STATE OF MICHIGAN

COURT OF APPEALS

In re VARNADO, Minors.

UNPUBLISHED
December 28, 2021

No. 356839
Kent Circuit Court
Family Division
LC Nos. 18-052477-NA
18-052478-NA

Before: GADOLA, P.J., and SWARTZLE and CAMERON, JJ.

PER CURIAM.

Respondent appeals the trial court's order terminating his parental rights to his minor children, HV and EV, under MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that the children will be harmed if returned to the parent). We affirm.

I. BACKGROUND

In April 2013, a petition was filed with respect to HV. In relevant part, the petition alleged that respondent and Bianca Varnado, HV's mother, were engaging in domestic violence. Varnado had an extensive history with Child Protective Services (CPS), and her rights to four other children had been previously terminated. One of these children was shared with respondent, and respondent's parental rights to that child were also terminated in 2012. The petition requested that the trial court remove HV from Varnado's care and custody and exercise jurisdiction. The petition was authorized, and HV was placed in foster care. The trial court later exercised jurisdiction after Varnado admitted to certain allegations in the petition. Varnado participated in and benefitted from the case service plan. Although respondent was identified as HV's legal father during the proceeding, he did not participate in services. In July 2015, the trial court terminated jurisdiction over HV as a result of Varnado's progress.

In June 2016, Varnado gave birth to EV, and a petition was filed with respect to HV and EV less than six months later. The petition alleged that respondent and Varnado continued to engage in domestic violence and that Varnado refused to provide CPS with contact information so that CPS could continue to verify the well-being of the children. The petition was authorized, and the children were placed in foster care. After respondent and Varnado admitted to certain

allegations in the petition, the trial court exercised jurisdiction and ordered respondent and Varnado to engage in and benefit from the case service plan. The trial court also ordered respondent and Varnado not to have contact with each another. However, in 2017, respondent and Varnado signed a co-parenting agreement, which provided that they would limit their communication to matters regarding the children and that they would do so only via e-mail unless there was an emergency. In January 2018, the trial court returned the children to Varnado's care and terminated jurisdiction.

In October 2018, another petition was filed. The petition alleged, in relevant part, that respondent and Varnado had continued to engage in domestic violence and that respondent had been criminally charged with domestic violence and "unlawful entry." Varnado was the complaining witness in both cases. The petition requested that the trial court remove the children from respondent and Varnado's care, exercise jurisdiction, and terminate respondent and Varnado's parental rights. The trial court authorized the petition, placed the children with Varnado, and ordered respondent and Varnado not to have contact with each other. Respondent was granted supervised parenting time.

In January 2019, respondent pleaded guilty to "unlawful entry" in relation to illegally entering Varnado's home. In exchange for respondent's plea, the domestic violence charge was dismissed. Petitioner offered respondent supervised visitation and services to address his history of domestic violence. Respondent did not consistently attend domestic violence services and did not take full advantage of the parenting time that was offered to him.

On March 11, 2019, respondent and Varnado pleaded to several allegations in the petition, and petitioner withdrew its request for termination. The trial court exercised jurisdiction, ordered that the children be placed in foster care,[1] and ordered that reasonable efforts toward reunification be made. Respondent was ordered to obtain and maintain suitable housing and legal income, to attend visitation with the children, to participate in and benefit from domestic violence counseling, and to submit to a psychological evaluation. Although respondent obtained housing and employment, consistently attended visitation, and submitted to a psychological evaluation with Dr. Robert Baird, respondent failed to address and take accountability for his history of domestic violence. Respondent also had difficulty controlling the children during supervised parenting time.

In December 2019, the permanency planning goal was changed to guardianship after Varnado and the foster parents expressed an interest in this arrangement. However, respondent refused to consent to the guardianship. In June 2020, Varnado voluntarily released her parental rights to the children. Thereafter, petitioner filed a supplemental petition, requesting that the trial court terminate respondent's parental rights to the children due to respondent's lack of sufficient progress during the lengthy proceeding.

The termination hearing was held over the course of several days between November 2020 and March 2021. Caseworkers and service providers testified about respondent and Varnado's lengthy history with CPS and about respondent's failure to make sufficient progress during the

[1] The children were placed with the same foster parents who had cared for the children during the 2016 proceeding.

lengthy proceeding. Respondent testified on his own behalf and denied responsibility for the children having been taken into care. Respondent also blamed caseworkers and service providers for the children remaining in care during the proceeding. After respondent testified, petitioner called Jody Smith, a foster care supervisor who had worked with respondent and the children, as a rebuttal witness. Smith testified about the number of times that the children had come into care, about respondent's lack of involvement with previous case service plans, and about the children's placement with their foster parents.

After the close of proofs, the trial court found that reasonable reunification efforts were made but that respondent had failed to benefit from most of the services. The trial court also concluded that statutory grounds existed to support the termination of respondent's parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j), and that termination of respondent's parental rights was in the children's best interests. This appeal followed.

II. REMOVAL OF THE CHILDREN

Respondent argues that the trial court improperly removed the children from his care. Because respondent failed to raise this argument before the trial court, we review for plain error affecting substantial rights. *In re Pederson*, 331 Mich App 445, 463; 951 NW2d 704 (2020).

"At the preliminary hearing, the court must decide whether to authorize the filing of the petition and, if authorized, whether the child should remain in the home, be returned home, or be placed in foster care pending trial." *In re Benavides*, 334 Mich App 162, 167; 964 NW2d 108 (2020) (quotation marks and citations omitted). A child may only be placed in foster care if a court finds all of the following:

> (a) Custody of the child with the parent presents a substantial risk of harm to the child's life, physical health, or mental well-being.
>
> (b) No provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from risk as described in subdivision (a).
>
> (c) Continuing the child's residence in the home is contrary to the child's welfare.
>
> (d) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.
>
> (e) Conditions of child custody away from the parent are adequate to safeguard the child's health and welfare. [MCL 712A.13a(9).]

At the October 10, 2018 preliminary hearing, Department of Health and Human Services (DHHS) Specialist Tiffany Armitage testified that she received a complaint about respondent and Varnado engaging in domestic violence on September 11, 2018. In response to this, Varnado reviewed the police report, which revealed that respondent had "shown up at [Varnado's] house unannounced" and that respondent had "punched her in the face while she was in the front seat of a vehicle while . . . [EV] was in the backseat." Respondent denied the incident, but admitted that

he had been living with Varnado. Although Varnado denied that she and respondent had been living together, Armitage believed that respondent and Varnado were in a relationship in September 2018 despite the fact that they had agreed to limit their communication to matters regarding the children. Respondent was facing criminal charges as a result of the September 11, 2018 incident, and a no-contact order was in place as a result of the criminal charges. Armitage noted that the children had been taken into care in the past due to the parties' domestic violence and that respondent had completed services in relation to the 2016 proceeding. Armitage also noted that Varnado had unilaterally placed the children in the care of their previous foster parents on October 7, 2018 in an effort to "keep them away" from respondent.

In light of this testimony, the referee concluded that it was proper to place the children with Varnado. The referee ordered that respondent and Varnado could not have contact and that respondent was not permitted to have contact with "the children's home." Respondent did not object, and the trial court adopted the referee's recommendation.

At the initial disposition hearing, the caseworker indicated that it was not proper for the children to be placed with respondent because of the parties' history of domestic violence, which respondent had not yet addressed despite his having been offered services. Additionally, respondent had only attended five visitations with the children over the course of several months despite being offered parenting time. The caseworker had been unable to evaluate respondent's living conditions because he continuously cancelled appointments. The caseworker was also concerned about respondent's financial stability. The trial court placed the children in foster care. In doing so, the trial court considered all five requirements of MCL 712A.13a(9). The trial court noted the parties' extensive history with domestic violence and respondent's failure to comply with or benefit from services that were provided to him in previous proceedings. We conclude that the trial court did not plainly error. Respondent is therefore not entitled to relief.

III. ADJUDICATION

Respondent argues that the trial court made several errors when accepting his plea and when exercising jurisdiction over the children. We disagree.

A. COMPLIANCE WITH MCR 3.971(B)(4)

Respondent first argues that, when accepting his plea to establish jurisdiction, the trial court erred by failing to comply with MCR 3.971(B)(4). Specifically, respondent argues that the trial court failed to advise him that his plea could be used against him during a subsequent termination proceeding. Although respondent moved to withdraw his plea, respondent never argued that the trial court failed to comply with MCR 3.971(B)(4), thereby rendering this argument unpreserved. *People v Clark*, 330 Mich App 392, 414; 948 NW2d 604 (2019). We therefore review for plain error affecting substantial rights. *In re Pederson*, 331 Mich App at 463.

As noted by this Court in *In re Pederson*,

> "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). The family court determines whether to take jurisdiction of the child during the adjudicative phase. *Id.* The "fact-finding adjudication of an

> authorized petition to determine if the minor comes within the jurisdiction of the court" is called a "trial." MCR 3.903(A)(27) . . . . A parent may also waive his or her right to a trial and admit the allegations in a petition or plead no contest to them. MCR 3.971(A); *In re Sanders*, 495 Mich at 405.
>
> Pleas generally waive certain rights . . . . "Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Brady v United States*, 397 US 742, 748; 90 S Ct 1463; 25 L Ed 2d 747 (1970). Hence, for a plea to constitute a valid waiver of constitutional rights, the person entering it must be made "fully aware of the direct consequences of the plea." *People v Cole*, 491 Mich 325, 333; 817 NW2d 497 (2012) (quotation marks and citation omitted). "A consequence is 'direct' where it presents 'a definite, immediate and largely automatic effect' on the defendant's range of punishment." *United States v Kikuyama*, 109 F3d 536, 537 (CA 9, 1997), quoting *United States v Wills*, 881 F2d 823, 825 (CA 9, 1989). [*In re Pederson*, 331 Mich App at 463-464.]

In the context of jurisdictional pleas in child protective proceedings, "[o]ur court rules reflect this due-process guarantee." *In re Ferranti*, 504 Mich 1, 21; 934 NW2d 610 (2019). MCR 3.971 provides, in relevant part, as follows:

> **(B) Advice of Rights and Possible Disposition.** Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:
>
> *** * ***
>
> (4) of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent.

The trial court in this case complied with MCR 3.971 and advised respondent on the record that his plea could "later be used as evidence in a proceeding to terminate parental rights." Thus, the trial court did not plainly err. Nonetheless, respondent asserts that his plea was not knowing and voluntary because the trial court failed to inform him that "his no-contest pleas would be viewed as an admission to the allegations that he committed domestic violence against Ms. Varnado."

Respondent pleaded *nolo contendere* to allegations that Varnado had reported to law enforcement that respondent had assaulted her in the presence of EV. Notably, respondent admitted that he had denied to law enforcement that he had battered Varnado, and respondent's attorney noted on the record that respondent had not been convicted of domestic violence. Thus, the trial court was aware that respondent did not admit to perpetrating domestic violence against Varnado. Furthermore, the record does not support that the trial court viewed respondent's plea as the sole basis to terminate his parental rights. Indeed, evidence was admitted at the termination hearing to support that respondent had an extensive history of domestic violence with Varnado, that respondent had difficulty regulating his emotions, and that respondent failed to benefit from

the services provided to him during the proceeding. Indeed, the trial court noted on the record that it did not matter who perpetrated the abuse. The trial court took issue with the fact that respondent had engaged in a relationship with Varnado between 2010 and 2018 despite the fact that he knew the relationship was toxic, that his children were being exposed to trauma, and that his children were repeatedly taken into care as a result. Therefore, respondent's argument that his plea "was the proximate cause of the downward spiral of services and eventual termination" of his parental rights is without factual merit.

B. SUFFICIENT FACTUAL BASIS FOR THE PLEA

Respondent next argues that "his plea was not a valid admission sufficient to grant the court jurisdiction over the matter and the minor children" because respondent never admitted to engaging in domestic violence with Varnado. Because respondent raised this argument in his motion to withdraw his plea, the argument is preserved. See *Glasker-Davis v Auvenshine*, 333 Mich App 222, 227; 964 NW2d 809 (2020).

We review a trial court's interpretation and application of statutes and court rules de novo. *Ligons v Crittenton Hosp*, 490 Mich 61, 70; 803 NW2d 271 (2011). "This Court reviews for [an] abuse of discretion a trial court's ruling on a motion to withdraw a plea. A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *People v Brinkey*, 327 Mich App 94, 97; 932 NW2d 232 (2019) (quotation marks and citation omitted). "A trial court also necessarily abuses its discretion when it makes an error of law." *People v Al-Shara*, 311 Mich App 560, 566; 876 NW2d 826 (2015).

After authorizing a petition to take jurisdiction over a minor child, the trial court "can exercise jurisdiction if a respondent-parent enters a plea of admission or no contest to allegations in the petition[.]" *Ferranti*, 504 Mich at 15. See also MCR 3.971.[2] However, before the trial court may do so, the court must find that a statutory basis exists for exercising jurisdiction. *In re PAP*, 247 Mich App 148, 152-153; 640 NW2d 880 (2001). Thus, even if a respondent enters a plea of admission to all or some of the allegations in the petition, the trial court may not accept that plea "without establishing support for a finding that one or more of the statutory grounds alleged in the petition are true[.]" MCR 3.971(D)(2).

In this case, the trial court exercised jurisdiction under MCL 712A.2(b)(1) and (2), which provide:

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

[2] The trial court may also exercise jurisdiction if petitioner proves the allegations alleged in the petition at trial. *Ferranti*, 504 Mich at 15.

her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent . . ., is an unfit place for the juvenile to live in. . . .

Respondent is correct that he did not specifically admit to assaulting Varnado. Instead, he pleaded *nolo contendere* to allegations that Varnado had reported to law enforcement that respondent had perpetrated domestic violence against her in the presence of EV. To the extent that respondent is arguing that a *nolo contendere* plea is insufficient to establish jurisdiction, he is mistaken.

A respondent in a child protective proceeding may make a plea of admission or no contest. MCR 3.971(A). MCR 3.971(D)(2) provides in part that, "If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true." In this case, the trial court relied on two September 2018 police reports. The September 11, 2018 police report indicated that Varnado had contacted law enforcement to report that, on that day, respondent "showed up at her home unannounced and there was an altercation between them which resulted in [respondent] punching her in the right cheek with a closed fist." The September 13, 2018 police report indicated that Varnado reported that, also on September 11, 2018, respondent had "punched her one time in the face when she was in the front seat of the car" and that EV was in the backseat of the vehicle when this occurred. Because this evidence was sufficient to establish support for a finding that jurisdiction was proper under MCL 712A.2(b)(1), respondent's claim that his plea was invalid because it lacked a factual basis is without merit. Consequently, the trial court did not abuse its discretion by denying respondent's motion to withdraw his plea.

IV. DISPOSITION

A. ADMISSION AND EXCLUSION OF EVIDENCE

Respondent next makes a myriad of arguments relating to evidence that was excluded or admitted during the termination hearing. We find that none of respondent's arguments have merit.

1. STANDARDS OF REVIEW AND GENERAL PRINCIPLES OF LAW

"We review for abuse of discretion a trial court's decision to admit or exclude evidence[.]" *In re MU*, 264 Mich App 270, 276; 690 NW2d 495 (2004). We review a trial court's interpretation and application of court rules de novo. *Ligons*, 490 Mich at 70. Court rules are interpreted pursuant to their plain meaning. *Henry v Dow Chem Co*, 484 Mich 483, 495; 772 NW2d 301 (2009). The term "shall" denotes mandatory action, and the term "may" denotes discretionary action. *Walters v Nadell*, 481 Mich 377, 383; 751 NW2d 431 (2008).

a. EXCLUSION OF DR. LENNOX FORREST'S TESTIMONY

Respondent argues that the trial court improperly refused to allow Dr. Lennox Forrest, who performed an independent psychological evaluation on respondent, to testify at the termination hearing because respondent failed to timely disclose that Dr. Forrest was a prospective witness.

After a termination petition is filed, the "[p]arties shall make disclosures as detailed in MCR 3.922(A) at least 21 days prior to the termination hearing and have rights to discovery consistent with that rule." MCR 3.977(F)(2). Under MCR 3.922(A), certain "materials are discoverable as of right in all proceedings and shall be produced no less than 21 days before trial, even without a discovery request[.]" This includes "the names of all prospective witnesses," MCR 3.922(A)(1)(c), "a list of all prospective exhibits," MCR 3.922(A)(1)(d), "the reports or findings of all experts," MCR 3.922(A)(1)(f), and "the curriculum vitae of an expert the party may call at trial," MCR 3.922(A)(1)(j). "Failure to comply with [MCR 3.922(A)(1)] may result in such sanctions in keeping with those assessible under MCR 2.313." MCR 3.922(A)(4).

In this case, the termination hearing commenced on November 23, 2020. Thus, under MCR 3.922(A)(1), respondent was required to name Dr. Forrest as a prospective witness and provide petitioner with a copy of Dr. Forrest's curriculum vitae by November 2, 2020. Respondent did not do so even though respondent had appointments with Dr. Forrest in October 2020 for purposes of completing the evaluation. At the November 23, 2020 termination hearing, respondent's counsel indicated for the first time that he intended to call Dr. Forrest as a witness and to move for admission of the psychological evaluation, which was drafted on November 11, 2020. More than two months later, respondent's counsel provided petitioner with the psychological evaluation. Petitioner indicated at the March 1, 2021 termination hearing that the only information that it had about Dr. Forrest was his name. Respondent failed to provide a valid justification for any of the delays. Thus, because respondent failed to comply with MCR 3.922(A)(1), the trial court was permitted to preclude Dr. Forrest from testifying. See MCR 3.922(A)(4); MCR 2.313(C)(1) ("If a party fails to provide information or identify a witness . . ., the party is not allowed to use that information or witness to supply evidence . . . at a hearing . . . unless the failure was substantially justified or is harmless"). Given the circumstances, we find that the trial court's decision did not fall outside the range of reasonable and principled outcomes.

Moreover, even if the trial court erred by precluding Dr. Forrest from testifying, respondent would not be entitled to relief because the trial court admitted Dr. Forrest's psychological evaluation into evidence, and explicitly considered the evaluation when deciding whether to terminate respondent's parental rights. More importantly, after reviewing the evaluation, it is difficult to conceive how Dr. Forrest's testimony would have affected the outcome of the proceeding given the evidence at issue in this case. Therefore, any error associated with precluding Dr. Forrest from testifying was harmless. See MCR 2.613(A). See also *People v Lukity*, 460 Mich 484, 496; 596 NW2d 607 (1999) (holding that an "error is not a ground for reversal unless after an examination of the entire cause, it shall affirmatively appear that it is more probable than not that the error was outcome determinative") (quotation marks omitted).

b. ADMISSION OF DOCUMENTS

Respondent next argues that the trial court "erred in failing to equally enforce its rulings pertaining to discovery and turnover of postpetition evidence."

Before the termination hearing commenced on November 23, 2020, respondent's counsel complained that the caseworker had provided him with 89 pages of documentation. When asked by the trial court if respondent's previous counsel had been provided with the documents, respondent's counsel responded, "I was not able to determine that." Thus, respondent has failed to establish a discovery violation with respect to these documents. Although the trial court admitted other documents that were produced after November 2, 2020, we fail to see how admission of these documents affected the outcome of the proceeding. Indeed, the documents related to respondent's progress with the case service plan in the weeks following the filing of the termination petition. Thus, the documents were relevant, and respondent does not explain or rationalize how he was unfairly surprised by the information contained in the reports, which were drafted by his caseworker and one of his therapists. Additionally, given respondent's consistent lack of sufficient progress and poor attitude throughout the lengthy proceeding, we conclude that any error with respect to these documents was harmless.

c. SMITH'S REBUTTAL TESTIMONY

Respondent next argues that the trial court improperly permitted Smith to testify as a rebuttal witness even though she was not named on petitioner's witness list.

While respondent is correct that Smith was not named as a prospective witness, "[t]rial courts should not be reluctant to allow unlisted witnesses to testify where justice so requires, *particularly with regard to rebuttal witnesses*." *Pastrick v Gen Tel Co of Mich*, 162 Mich App 243, 245; 412 NW2d 279 (1987) (emphasis added). This Court has held that, "[i]f reasonable conditions can allow the testimony of the undisclosed witness to be admitted without prejudice to the opposing parties, then we see nothing wrong with permitting the witness to testify subject to those conditions." *Id*. at 246. Importantly, "[n]o party is prejudiced and the [fact finder] is afforded a fuller development of the facts surrounding the case." *Id*.

We conclude that the trial court did not abuse its discretion by permitting Smith to testify as a rebuttal witness. Smith's testimony related to the number of times that the children had come into care, respondent's lack of involvement with previous case service plans, the children's placement with their foster parents, and the reason for DHHS's decision not to place the children with respondent's mother. Smith's testimony was offered to rebut respondent's testimony that the children came into care through no fault of his own and that the children remained in care because of DHHS's deficits. Respondent cannot claim prejudice because Smith's testimony was consistent with evidence that was presented at previous hearings, and her testimony mostly focused on the previous proceedings and the children's placement with their foster parents. Moreover, given that the evidence overwhelmingly supported terminating respondent's parental rights, any error in permitting Smith to testify was harmless.

Respondent also repeatedly notes that Smith was in the courtroom while other witnesses were testifying even though the trial court had entered a sequestration order at the beginning of the

termination hearing. Although respondent cites MRE 615, he does not cite additional authority, he does not explain or rationalize why Smith would not be considered "an officer or employee" of DHHS, and he does not explain or rationalize how Smith's presence in the courtroom affected her testimony. See *People v Meconi*, 277 Mich App 651, 654; 746 NW2d 881 (2008) ("The purposes of sequestering a witness are to prevent him [or her] from coloring his [or her] testimony to conform with the testimony of another[.]") (Quotation marks and citation omitted.) Consequently, respondent has abandoned this argument and we need not consider it. See *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008).

B. REASONABLE EFFORTS

Respondent next argues that DHHS did not make reasonable efforts toward reunification because (1) it refused to acknowledge respondent's status as the victim—as opposed to the perpetrator—of domestic violence and therefore failed to offer him appropriate services, (2) it failed to provide respondent with sufficient services to address his "parenting skills" barrier, and (3) it created excessive restrictions on respondent's ability to parent. We disagree.

"Under Michigan's Probate Code, the [DHHS] has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017). "As part of these reasonable efforts, the [DHHS] must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *Id.* at 85-86. This includes updating the parent's treatment plan throughout the case and giving the parent reasonable time to make changes and benefit from the services before the termination of parental rights. *In re Mason*, 486 Mich 142, 156; 782 NW2d 747 (2010). "If a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent." *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000) (quotation marks and citation omitted).

With respect to respondent's claim that DHHS failed to acknowledge that he was a victim of domestic violence and therefore failed to provide him with appropriate domestic violence services, the record supports that respondent and Varnado had an extensive history of engaging in domestic violence.[3] Respondent was offered services to address his history of domestic violence with Varnado both in the 2016 proceeding and this proceeding. After the children were returned to Varnado's care in relation to the 2016 proceeding, respondent continued to have extensive contact with Varnado despite agreeing to only communicate with her about the children. In September 2018, there were additional allegations of domestic violence, which resulted in the children being removed from respondent's care again.

Although respondent completed services related to domestic violence and anger management during the proceeding in this case, he continued to blame Varnado and only took

[3] The record establishes that petitioner was aware that respondent had been a victim of domestic violence. Indeed, at a March 2019 hearing, Varnado admitted on the record that she had threatened to have respondent killed. Varnado also admitted at a review hearing that she had been physically violent toward respondent in the past. Thus, DHHS was aware that respondent was a victim of domestic violence to some extent.

minimal responsibility for the impact that the domestic violence had on the children. Respondent's domestic violence counselor Jessica DeJarnatt testified that respondent did not qualify as a victim of domestic violence. This was based on statements that were made during the time that DeJarnatt treated respondent from December 2018 through January 2020. DeJarnatt ultimately discharged respondent because of his failure to take any accountability for his actions.

Although respondent argues that DeJarnatt's conclusion was erroneous, the record establishes that HV would remind respondent of the abuse that he had inflicted upon Varnado. Additionally, respondent was rude, aggressive, and hostile toward caseworkers and service providers during the proceeding. One of the caseworkers noted that respondent used "body language to exhibit threats of force," including slamming his fist on a table during a meeting. One case aide stopped supervising visits because she did not feel safe around respondent. Respondent also denied being afraid of Varnado and told DeJarnatt that he "could break [Varnado] in two if [he] wanted to." In August 2020, respondent threatened to "blow" the foster father's "brains out" and threw items in the presence of the children. This occurred after respondent told Dr. Baird that he never loses his temper and after respondent had attended classes and individual counseling to address his issues with anger management.[4] Therefore, the record establishes that, although respondent was offered and took advantage of extensive services to address his history of domestic violence and his issues with anger management, he failed to benefit from the services.

Next, respondent argues that he was not provided with adequate services to address his parenting skills. During the proceeding, respondent was referred to the Early Childhood Attachment Program and to the Trauma Informed Parenting Class. Respondent only minimally participated in these services, and the Early Childhood Attachment therapist noted that respondent appeared to be "distrustful" of her. Respondent was also provided supervised parenting time, and case aides were present to assist him. Although respondent struggled with controlling the children's poor behavior during parenting time, respondent denied that he required assistance with parenting and was quick to disregard suggestions. Dr. Baird opined that insight and willingness to address issues is required to be an effective parent. Given respondent's inability or unwillingness to do so, we conclude that it is unlikely that respondent would have benefitted from additional services.

Respondent also argues that DHHS interfered with his ability to parent by refusing to place the children with respondent and by suspending his visitations with the children. For the reasons already discussed, it was appropriate for the trial court to remove the children from respondent's care. It was also proper to restrict some of respondent's conversations with the children and to suspend respondent's visits because respondent's interactions with the children were concerning and because respondent continued to question the children about their foster parents after he was told to stop doing so. See MCR 3.965(C)(7)(a); MCL 712A.13a(13) (permitting suspension of

[4] Although respondent argues that the individual therapy was unexpectedly terminated by the therapist, the record does not support this. Indeed, the record establishes that respondent often failed to attend his appointments and that he was not benefitting from therapy because he did not want to address his anger issues.

parenting time where visitation is harmful to the children).[5] Importantly, before the trial court entered the December 2020 order suspending respondent's parenting time, the trial court reviewed several videos of respondent's parenting time and noted concern over respondent's behavior and lack of ability to control the children. At the termination hearing, the children's therapist agreed that respondent's visits with the children were harmful to them.

In sum, given that respondent failed to uphold his "commensurate responsibility" to engage in and benefit from the services offered by DHHS, see *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012), we are not persuaded that he would have fared better if DHHS had offered other services, see *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005). While respondent blames his lack of progress on the level of animosity DHHS exhibited against him, the fact of the matter remains that respondent failed to benefit from the myriad of services he was offered. We therefore conclude that the trial court did not clearly err by determining that DHHS made reasonable efforts to promote reunification. See *id*. at 541-543 (applying a clear error standard of review to challenge reasonableness of services).

C. STATUTORY GROUNDS

Respondent next argues that the trial court clearly erred by finding clear and convincing evidence supporting the statutory grounds cited in support of termination. We find no clear error warranting reversal.

"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). "We review the trial court's determination for clear error." *Id*. "A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made," with the reviewing court "defer[ring] to the special ability of the trial court to judge the credibility of witnesses." *In re LaFrance*, 306 Mich App 713, 723; 858 NW2d 143 (2014).

We conclude that the trial court did not clearly err by finding that grounds for terminating respondent's parental rights to the children were established under MCL 712A.19b(3)(g). MCL 712A.19b(3)(g) authorizes termination under the following circumstances:

> The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child[ren] 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[ren]'s age[s].

In this case, respondent was unable to provide proper care and custody to the children when they were removed from his care in October 2018 because he was living with Varnado, with whom he had an extensive and lengthy history of domestic violence. During the proceeding, respondent

[5] The trial court also could have suspended respondent's parental rights in December 2020 based solely on the filing of the termination petition. See MCL 712A.19b(4) (permitting suspension of parenting time after the filing of a termination petition).

completed domestic violence services, an anger management class, and a budgeting class to address these barriers. Respondent also participated in individual therapy. However, respondent never accepted responsibility for his role in the domestic violence between himself and Varnado, and respondent only took minimal responsibility for the impact that witnessing domestic violence had on HV.

Although respondent vehemently denies that he ever perpetrated domestic violence against Varnado, the record is replete with evidence that respondent acted in an intimidating and aggressive manner in the presence of caseworkers and service providers during the proceeding. This included swearing, raising his voice, and using intimidating body language. Respondent did so despite being informed that intimidation is a form of abuse. Perhaps most notably, in August 2020, respondent threatened to "blow" the children's foster father's "brains out" in the presence of the children. While respondent notes that this was in response to the children's allegations of abuse in the foster home, respondent's explosive reaction to this information demonstrates his inability to regulate his emotions and behavior.[6] Importantly, this occurred after respondent attended anger management classes and individual therapy.

Moreover, respondent was unemployed at times during the proceeding and moved multiple times. Caseworkers often noted that they were unable to obtain verification of respondent's income, and respondent had issues with creating a budget despite being provided assistance from the caseworkers. Respondent never had independent housing during the proceeding and instead lived with family members, including his mother who had "a very long history of police engagement[.]" Caseworkers opined that respondent did not have any plans for caring for the children if they were returned to his care full time.

Respondent also sometimes missed parenting times and struggled with effectively parenting the children throughout the proceeding. Specifically, respondent failed to discipline the children or acknowledge their behaviors, which were aggressive and inappropriate at times. The foster parents had difficulty regulating the children's behavior in the hours following parenting time. Respondent also inappropriately questioned the children about the foster home even though it was distressing to the children. The children's therapist opined that respondent did so either because he did not understand the children's emotional needs or because he was jealous of the foster parents, with whom the children were bonded. The children were aware that respondent did not like the foster parents and believed that they had to choose between respondent and the foster parents. In August 2020, respondent threatened to kill the children's foster father and threw items in a fit of rage in the presence of the children. Respondent did so despite the fact that the domestic violence between himself and Varnado had traumatized HV. At times, the children expressed that

[6] CPS investigated the allegations of abuse, and the allegations were not substantiated. Although respondent notes that HV alleged that the foster parents hit the children and that EV alleged that the foster parents called them "the n-word," evidence supports that HV's statement was based in part on the leading questions that respondent had asked her. The children's therapist testified that HV had a tendency to say things that were not true in an effort to please others as a result of her trauma and fear of abandonment. A caseworker also noted that EV was laughing when she made the disclosure about the foster parents and that HV denied that the name calling had occurred.

they did not want to visit with respondent, would indicate that they did not like him, and would run from the room. In December 2020, the trial court suspended respondent's parenting time because of concerns for the children's well-being.

The children's therapist testified that HV required therapeutic parenting and treatment because she had been "very developmentally traumatized." There is no indication that respondent would be able to provide this to HV or that he would be able to prevent EV from being exposed to trauma. Indeed, respondent believed that the children would be "fixed" once they were returned to his care and that DHHS and the foster parents were causing the children trauma. Given this evidence, it is unlikely that respondent would appropriately parent the children or provide HV with the mental health treatment that she required. Thus, the record establishes that respondent was unable to provide proper care and custody at the time of termination despite being "financially able to do so[.]"

Furthermore, there is no evidence that respondent would have been able to provide proper care and custody within a reasonable time given the ages of the children. Respondent demonstrated a lack of progress during the lengthy proceeding. Given the lack of evidence during the proceeding that respondent would be able to regulate his emotions, engage in healthy relationships, effectively parent the children, and maintain stable housing and employment, it is unlikely that he would be able to provide proper care and custody within a reasonable time. Indeed, respondent repeatedly denied responsibility and blamed others. At the time of termination, HV was nearly eight years old and EV was 4-1/2 years old. The children had spent a vast majority of their young lives in care and neither child had been in respondent's care for 29 months. Because the children required consistency and permanency, the trial court's finding that termination of respondent's parental rights was proper under MCL 712A.19b(3)(g) does not leave us with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).[7]

D. BEST INTERESTS

Respondent argues that the trial court erred by finding that termination of his parental rights was in the children's best interests. We disagree.

"The trial court must order the parent's rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). We review the trial court's best-interest determination for clear error. *Id.*

This Court focuses on *the children*—not the parents—when reviewing best interests. *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000). "In making its best-interest determination, the trial court may consider the whole record, including evidence introduced by any

[7] Because we have concluded that at least one ground for termination existed, we need not specifically consider the additional grounds upon which the trial court based its decision. *In re HRC*, 286 Mich App at 461. However, we have considered them and conclude that termination was also proper under MCL 712A.19b(3)(c)(*i*) and (j).

party." *In re Medina*, 317 Mich App 219, 237; 894 NW2d 653 (2016) (quotation marks and citation omitted).

> [T]he court should consider a wide variety of factors that may 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. The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption. [*In re White*, 303 Mich App at 713-714 (quotation marks and citation omitted).]

Although the record supports that respondent was bonded with the children at times, the record also supports that the children did not consider respondent to be a parental figure. Instead, they would sometimes run out of the room during parenting time, and HV would disconnect phone calls with respondent. The children sometimes expressed that they did not wish to attend visitation with respondent. Additionally, respondent behaved in an aggressive manner toward service providers and the children's foster parents in the children's presence. Respondent also inappropriately and aggressively questioned the children, which caused them distress and eventually led to respondent's visits being suspended in December 2020. Respondent was never able to have unsupervised parenting time with the children, who had been out of his care for 29 months at the time of termination. Thus, to the extent that respondent shared a bond with the children at the time of termination, the record supports that the bond was not healthy for the children. See *In re CR*, 250 Mich App 185, 196-197; 646 NW2d 506 (2002), overruled on other grounds by *In re Sanders*, 495 Mich 394 (2014) (holding that the fact that there was a "serious dispute" on the record concerning whether the respondent had "a healthy bond" with her children supported that termination of her parental rights was in the children's best interests).

Additionally, the parent-child bond is only one factor for the trial court to consider. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). As discussed above, respondent has an extensive history with CPS and failed to benefit from his case service plan in relation to this proceeding. Respondent consistently demonstrated a lack of progress and an inability to provide stability and permanency to the children. Meanwhile, the children were doing well in their placement, and their foster parents were educated on how to parent children who had experienced trauma. The record supports that the children were bonded to their foster parents, and that the children turned to them for support, guidance, and comfort. Importantly, the children had been in the care of the foster parents for a vast majority of their lives, and the foster parents were interested in adopting the children. For these reasons, we conclude that the trial court did not clearly err by finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Michael F. Gadola
/s/ Brock A. Swartzle
/s/ Thomas C. Cameron