constitutional error or a court rule violation, is bound by that decision.

III. DISPOSITIONAL BACKGROUND

During the child protective proceedings, respondent was ordered to complete his psychological evaluation, participate in psychological counseling, attend AA meetings, and submit to random alcohol screening. Respondent tested positive for alcohol on June 30, July 14, and September 29, 2014. He claimed that he was exposed to a chemical at work that could result in a false positive result, but never presented requested documentation from his doctor. Respondent claimed that he attended AA meetings, but delayed in providing attendance sheets to document his compliance. Dr. Sommerschield remained unable to complete respondent's psychological evaluation because he tested "within the moderate to extreme range of

defensiveness." Respondent did attend psychological counseling and his first assigned therapist reported that he was "receptive" and showed improvement.

In the fall of 2014, however, respondent's compliance with the parent-agency agreement faltered. Respondent repeatedly failed to call in for random alcohol screens. He also stopped attending counseling sessions for a time.

Respondent returned to counseling with a new provider in April 2015. However, he continued to exhibit strange and menacing conduct. In August 2015, respondent unnerved a caseworker by revealing that he knew the security code to enter the DHHS building where supervised parenting time sessions had been conducted. This resulted in a change of venue. Respondent also made "passive threats" by making a point of identifying the caseworker's vehicle and informing the worker that he knew she took I-96 East home. AN's foster parents requested permission to take the child out of state on vacation and Houghtaling granted permission. Respondent became angry and threatened to report the foster parents to the police for kidnapping. He also made vague threats to "create havoc." During a subsequent visit, respondent was angered when the caseworker denied his request to take AN to the park. He positioned himself between the worker and the door, blocking the worker's exit and loudly argued with and swore at the caseworker. Visitors to the site summoned a supervisor and AN was removed from the room. As a result of respondent's outbursts, a new system was arranged whereby respondent entered through a back door and remained segregated in the building until the foster parents dropped off AN and left.

The counselor respondent began seeing in the spring of 2015, Karen Bergbower, reported that respondent showed vast improvement. She blamed the caseworker assigned around the same time for causing several problems, failing to communicate concerns to the counselor, and behaving unprofessionally. Bergbower described respondent as a large man with a loud voice who is in constant motion. His demeanor could be perceived as intimidating although that was not his intent. Bergbower admitted that a child AN's age could be "traumatized" by seeing her parent act as respondent had. She also noted that respondent required approximately six more months of therapy to reach his goals.

In relation to AN, social worker Mary Hayek conducted a trauma assessment in June 2015. Hayek reported that AN had a "fragile" and "aroused" nervous system. She described that in infancy, children learn how to control their nervous systems with the assistance of their primary caregiver. A combination of factors—premature birth, withdrawal upon birth, separation from parents, frequent moves—had delayed this process approximately 1½ years in AN. As a result, AN had difficulty socializing with her peers, was inappropriately clingy with adults, and could not focus, further delaying her education. Hayek opined that AN required occupational therapy to learn to self-regulate. She also quickly needed a sense of security and knowledge of where her permanent residence would be.

Ultimately, the DHHS filed a series of supplemental petitions seeking termination of respondent's parental rights, the latest in August 2015. That petition outlined respondent's extensive history of alcohol-related offenses and domestic violence incidents. The petition continued by elucidating respondent's history with CPS and the prior provision of services. The DHHS alleged that respondent's failure to benefit from those services resulted in the termination

of his parental rights to his three older children from two prior relationships. The petition reiterated respondent's statements on February 28, 2014, "that CPS had 'nothing' on him" and "that he 'would not do any service plan' " related to AN's case.

The petition recited concerns from respondent's substance abuse assessment that he "appeared to minimize his use of alcohol" and that he failed to fully disclose his criminal history of alcohol-related offenses. Thereafter, respondent called in but failed to appear for nine random screens, failed to call or appear on 12 dates, and tested positive for alcohol on three. The DHHS emphasized that respondent missed nine sessions with his first counselor, Shirley Brogan, and disregarded her advice to attend 90 AA meetings in 90 days. He failed to present any sign-in sheets to establish attendance at AA meetings. Respondent then reported that his attorney possessed the relevant evidence, but later admitted that this was false and that he had not attended AA because he did not like it. He eventually provided proof of attending only seven meetings.

The petition described respondent's October 27, 2014 outburst in court and altercation with the caseworker in the court hallway, and the withdrawal of respondent's retained counsel after a similar outburst in August 2015. It described respondent's aggressive conduct toward the caseworker in April 2015. The DHHS indicated that on May 6, 2015, the caseworker discontinued respondent's daily telephone contacts with AN after he made several threats to the caseworker and the foster parents. On May 21, despite being notified that AN was on vacation with the foster family and would not be available for parenting time, respondent appeared at the DHHS office and was ordered off the premises. On August 17, respondent again intimidated the caseworker and caused a scene requiring removal of AN during a visit. On August 19, respondent ignored the safety plan for arriving at parenting time sessions, watched the foster parents' arrival, and then commented to the worker about the driver. The petition also outlined respondent's history of tardiness to supervised parenting time sessions and his habit of discussing the case in front of AN.

Based on the myriad allegations, the DHHS sought termination of respondent's parental rights under MCL 712A.19b(3)(c)(*i*), (g), (j), and (*l*). The court terminated respondent's rights in December 2015. The court acknowledged that respondent had shown improvement in the last couple months of the proceedings. However, respondent's consistent failure to follow through with services geared toward reaching sobriety and his enduring menacing and angry conduct toward the caseworkers and in court established that the conditions that led to adjudication had not been rectified, that respondent could not provide for a child's needs, and that AN faced a risk of harm if returned to respondent's care. The court further supported termination under factor (*l*) based on the prior termination of respondent's parental rights to his older three children on essentially the same grounds as the current proceedings.

IV. TERMINATION SUPPORTED BY STATUTORY GROUNDS

Respondent challenges the statutory grounds supporting the termination decision. Pursuant to MCL 712A.19b(3), a circuit court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). If the court relies on new grounds raised in a

supplemental petition, legally admissible evidence must underlie the termination decision. MCR 3.977(F)(1)(b). We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "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." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

The circuit court terminated respondent's parental rights under MCL 712A.19b(3)(c)(*i*), (g), (j), and (*l*) which provide:

> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> * * *
>
> (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.
>
> * * *
>
> (*l*) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

Respondent contends that the DHHS could support termination under no statutory ground because it failed to make reasonable efforts toward reunification of parent and child. Absent extenuating circumstances not present here, "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 . . . ." *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). Respondent cites no service that was denied. Rather, he claims that the termination was improperly based on his contentious relationship with caseworker Katelyn DesJardins Knopf. There is no hint on the record that the DHHS limited its reunification efforts based on this conflict. Indeed, the DHHS modified parenting time arrangements and its interactions with respondent to overcome the ill will. Accordingly, we grant no relief on this ground.

In relation to the statutory grounds, respondent correctly posits that the circuit court improperly relied upon the prior termination of his parental rights to support termination in this case under factor (*l*). In *In re Gach*, ___ Mich App ___; ___ NW2d ___ (Docket No. 328714, issued April 19, 2016), slip op at 7, this Court declared that this subsection "provides constitutionally deficient protection to a respondent's due process interest in raising his or her children" and thereby invalidated termination on this ground.

However, termination under MCL 712A.19b(3) need only be supported by one statutory ground and the DHHS established three others here. Clear and convincing evidence established that respondent did not adequately benefit from sobriety services. Respondent's chronic alcoholism was a key factor in the court's taking of jurisdiction. Yet, from February 2014 through the spring of 2015, respondent refused to participate in AA meetings. Respondent failed to regularly call in for and submit to random alcohol screens until more than a year into the proceedings. And Bergbower testified that respondent relapsed in August 2015 when the DHHS sought termination.

Respondent's 2009 domestic violence against Houghtaling also supported the court's jurisdictional order. At the termination hearing, Houghtaling testified regarding additional assaults by respondent against her, her mother, and respondent's own parents. The latest incident occurred in May 2013. Shirley Brogan and Karen Bergbower described the work they had done with respondent so he could recognize and curb his aggressive tendencies. Despite intensive therapeutic services during these proceedings (as well as counseling provided in the last), respondent continued to exhibit explosive outbursts and use threats and threatening innuendo to coerce others. More than one caseworker testified regarding respondent's conduct, as did Houghtaling. The court also observed respondent's conduct first hand. These incidents amply supported that respondent had not benefitted from services, warranting termination under factor (c)(*i*).

Even accepting as true Bergbower's testimony that respondent did not intend to intimidate but was just naturally bombastic, clear and convincing legally admissible evidence supported that respondent could not provide proper care and custody for AN and that AN would likely face harm in respondent's care. Mary Hayek's trauma assessment revealed that AN experienced development, physical, and social delays as a result of the vast turmoil in her young life. Hayek opined that AN has "an aroused, fragile nervous system." AN needs a calm, stable caregiver to assist her while she learns to regulate her system. Stress and additional caregiver changes would further delay AN's progress. Although respondent interacted well directly with AN and was fully aware of AN's special needs, he continued to act out inappropriately in her presence. The caseworkers reported that respondent repeatedly discussed the case in front of AN, even on the eve of termination. As late as August 2015, respondent became so angry with a caseworker that he dissolved into vulgarity and shouting during a parenting time session and AN has to be removed from the room. This conduct demonstrates that respondent cannot provide the "loving, structured, and stable home" that AN requires. Accordingly, termination was also supported under factors (g) and (j).

V. BEST INTERESTS

Finally, respondent contends that termination of his parental rights was not in AN's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *Moss*, 301 Mich App at 90. The lower court should weigh all the evidence available to it in determining the child's best interests. *Trejo*, 462 Mich at 356-357. Relevant factors in this consideration 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." *Olive/Metts*, 297 Mich App at 41-42 (citations omitted).

Everyone agreed that respondent shares a bond with his daughter and that they love each other. AN is always excited to see her father, vocalizes her love, and enjoys doing activities with him during parenting time. Moreover, Hayek admitted that it would be very hard on AN to learn that she would never see respondent again. However, respondent's aggressive and angry conduct in front of the child negated any benefit he provided AN, given the child's extreme sensitivity. Extending the proceedings to permit additional services to address respondent's behavioral deficits placed AN in danger of further turmoil; her foster parents expressed their fear for their other children based on respondent's conduct, which might result in yet another move for the child if respondent remained in the picture. In the event of termination, however, the foster family expressed a willingness to adopt and continue supporting AN's development. Ultimately, the circumstances preponderated in favor of termination.

We affirm.

/s/ Amy Ronayne Krause
/s/ Peter D. O'Connell
/s/ Elizabeth L. Gleicher