STATE OF MICHIGAN

COURT OF APPEALS

In re LAWHORN, Minors.

UNPUBLISHED
December 21, 2021

Nos. 356743; 356817
Shiawassee Circuit Court
Family Division
LC No. 18-014261-NA

Before: STEPHENS, P.J., and BORRELLO and O'BRIEN, JJ.

PER CURIAM.

In these consolidated appeals,[1] respondent-mother and respondent-father each appeal as of right the trial court's order terminating their parental rights to the minor children, SL, EL, AL, and IL, pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

This case arises out of the removal of the minor children from respondent-mother's care after an incident during which respondent-mother abused alcohol and became violent at home.[2] The initial petition, filed on July 24, 2018, alleged that respondent-mother had an extensive history with Children's Protective Services (CPS), which included allegations of improper supervision, physical abuse, and neglect in 2011, 2013, 2017, and May 2018. These prior incidents related to respondent-mother's alcohol abuse, domestic violence, yelling and screaming at the children, and improper care for the children. The petition further alleged that although respondent-mother had agreed on May 21, 2018, to refrain from using alcohol in her home or around the children, she returned home at approximately 5:00 a.m. on July 24, 2018, highly intoxicated after having spent

[1] *In re Lawhorn Minors*, unpublished order of the Court of Appeals, entered April 26, 2021 (Docket Nos. 356743 and 356817.

[2] Our recitation of the relevant background facts pertains to both Docket Nos. 356743 and 356817 because both appeals arise from the same trial court case.

the night drinking alcohol and began smashing things in the house and acting violently. Respondent-mother's then-boyfriend, with whom she resided, called the police and also reported to a CPS worker that respondent-mother and the children needed to move out because of respondent-mother's drinking problem. The petition also alleged that respondent-mother had been arrested on outstanding warrants on July 24, 2018, and listed her prior convictions, which included convictions for misdemeanor assault and felony obstruction of a police officer. Petitioner alleged that it was contrary to the children's[3] welfare to remain in respondent-mother's care and custody because of respondent-mother's chronic alcohol abuse, continuous domestic violence altercations, and physical neglect.

With respect to respondent-father, the initial petition stated that it was contrary to the children's welfare for the children to reside with him because of "his criminal record and his lack of support and contact with his children." The petition listed respondent-father's address as "unknown." The petition also alleged that respondent-father had a 2010 conviction for "disorderly person-drunk" and a 2013 conviction for felony possession of marijuana.

On November 1, 2018, respondent-mother entered a no-contest plea to the allegations in the August 7, 2018 amended petition, which contained the same allegations against respondent-mother described above. The trial court placed the children in the custody of the Department of Health and Human Services (DHHS). The matter proceeded to disposition, and the trial court ordered respondent-mother to follow the parent-agency treatment plan, including that mother show benefit from services that included parenting classes, anger management, psychological evaluation, substance abuse assessment, and drug screens. Respondent-mother was also ordered to find appropriate housing and continue employment.[4]

Petitioner filed a second amended petition on November 7, 2018, in which respondent-father was still listed as a respondent. This amended petition alleged that CPS documents from Ohio stated that one of the children had reported in July 2016 that she lived with her "memaw" because respondent-father broke respondent-mother's wrist when he tried to take her phone to stop her from calling the police. The amended petition also alleged that other CPS records from Ohio indicated that the same child was observed in November 2016 to have bruising on her arm and a red mark on her face, and the child reported that respondent-father had hit her with the hard part

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[3] The petition also involved respondent-mother's other children who had different fathers, but those additional children are not at issue in this appeal. This appeal only concerns the children in common of respondent-mother and respondent-father. Thus, from this point forward in this opinion, we only refer to these four children when we use the word "children" unless otherwise noted.

[4] At a January 27, 2020 hearing, the trial court granted respondent-mother's motion to vacate her plea, after which respondent-mother again entered a no-contest plea. Respondent-mother does not raise any challenge on appeal to the adjudication phase of these proceedings with respect to her. At this same January 27, 2020 hearing, the trial court proceeded to disposition and again ordered respondent-mother to comply with the parent-agency treatment plan, which included maintaining housing, maintaining employment, substance abuse assessment, substance abuse treatment, parenting classes, supervised parenting time, a psychological assessment, and counseling.

of a belt and caused bruising on her arm. Additionally, the petition alleged that respondent-father had two substantiated CPS cases in 2013 for physical abuse and physical neglect. Finally, the petition alleged that respondent-father had been convicted in 2010 for "disorderly person-drunk" and in 2013 for "felony possession of marijuana."

A bench trial was held on January 8, 2019. At this same hearing, respondent-father was established as the legal father of the children. By this time, respondent-father had been located and appeared personally at the proceedings. During the adjudication trial, respondent-mother testified that her relationship with respondent-father began in 2007 and ended in approximately January 2017. Respondent-mother described respondent-father as abusive and controlling toward her. She said that respondent-father hit her while she was pregnant and would throw things when she did not do as he instructed. On one occasion, he hit her with the back of his hand and gave her a black eye and a "fat lip." Respondent-mother also maintained that respondent-father was abusive toward the children. He would punish them by making them "either push the wall or push the floor" and would beat them with a belt if they moved. According to respondent-mother, the abuse occurred consistently over the years, but she only reported the last incident to the police (which occurred in 2017 when they were in Ohio) because the children had run out of the house screaming that "daddy hurt mommy."

Respondent-mother testified that she moved from Ohio to Michigan approximately six months later to get away from respondent-father. Respondent-mother stated that respondent-father was arrested and convicted of domestic violence, went to jail, and was released. According to respondent-mother, respondent-father made sporadic telephone calls to the children since she moved to Michigan, but she told him not to call anymore after he failed to send birthday and Christmas presents to the children as he had promised. Respondent-mother also maintained that she told respondent-father that he could visit with the children if they met outside her home, but he did not take her up on the offer to visit the children.

Respondent-mother knew that respondent-father had moved back to Michigan. She acknowledged that respondent-father had sent money to her periodically, although it was "[m]aybe Ten, Twenty, here and there." Respondent-mother did not believe that the children would be safe if placed in respondent-father's custody because of his methods of disciplining the children. When respondents lived in Ohio, she reported respondent-father to CPS based on his conduct toward the children. According to respondent-mother, respondent-father made the children shake with fear and he had hit all but the youngest of their four children with a belt. Respondent-mother recalled one instance where respondent left a large welt on one child's leg.

CPS worker Sara Witter testified that in attempting to identify the fathers of all of respondent-mother's children early in the case, respondent-father was located in Ohio.[5] When preparing the background investigation, Witter discovered three substantiated Ohio CPS cases involving respondent-father from August 2013. One of the cases involved respondent-father hitting one of the children with a belt and leaving marks. Witter also learned that respondent-father

[5] As previously explained, only the four children, of both respondent-mother and respondent-father are at issue in this appeal.

had been in jail for domestic violence. Witter testified that respondent-father was made a respondent in this case based on his CPS and domestic violence history.

Respondent-father testified that he left his job and moved from Ohio to Michigan in August 2018, when he heard about the current case. Respondent-father acknowledged that he had "smack[ed]" respondent-mother in the face when she was pregnant, but he claimed that he was trying to stop respondent-mother, who was intoxicated, from repeatedly punching herself in the stomach in an attempt to lose the baby. He denied that he had improperly disciplined the children, and he denied striking the children with belts or leaving any marks on them. He also stated that he had obtained housing and employment, completed parenting classes, and was participating in parenting time. Respondent-father further denied ever being convicted of domestic violence, but acknowledged that he had pleaded to "attempt to assault" in Ohio in 2016, in a case in which respondent-mother was the listed victim. Respondent-father claimed that he and respondent-mother merely "argued a lot" but that he did not ever hit her. Respondent-father's testimony about his CPS history was unclear. He seemed to suggest that CPS questioned him in the past about allegations of abuse and then "dismissed it." He also claimed to have frequently provided money to respondent-mother.

The trial court found that jurisdictional grounds had been established by a preponderance of the evidence.

At a hearing on February 1, 2019, foster care worker Amanda Bouwman, stated that the primary barriers to reunification with respondent-father were substance abuse and general neglect. Bouwman explained that respondent-father needed to complete a substance abuse assessment, follow the recommendations of the substance abuse assessment, and complete counseling. She noted that respondent-father had been testing positive for marijuana. However, she indicated that petitioner would recommend returning the children to respondent-father if he went to counseling, showed "low levels of THC," and continued to do what he was doing.

The trial court ordered respondent-father to comply with the parent-agency treatment plan and petitioner's recommendations. The court also noted that if petitioner determined that respondent-father needed to completely stop using marijuana, he would have to comply until the case was closed.

The petition to terminate respondents' parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j) was filed on December 10, 2020. With respect to respondent-mother, the petition alleged regarding the substance abuse treatment component of her parent-agency treatment plan that respondent-mother was to refrain from consuming alcohol due to its negative effects on her parenting and that respondent-mother had been arrested, or had other interactions with law enforcement, on numerous occasions during the pendency of the instant child protective proceedings for incidents involving intoxication, assault, or domestic assault. The petition also alleged that respondent mother drove her vehicle into a ditch while intoxicated and delayed in participating in substance abuse treatment despite the recommendations that resulted from her substance abuse assessment. Respondent-mother had received probation violations for consuming alcohol contrary to the terms of her probation. The petition further alleged that respondent-mother had failed to consistently engage in substance abuse treatment during the duration of the case to adequately address her substance abuse issues. She also failed to obtain consistent, stable housing.

With respect to respondent-father, the petition alleged that respondent-father's psychological evaluations resulted in a recommendation that he engage in substance abuse treatment due to his high risk for marijuana addiction. Bouwman informed respondent-father multiple times that he needed to stop smoking marijuana and that petitioner needed to see a decrease in his marijuana levels. The petition also alleged that respondent-father admitted in a substance-abuse assessment that he used marijuana more than initially intended, desired to use it daily, had difficulty stopping his daily use, and that he continued to use marijuana despite the problems it caused. Respondent-father had an outstanding warrant in Ohio related to his probation in a case involving marijuana. According to the petition, respondent-father continued to test positive for THC throughout the duration of these child protective proceedings and his parenting time went from unsupervised to supervised as a result of demonstrated increases in his THC levels. He also tested positive for cocaine, Xanax, opiates, and Hydrocodone.

The petition alleged that respondent-father was discharged from counseling twice for poor attendance and did not benefit from the counseling sessions he attended. Regarding the housing requirement in the parent-agency treatment plan, the petition alleged that respondent-father had failed to maintain suitable housing, noting that respondent-father had been evicted from two separate rental homes during the case for nonpayment of rent and that both of those rental homes had been too small for all of his children to be returned to his care.

The termination hearing began on January 26, 2021. Respondent-father's counsel objected to witnesses appearing by Zoom, and the trial court overruled the objection based on administrative orders entered by the Michigan Supreme Court related to the COVID-19 pandemic. The first witness, Bouwman, testified that she was the foster care worker assigned to the case from August 2018 to March 2020. She stated that respondent-mother's parent-agency treatment plan required her to complete substance abuse and psychological assessments, to refrain from using alcohol, obtain stable housing, complete parenting classes, and participate in counseling. Bouwman explained that the children had come into care because of respondent-mother's alcohol abuse and that respondent-mother was arrested at the time the children were removed. Respondent-mother completed her substance abuse assessment in December 2018 and a psychological evaluation in January 2019. The substance abuse assessment indicated that respondent-mother was at a high risk for alcohol addiction. She was to engage in counseling and attend AA meetings. The psychological evaluation led to a recommendation that respondent-mother also engage in counseling to learn to control her anger.

Bouwman testified about respondent-mother's interactions with law enforcement throughout the case. Respondent-mother was involved in an assaultive altercation in October 2018. She was eventually arrested and convicted as a result of this incident, and it was documented that she was intoxicated at the time of her arrest. Bouwman also discussed other interactions respondent-mother had with the police in November 2018, December 2018, and April 2019, where the police had been called for potential domestic violence or noise complaints and respondent-mother was found to be intoxicated. Respondent-mother was also arrested on an outstanding bench warrant in March 2019, and she was intoxicated at the time of her arrest. Bouwman testified that respondent-mother told her in September 2019 that she had recently driven her vehicle into a ditch after consuming alcohol. Respondent-mother continued to test positive for alcohol in October and November 2019, and she received probation violations for consuming alcohol. In January 2020,

police spoke to respondent-mother because she had allegedly witnessed an assault and battery and she was found to be intoxicated during this interview.

Bouwman reported that respondent-mother participated only sporadically in AA and counseling, attending only nine counseling sessions through March 2020. Bouwman opined that respondent-mother had not benefited from counseling services or substance abuse treatment because of her lack of consistent engagement. Respondent-mother sometimes had difficulty parenting all of the children at the same time during visits, and she would at times become frustrated and overwhelmed. She completed a parenting class, but was inconsistent in applying what she had learned. Bouwman opined that respondent-mother had not benefited from services aimed at addressing her parenting ability and emotional stability. Respondent-mother's housing situation throughout the case was unstable and inconsistent. Bouwman also opined that respondent-mother would not be able to rectify these barriers within a reasonable time. Bouwman acknowledged that respondent-mother had a strong bond with the children. Bouwman testified that terminating respondent-mother's parental rights was in the best interests of the children because respondent-mother had not adequately addressed her issues with alcohol abuse, even with the services she was provided, and could not provide stability to the children.

Bouwman testified that respondent-father's parent-agency treatment plan, which he signed and agreed to follow and which the trial court ordered him to follow, recommended psychological and substance abuse evaluations. As a result of respondent-father's psychological evaluation, it was recommended that he attend counseling because of reported anxiety and his high risk of marijuana addiction. This recommendation was also included in the parent-agency treatment plan. Respondent-father only participated sporadically in counseling. He missed 18 of 28 counseling appointments and was discharged from the Catholic Charities program for nonattendance. The substance abuse assessment recommended that respondent-father, at the least, participate in substance abuse education or prevention classes. Bouwman also advised respondent-father and his counsel that respondent-father needed to demonstrate a decrease in his marijuana use. Bouwman explained that she needed to see a decrease in respondent-father's marijuana use because he had a warrant out for his arrest related to marijuana charges in Ohio, his increasing marijuana levels were a concern, and the substance abuse assessment had indicated that he was at a high risk for addiction.

Nonetheless, respondent-father tested positive for marijuana numerous times and also had positive drug screens for cocaine, Xanax, opiates, and hydrocodone during the course of the case. Although respondent-father was given unsupervised parenting time early in the case due to his completion of parenting classes, completion of the substance abuse assessment, and completion of the psychological evaluation, his parenting time was subsequently changed to supervised because his drug screens reflected an increase in his marijuana levels, as well as his use of Xanax. Bouwman opined that respondent-father was unsuccessful in controlling his use of controlled substances.

Bouwman also discussed a 2019 CPS investigation concerning respondent-father's alleged use of improper physical discipline on the child of his then-girlfriend, but this investigation was closed when the mother moved to Ohio. Respondent-father had been evicted from his housing twice during the proceedings. Bouwman opined that respondent-father would not be able to rectify his substance abuse and housing issues within a reasonable time. It was her opinion that

respondent-father's parental rights be terminated because he could not provide stability and protect the children from further harm.

Bouwman recommended termination of both respondents' parental rights because the children needed certainty and finality, which respondents could not provide within a reasonable time.

Foster care worker Hollie Walter testified that she became involved in the case in March 2020. She discussed respondent-mother's parent-agency plan at that time. In addition to remaining sober, attending AA, and completing substance abuse treatment, respondent-mother was to attend counseling for emotional stability and benefit from it. She also was to maintain housing. However, respondent-mother did not follow the treatment plan regarding substance abuse, such as attending AA and counseling. Respondent-mother attended counseling sessions, which were designed to address her emotional stability, only from February 2019 to July 2019. Respondent-mother had not attended counseling or substance abuse treatment over the approximately 11 months since Walter had taken over the case. Respondent-mother also did not seek substance abuse treatment or attend AA meetings during this period. Walter indicated that respondent-mother had failed to address the major concern of her alcohol abuse during the pendency of the case.

Walter also discussed respondent-mother's repeated involvement with law enforcement. Respondent-mother was arrested multiple times in 2020 and was interviewed a number of other times, mostly related to incidents concerning her intoxication with alcohol and domestic violence involving her mother. Respondent-mother was inconsistent with attending parenting times, having attended only 21 out of 34 video visits. Many of her missed visits occurred while she was in jail. Walter testified that it had appeared to her that respondent-mother was intoxicated a few times during parenting time video visits; on one occasion where Walter believed respondent-mother was under the influence during a video visit, respondent-mother was arrested later the same evening. Respondent-mother had lived in three or four places during the last 11 months, none of which were considered appropriate due to various concerns about the other people residing with respondent-mother in these places. Respondent-mother had thus failed to obtain adequate housing as required by her parent-agency treatment plan. She was also unemployed. Walter opined that Garcia's parental rights should be terminated because she had not rectified the conditions that led to removal, and they could not be rectified within a reasonable time.

Walter stated that respondent-father's parent-agency treatment plan required him to maintain housing and employment and participate in substance abuse treatment. He was also to maintain emotional stability. Walter stated that respondent-father was "very quick to anger" and could become "pretty aggressive verbally." Walter testified that respondent-father's substance abuse history included the use of cocaine and prescription drugs that were not prescribed to him. Respondent-father continued to test positive for marijuana during Walter's involvement with the case and had failed to follow through with substance abuse treatment. Respondent-father had reengaged with Catholic Charities for counseling to address his emotional stability and substance abuse, but he was discharged again for missing appointments. Respondent-father had been served an eviction notice, so his current home was not suitable for the children. He was employed. The main barriers to reunification were his substance use and housing.

Walter stated that neither parent benefited from any of the services they were offered and that termination of their parental rights was in the children's best interests. She opined that the children needed permanency and security.

During day three of the termination hearing, the trial court also held a statutory review and permanency planning hearing. Caseworker Stacey McAuliffe testified that during parenting time on December 23, 2020, Garcia was visibly intoxicated to the point where two of the children could tell. McAuliffe stated that substance abuse remained a concern during the reporting period.

Following the conclusion of the termination hearing, the trial court terminated respondents' parental rights to all four children under MCL 712A.19b(3)(c)(*i*), (g), and (j), additionally finding that termination of their parental rights was in the children's best interests. Respondents now appeal.[6]

II. DOCKET NO. 356743 (RESPONDENT-MOTHER)

A. STATUTORY GROUNDS FOR TERMINATION

Respondent-mother first argues that the trial court erred by finding that petitioner established a statutory ground for termination by clear and convincing evidence.

We review for clear error a trial court's ruling that a statutory ground for termination has been established by clear and convincing evidence. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id*.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). In this case, the trial court cited MCL 712A.19b(3)(c)(*i*), (g), and (j)[7] as the established statutory grounds supporting its decision to terminate respondents' parental rights. Those statutory provisions allow for termination of parental rights under the following circumstances:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
>
> * * *

[6] We note that petitioner has failed to file a responsive brief, which hampers the process of appellate review.

[7] The record discloses that, contrary to what respondent-mother asserts on appeal, the trial court did not rely on § 19b(3)(c)(*ii*) as an additional ground for termination. We also note that respondent-mother's appellate argument appears to refer to factual circumstances that were not part of this case in support of her appellate arguments.

(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.

* * *

(g) The parent, although, in the court's discretion, financially able to do so, 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.

In this case, the trial court discussed respondent-mother's continued abuse of alcohol and her repeated arrests and interactions with law enforcement that also involved her being intoxicated that occurred throughout the case after the children were removed from her care. The court found that respondent-mother's inability to consistently maintain her sobriety and her repeated alcohol-related probation violations, despite that the children had been wards of the court for over 2½ years, demonstrated that respondent-mother's substance abuse issues could not be rectified within a reasonable time. The trial court's findings were supported by the record. There was overwhelming evidence that respondent-mother continued to struggle with her abuse of alcohol throughout the case and that she failed to fully participate in and benefit from services aimed at treating her substance abuse issues. There was evidence that respondent-mother repeatedly tested positive for alcohol, received probation violations, and had interactions with the police during which she was intoxicated. There was also evidence that she drove her vehicle into a ditch while intoxicated and engaged in assaultive conduct that resulted in criminal convictions or other police involvement. This behavior continued after her children were removed from her care even though it was an evening of excessive drinking culminating in violence—thereby violating a previous agreement she had made to refrain from using alcohol—that led to the initial removal of the minor children in 2018.

The trial court did not clearly err by finding that statutory grounds had been established under § 19b(3)(c)(*i*). Furthermore, much of the evidence described above also supports a conclusion that there is a reasonable likelihood that the children could be harmed by respondent-mother's conduct and poor decisions resulting from her continued abuse of alcohol and inability to fully engage with and benefit from substance abuse treatment, contrary to her parent-agency treatment plan that the court ordered her to follow. With respect to § 19b(3)(j), this Court has held that "a parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home." *In re White*, 303 Mich

App 701, 711; 846 NW2d 61 (2014); see also *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012) ("While respondents were offered various services and did participate in and complete certain mandated requirements of their respective treatment plans, they failed to demonstrate sufficient compliance with or benefit from those services specifically targeted to address the primary basis for the adjudication in this matter—their historical problems with alcohol and substance abuse. Consequently, the trial court did not clearly err by finding insufficient compliance with and benefit from the services provided by the DHS, necessitating the termination of respondents' parental rights."). Thus, the trial court also did not clearly err by relying on § 19b(3)(j).[8]

B. MISCELLANEOUS ARGUMENTS

Respondent-mother also summarily asserts that her right to due process was violated by the trial court's reliance on inadmissible hearsay. However, she does not identify any specific hearsay testimony that she believes was inadmissible, nor does she further develop this argument or support it with legal authority. This argument is therefore abandoned. "A party cannot simply assert an error or announce a position and then leave it to this Court to discover and rationalize the basis for [her] claims, or unravel and elaborate for [her her] argument, and then search for authority either to sustain or reject [her] position." *In re TK*, 306 Mich App 698, 712; 859 NW2d 208 (2014) (quotation marks and citation omitted; alterations in original).

Similarly, respondent-mother summarily asserts that petitioner did not provide adequate services for reunification, but bases this one-sentence argument solely on the timing of petitioner's decision to seek termination of parental rights. Considering that the termination hearing was held more than 2½ years after the children were placed in care, well beyond the 182-day period required under § 19b(3)(c)(*i*), on its face, there appears to be no merit to any claim that termination was premature. Respondent-mother was given a great deal of time to address her barriers to reunification and failed to adequately avail herself of the offered services. Furthermore, the trial court expressly dealt with this issue and made a finding that nothing in the record would lead it to conclude that either respondent, given additional time to do so, would conform their behavior in a manner that would allow either of the respondents to gain custody of the minor children. Moreover, respondent-mother's failure to further develop and support this appellate argument renders it abandoned. *In re TK*, 306 Mich App at 712.

[8] The trial court indicated that it was also relying on § 19b(3)(g), but did not discuss this factor in detail. Most notably, the trial court did not make any specific findings regarding whether respondent-mother's inability to provide proper care and custody was unrelated to any lack of financial ability, which is an express requirement of § 19b(3)(g). Absent any findings on that issue, the trial court erred by relying on § 19b(3)(g) as a ground supporting termination of respondent-mother's parental rights. However, because a single statutory ground for termination is sufficient to support termination of parental rights, *In re Schadler*, 315 Mich App 406, 410; 890 NW2d 676 (2016), and the trial court did not clearly err by finding that termination of respondent-mother's parental rights was justified under § 19b(3)(c)(*i*) and (j), any error in relying on § 19b(3)(g) as an additional ground for termination was harmless.

C. BEST INTERESTS

Respondent-mother argues that the trial court erred when it found that termination of her parental rights was in the children's best interests.

We review for clear error a trial court's determination that termination is in the children's best interests. *In re Schadler*, 315 Mich App at 408. "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." *Id*. at 408-409 (quotation marks and citation omitted).

"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). "[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 76, 90; 836 NW2d 182 (2013). Factors to be considered 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*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). A court may also consider whether it is likely "that the child could be returned to her parents' home within the foreseeable future, if at all." *In re Frey*, 297 Mich App at 248-249.

Here, the trial court did not clearly err by finding that termination of respondent-mother's parental rights was in the children's best interests. When the termination hearing concluded, the children had been court wards for more than 2½ years. During that time, respondent-mother had made little progress in addressing her primary issues of alcohol abuse and violent conduct. Despite the obvious need for emotional stability and substance abuse counseling, respondent-mother stopped attending AA and counseling, and she failed to seek substance abuse treatment to resolve her alcohol-abuse problem. Further, she remained unemployed, lacked housing, and had repeatedly been arrested and violated her probation. Her interactions with law enforcement often involved her being intoxicated. Walter stated that respondent-mother had not benefited from any of the services that were offered. Walter also opined that the children needed permanency and security. At the time of the termination hearing, respondent-mother could provide neither for the children. The trial court did not clearly err by finding that termination of respondent-mother's parental rights was in the children's best interests.[9]

III. DOCKET NO. 356817 (RESPONDENT-FATHER)

A. STATUTORY GROUNDS FOR JURISDICTION

[9] To the extent respondent-mother raises a single-sentence argument in passing that termination of her parental rights "is premature, because the new allegations were never properly adjudicated," respondent-mother has abandoned this argument by completely failing to further explain or develop this argument. *In re TK*, 306 Mich App at 712. We therefore decline to address it.

Respondent-father first argues that the trial court erred by exercising jurisdiction over him because the evidence at the adjudication trial did not support that statutory grounds for jurisdiction existed.

In general, "[c]hallenges to the court's decision to exercise jurisdiction are reviewed for clear error in light of the court's finding of fact." *In re Kellogg*, 331 Mich App 249, 253; 952 NW2d 544 (2020) (quotation marks and citation omitted). "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*. (quotation marks and citation omitted). However, "adjudication errors raised after the trial court has terminated parental rights are reviewed for plain error." *In re Ferranti*, 504 Mich 1, 29; 934 NW2d 610 (2019). A respondent "must establish that (1) error occurred; (2) the error was 'plain,' i.e., clear or obvious; and (3) the plain error affected their substantial rights. And the error must have 'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings[ ] . . . .' " *Id*. (citations omitted; alterations and ellipsis in original). "We review de novo questions of constitutional law, including whether a child protective proceeding complied with a respondent's right to due process." *In re Yarbrough*, 314 Mich App 111, 121-122; 885 NW2d 878 (2016).

"Child protective proceedings are generally divided into two phases: the adjudicative and the dispositional." *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993). Respondent-father in this case challenges the trial court's decision in the adjudicative phase, which concerns whether the trial court "may exercise jurisdiction over the child." *Id*. "In order to find that a child comes within the court's jurisdiction, at least one statutory ground for jurisdiction contained in MCL 712A.2(b) must be proven, either at trial or by plea." *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008). A statutory ground for jurisdiction must be established by a preponderance of the evidence. *In re Brock*, 442 Mich at 108-109.

Our Supreme Court has held that "due process requires a specific adjudication of a parent's unfitness before the state can infringe the constitutionally protected parent-child relationship." *In re Sanders*, 495 Mich 394, 422; 852 NW2d 524 (2014). A court may not interfere with a parent's fundamental right to direct the care, custody, and control of the parent's children "solely because the other parent is unfit, without any determination that he or she is also unfit." *Id*. at 400-401. "When the petition contains allegations of abuse or neglect against a parent, MCL 712A.2(b)[], and those allegations are proved by a plea or at the trial, the adjudicated parent is unfit." *Id*. at 405.

In relevant part, MCL 712A.2(b)[10] provides the court with the following jurisdiction:

> (b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:
>
> (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

[10] Although this statute has been amended since respondent-father's adjudication, the provisions at issue in this case were not affected by the amendment. See 2019 PA 113.

> 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. . . .
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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. . . .

Here, respondent-father claims that the petition lacked sufficient allegations against him to support the court's jurisdiction, as he attempts in his submissions to this Court to minimize his criminal and CPS history. However, he does not discuss the testimony supporting the trial court's decision. The November 7, 2018 second amended petition alleged that there were CPS reports from Ohio involving one of the children reporting in July 2016 that she lived with her "memaw" because respondent-father broke respondent-mother's wrist when he tried to take her phone to stop her from calling the police. The amended petition also alleged that other CPS records from Ohio indicated that the same child was observed in November 2016 with bruising on her arm and a red mark on her face, and the child reported that respondent-father had hit her with the hard part of a belt and caused bruising on her arm. The petition further alleged that respondent-father had two substantiated CPS cases in 2013 for physical abuse and physical neglect, in addition to a 2010 conviction for "disorderly person-drunk" and a 2013 conviction for "felony possession of marijuana."

At the January 8, 2019 bench trial, respondent-mother described respondent-father as abusive and controlling toward her, and she said that respondent-father hit her while she was pregnant and would throw things when she did not do as he instructed. On one occasion, he hit her with the back of his hand and gave her a black eye and a fat lip. Respondent-mother also maintained that respondent-father was abusive toward the children, punishing them by making them "either push the wall or push the floor" and beating them with a belt if they moved. According to respondent-mother, the abuse occurred consistently over the years, but she only reported the last incident to the police (which occurred in 2017 when they were in Ohio) because the children had run out of the house screaming that "daddy hurt mommy."

Respondent-mother testified that she moved from Ohio to Michigan approximately six months later to get away from respondent-father, who was arrested and convicted of domestic violence. Respondent-mother maintained that respondent-father did not visit the children. Respondent-mother did not believe that the children would be safe in respondent-father's custody because of his discipline methods. She had reported respondent-father to CPS when they lived in Ohio based on his conduct toward the children. According to respondent-mother, respondent-father made the children shake with fear and he had hit all but the youngest of their four children with a belt. Respondent-mother recalled one instance where respondent left a large welt on one child's leg.

CPS worker Sara Witter testified that she discovered three substantiated Ohio CPS cases involving respondent-father from August 2013. One of the cases involved respondent-father

hitting one of the children with a belt and leaving marks. Witter also learned that respondent-father had been in jail for domestic violence. Witter testified that respondent-father was made a respondent in this case based on his CPS and domestic violence history.

Based on the testimony introduced at trial, the trial court did not err by finding that at least one of the allegations in the petition, bringing the matter within a statutory ground for jurisdiction under MCL 712A.2(b)(1) or (2), was established by a preponderance of the evidence and the trial court therefore did not err in assuming jurisdiction with respect to respondent-father. *In re SLH*, 277 Mich App at 669; *In re Brock*, 442 Mich at 108-109; *In re Sanders*, 495 Mich at 405. Although respondent-father generally denied many of the allegations, we give "due regard to the trial court's special opportunity to observe the witnesses," and we do not find the trial court's factual findings to be clearly erroneous. *In re Kellogg*, 331 Mich App at 253 (quotation marks and citation omitted).

B. VIDEO TECHNOLOGY

Respondent-father next argues that the trial court violated his rights to due process and to confront witnesses when the trial court allowed witnesses to appear at the termination trial using Zoom video technology instead of testifying in person. Respondent-father also contends that the court failed to comply with MCR 3.904(B), which governs the use of videoconferencing technology during termination of parental rights proceedings.

We review the interpretation and application of statutes and court rules de novo. *In re Sanders*, 495 Mich at 404. "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." *Id*. at 403-404.

To the extent respondent-father's argument relies on the Sixth Amendment right to confrontation, this particular constitutional right is not directly applicable in this case because child protective proceedings are not criminal proceedings. *In re Brock*, 442 Mich at 107-108. "The purpose of child protective proceedings is the protection of the child, while criminal cases focus on the determination of the guilt or innocence of the defendant." *Id*. Accordingly, the constitutional right implicated by the nature of respondent-father's arguments is his right to procedural due process. *Id*. at 105-109. "Although due process often requires confrontation and cross-examination, these are not absolute requirements . . . ." *Id*. at 109. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Id*. at 111, quoting *Mathews v Eldridge*, 424 US 319, 332, 334; 96 S Ct 893; 47 L Ed 2d 18 (1976) (quotation marks omitted; alteration in original).

At the time of the termination hearing, MCR 3.904(B)[11] provided in relevant part regarding child protective proceedings:

[11] Although MCR 3.904 was later amended, effective July 26, 2021, the above quoted provisions were not changed.

> (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.
>
> (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:
>
> * * *
>
> (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.

At the beginning of the termination trial on January 26, 2021, respondent-father's attorney objected under MCR 3.904(B)(2)(b) to any witnesses testifying by videoconferencing technology. The trial court overruled the objection based on our Supreme Court's orders issued in light of the COVID-19 pandemic and the trial court's conclusion that respondent-father's due process rights to notice and an opportunity to be heard were not violated by the procedures allowing witnesses to testify by videoconferencing technology in this case.

Due to the unusual circumstances of the COVID-19 pandemic, our Supreme entered a series of administrative orders extending the authority of lower courts to hold proceedings remotely. In relation to MCR 3.904, Administrative Order No. 2020-9, 505 Mich cxxxix (2020), entered April 17, 2020, provided:

> During the state of emergency established by Governor Whitmer under Executive Order 2020-33, the following rules are temporarily amended:
>
> * * *
>
> MCR 3.904. Courts may use two-way videoconferencing technology or other remote participation tools where the court orders a more restrictive placement or more restrictive treatment.

Administrative Order No. 2020-19, 505 Mich clxxi (2020), entered June 26, 2020, further provided:

> For the last several months, courts have been operating under special rules to ensure that essential functions continue while also limiting access to physical locations as a way to limit the spread of COVID-19 for both court staff and court visitors. As courts return to full capacity it is now appropriate to revisit those early orders.
>
> . . . The technological tools courts used to ensure access during the closure should be maintained and indeed used more frequently to rebuild capacity.

* * *

> 2. Courts shall continue to expand the use of remote participation technology (video or telephone) as much as possible to reduce any backlog and to dispose of new cases efficiently and safely. As articulated in Administrative Order No. 2020-1 and Administrative Order No. 2020-6, as courts expand their use of remote technology tools, courts must continue to verify that participants are able to proceed remotely, and should permit some participants to appear remotely even if all participants are not able to participate electronically. To enable the greatest participation possible for judicial officers, Administrative Order No. 2012-7 (which limits the circumstances under which judges may preside over remote proceedings) is suspended until further order of the Court.
>
> 3. Administrative Order No. 2020-9 adopted temporary amendments that promoted the use of electronic means to access the courts and enable parties to proceed with litigation, as well as extended some filing deadlines. The amendments of . . . MCR 3.904 . . . continue in effect until further order of the Court.

Administrative Order No. 2020-14, 505 Mich cxlix (2020), entered on May 6, 2020, is also relevant and provided:

> The Michigan Supreme Court has made clear that during the health crisis relating to the coronavirus pandemic, courts must continue to conduct essential functions, and are expected to use their best efforts to provide timely justice in all other matters. To achieve this goal, the Court has authorized judicial officers *to conduct proceedings remotely to the greatest extent possible*, and several administrative orders have been adopted to help courts and litigant navigate more efficiently and effectively. [Emphasis added.]

Furthermore, the Supreme Court ordered courts to adhere to policies that included "[c]ontinued use and expansion of remote hearings as practicable and increase of the court's capacity to conduct business online, including increased remote work by employees." AO 2020-14.

Of additional importance to our analysis is Administrative Order 2020-6, 505 Mich cxxxiv, entered April 7, 2020, which provided as relevant to the arguments raised in this appeal:

> In response to the extraordinary and unprecedented events surrounding the COVID19 pandemic in Michigan, the Court has adopted a number of administrative orders authorizing courts to implement emergency measures to mitigate the transmission of the virus and provide the greatest protection possible to those who work and have business in our courts. . . .
>
> Although our highest priority during this crisis is for courts to continue to be vigilant and protect against further spread of the coronavirus, we must also continue to ensure that our courts operate as efficiently and effectively as possible under the circumstances, continue to ensure timely hearing and disposition of essential matters, and make our best efforts to provide timely justice in all other matters. The purpose of the order is to empower our courts and judges to meet this

> challenge by allowing them to use innovative ways to conduct court business remotely, including best practices as identified by the State Court Administrative Office.
>
> On order of the Court, pursuant to 1963 Const, Art VI, Sec 4, which provides for the Supreme Court's general superintending control over all state courts, the Court authorizes judicial officers to conduct proceedings remotely (whether physically present in the courtroom or elsewhere) using two-way interactive videoconferencing technology or other remote participation tools under the following conditions:
>
> • any such procedures must be consistent with a party's Constitutional rights;
>
> * * *
>
> While this order is in effect, and consistent with its provisions, all judges in Michigan are required to make a good faith effort to conduct proceedings remotely whenever possible.

All four of the administrative orders quoted above were rescinded by an order of the Michigan Supreme Court entered on July 26, 2021. See July 26, 2021 order of the Michigan Supreme Court in ADM File No. 2020-08. Thus, these orders were in effect at the time of respondent-father's termination trial.

Respondent-father has not shown a violation of MCR 3.904(B) as temporarily amended by the Supreme Court's administrative orders. The orders permitted courts to order the use of "two-way videoconferencing technology or other remote participation tools" and to "operat[e] under special rules to ensure that essential functions continue while also limiting access to physical locations as a way to limit the spread of COVID-19 for both court staff and court visitors."

These orders, in an attempt to prevent the virus from spreading, effectively limited the ability of a party to a child protective proceeding to withhold consent for a witness to testify by two-way videoconferencing technology. If respondent-father could have absolutely insisted on the personal appearance and presence of court personnel and witnesses, the administrative orders would have been without effect. Adjourning hearings indefinitely until it was safe to resume pre-pandemic procedures would have introduced greater and unnecessary uncertainty into the children's future, interfering with the ability to ensure protection of the children. *In re Brock*, 442 Mich at 107-108. Under these administrative orders and the temporary amendment to MCR 3.904, the appearance of witnesses by videoconferencing technology was permissible so long as its use was consistent with respondent-father's constitutional rights. AO 2020-06.

We reject respondent-father's argument that the video technology procedure in this case violated his due process right to confront witnesses. This Court recently discussed due process rights in child protective proceedings within the context of the COVID-19 pandemic in *In re Sanborn*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket Nos. 354915 and 354916); slip op at 6-7, stating

> "The fundamental requisite of due process of law is the opportunity to be heard. The hearing must be at a meaningful time and in a meaningful manner." "Due process requires fundamental fairness, which is determined in a particular situation first by considering any relevant precedents and then by assessing the several interests that are at stake." "In Michigan, procedures to ensure due process to a parent facing removal of his child from the home or termination of his parental rights are set forth by statute, court rule, DH[H]S policies and procedures, and various federal laws . . . ." "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." [Citations omitted; ellipsis and alteration in original.]

In *In re Sanborn*, this Court recognized that although the COVID-19 pandemic resulted in certain hearings being held outside statutory windows, the potential infringement on due process rights caused by the delay was harmless. *Sanborn*, slip op at 7. In the instant case, respondent-father has not shown that our Supreme Court's administrative rules allowing videoconferencing technology in response to the COVID-19 pandemic did not provide adequate procedural protections. Respondent-father was provided with notice and an opportunity to be heard. His attorney was free to cross-examine the witnesses, and did so. Although respondent-father hypothesizes what could have occurred because witnesses could not be "properly sequestered" or could have been coached or have reviewed materials offscreen, he provides no actual evidence that coaching occurred or that any of the witnesses actually relied on impermissible materials when testifying. Nor has he provided any evidence of how the video proceedings resulted in witnesses being able to lie, or any abuse of the process by witnesses, parties, or counsel. Respondent-father has not supported his assertions of error with evidence or relevant legal authority.

Central in termination proceedings are the considerations of the children's health and safety, particularly when they would otherwise have had to endure an indeterminate adjournment in a case where they had already been court wards for approximately 2½ years. Here, the use of videoconferencing technology allowed the proceedings to continue while preserving respondent-father's ability to confront witnesses in real time to the greatest extent possible and still minimizing close contact between people in an effort to prevent the spread of COVID-19 during a global pandemic. In this way, respondent-father's essential due-process rights were preserved despite the significant effects of the pandemic on bringing people together in ways that used to be considered ordinary. *Id*. at 6-7. The circumstances involved balancing respondent-father's due-process rights with the health and safety of the involved parties, judge, attorneys, court staff, and witnesses. "Due process requires fundamental fairness, which is determined in a particular situation first by considering any relevant precedents and then by assessing the several interests that are at stake." *In re Brock*, 442 Mich at 111 (quotation marks and citation omitted). Under the circumstances, respondent-father has not demonstrated that the procedures were fundamentally unfair or that he was denied "such procedural protections as the particular situation demands." *Id*. (quotation marks and citation omitted). Respondent-father is not entitled to any relief on this ground.

C. STATUTORY GROUNDS FOR TERMINATION

Respondent-father next argues that the trial court erred in finding that a statutory ground for termination was established by clear and convincing evidence.

We review for clear error a trial court's ruling that a statutory ground for termination has been established by clear and convincing evidence. *In re Hudson*, 294 Mich App at 264. "In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App at 139. The trial court found that grounds for terminating respondent-father's parental rights were established under MCL 712A.19b(3)(c)(*i*), (g), and (j).[12] We have already quoted these provisions above.

Here, there was evidence that respondent-father had agreed to, and been ordered by the court to follow, a parent-agency treatment plan. Pursuant to the treatment plan, respondent-father was required to cease (or at least decrease) his marijuana use, treat his substance abuse problem involving marijuana, engage in counseling, and maintain housing. Yet, he continued to test positive for marijuana consistently throughout the case and had his parenting time changed from unsupervised to supervised because his drug screens reflected an *increase* in his marijuana levels. Respondent-father also tested positive for other substances, including Xanax and cocaine. He was discharged twice from counseling for nonattendance. Additionally, there was evidence that respondent-father had been evicted from his housing and failed to maintain adequate housing for the children. Respondent-father's failure to comply with the service plan, particularly his failure to address his substance abuse problems and maintain housing, and his failure to demonstrate benefit from services, support the conclusion that termination was warranted under § 19b(3)(j). *In re White*, 303 Mich App at 711; *In re Frey*, 297 Mich App at 248. Because only one statutory ground is necessary to support termination, *In re Schadler*, 315 Mich App 406, 410; 890 NW2d 676 (2016), the trial court did not clearly err by finding that a statutory ground had been established by clear and convincing evidence, *In re VanDalen*, 293 Mich App at 139.

Respondent-father nonetheless maintains that the trial court inappropriately relied on his marijuana use in terminating his parental rights, in violation of MCL 333.27955(3), which is contained with the Michigan Regulation and Taxation of Marihuana Act (MRTMA), 333.27951 *et seq*. Under MCL 333.27955(3), "[a] person shall not be denied custody of or visitation with a minor for conduct that is permitted by this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated." However, contrary to respondent-father's arguments, evidence existed within the record that demonstrated his continued and increasing use of marijuana presented an unreasonable danger to the children. The record reveals that respondent was not simply using marijuana, rather, the record clearly articulated and substantiated that it was respondent-father's *abuse* of marijuana and his demonstrated inability to stop or decrease his use of this substance for the benefit of obtaining custody of his children. His actions reflected an unwillingness to put the needs of his children ahead of his substance use. We find the following analysis of another panel of this Court persuasive and adopt it as our own:

> MRTMA does provide that if the person's use of marijuana "creates an unreasonable danger to the minor that can be clearly articulated and substantiated,"

[12] The record does not support respondent-father's assertion that the trial court relied on MCL 712A.19b(3)(i) as an additional ground for termination.

> the person can be "denied custody of or visitation with a minor." MCL 333.27955(3). . . . Moreover, even though alcohol is legal under certain conditions for persons over 21 years of age, the abuse of alcohol can be grounds for termination of parental rights. See, e.g., *In re Powers*, 244 Mich App 111, 119; 624 NW2d 472 (2000), and *In re Conley*, 216 Mich App 41, 43-44; 549 NW2d 353 (1996). In the present case, the fact that marijuana use was permitted by law did not preclude the fact that respondent's abuse of it could be considered as a factor in the termination of her parental rights. Therefore, we conclude that the trial court did not clearly err as a matter of law in considering respondent's continued use of marijuana, given evidence of substance abuse and absent any attempt on her part to obtain supporting evidence of need from her doctors and to obtain a medical marijuana card. [*In re Hilts*, unpublished per curiam opinion of the Court of Appeals, issued April 23, 2020 (Docket No. 350147), p 4.]

D. BEST INTERESTS

Finally, respondent-father argues that the trial court erred by finding that termination of his parental rights was in the children's best interests.

We review for clear error a trial court's determination that termination is in the children's best interests. *In re Schadler*, 315 Mich App at 408. "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." *Id.* at 408-409 (quotation marks and citation omitted).

"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). "[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. Factors to be considered 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*, 297 Mich App at 41-42 (citations omitted). A court may also consider whether it is likely "that the child could be returned to her parents' home within the foreseeable future, if at all." *In re Frey*, 297 Mich App at 248-249.

When the termination hearing concluded, the children had been court wards for over 2½ years. During that time, respondent-father had made little progress. Despite the reported need for counseling to address emotional stability, anxiety, and substance abuse, respondent-father stopped attending counseling and did not engage in substance abuse treatment. He did not participate consistently in counseling even though he had past substantiated CPS cases involving abuse, he had been convicted of a domestic-violence-related charge, and he had been the subject of another investigation while the instant case was pending. He failed to address any substance abuse issues, even in light of positive screens for cocaine and numerous positive screens for marijuana. He did not maintain suitable housing. Caseworker Walter stated that respondent-father did not benefit from any of the services offered and that termination of his parental rights was in the children's best interests. She also opined that the children needed permanency and security. At the time of

the termination hearing, respondent-father could not provide either and had shown that he was unable to put the needs of his children first. Accordingly, the trial court did not clearly err by finding that termination of Lawhorn's parental rights was in the children's best interests.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Stephen L. Borrello
/s/ Colleen A. O'Brien