# STATE OF MICHIGAN

# COURT OF APPEALS

UNPUBLISHED
April 26, 2012

In the Matter of R. L. VINCENT, Minor.

No. 307202
Van Buren Circuit Court
Family Division
LC No. 10-016738-NA

Before: BECKERING, P.J., and OWENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent father appeals as of right from the trial court's order terminating his parental rights to the minor child. The court determined that two statutory grounds supported termination[1], MCL 712A.19b(3)(g) and (h), and that termination was in the minor child's best interest, MCL 712A.19b(5). We affirm the trial court's determination that two statutory grounds supported termination but vacate its best-interest determination and remand for further consideration of that issue.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been established by clear and convincing evidence and that termination is in the best interests of the child. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). We review a trial court's decision terminating parental rights for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). 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. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

[1] We note that the Department of Human Services petitioned to terminate respondent's parental rights under MCL 712A.19b(3)(g), (h), and (j); however, petitioner acknowledged at the termination hearing that § 19b(3)(j) had not been established by clear and convincing evidence. The trial court did not address § 19b(3)(j) upon terminating respondent's parental rights.

The trial court determined that a statutory basis for termination of respondent's parental rights was established under MCL 712A.19b(3)(g) and (h), which state the following:

> (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:
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> * * *
>
> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
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> (h) The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, 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.

We conclude that the trial court did not clearly err in finding that §§ 19b(3)(g) and (h) were established by clear and convincing evidence. When the trial court terminated respondent's parental rights in October 2011, the minor child's mother's parental rights had been terminated, and respondent would remain incarcerated until at least 2014. Thus, respondent's imprisonment would deprive the minor child of a normal home for two years in the future. See MCL 712A.19b(3)(h); *In re Perry*, 193 Mich App 648, 650; 484 NW2d 768 (1992). Furthermore, the minor child's great grandmother testified that she, not respondent and the minor child's mother, provided care and custody for the minor child before respondent became incarcerated. More specifically, she provided housing, food, and clothing for the minor child. Although respondent was employed by the National Guard, he did not financially contribute toward the minor child's care. Indeed, he stole $18,000 from the great grandmother. The great grandmother testified that respondent would play computer games between eight to ten hours per day instead of caring for the minor child. Respondent admitted that he played computer games "for the majority of the day." The great grandmother also testified that she would change the minor child's diapers—respondent changed the child's diapers "maybe a couple times." The great grandmother would also bathe the minor child because respondent did not keep the child clean enough.

Furthermore, the trial court entered several orders when respondent was incarcerated notifying respondent what he needed to do to retain his parental rights. Respondent failed to substantially comply with these orders.[2] Specifically, the court ordered respondent to

[2] We note that the trial court ordered respondent to, among other things discussed above, take education and counseling courses while in prison and send the minor child birthday cards. The trial court concluded that respondent did not do these things. This was clear error. The record establishes that respondent participated in education classes during incarceration. Respondent

communicate with the minor child by writing two letters each month and sending correspondence on holidays. Respondent did not fulfill the monthly letter obligation and did not send holiday communications. The court also ordered respondent to obtain employment while incarcerated and to provide support to the minor child. Although respondent obtained employment, he did not provide child support. Moreover, the court ordered respondent to participate in a prison program that serves children, i.e., the "Angel Tree" program; however, respondent failed to do so.

We recognize that respondent could provide proper care and custody for the minor child through placement with a relative. See *In re Mason*, 486 Mich 142, 161 n 11, 163-164; 782 NW2d 747 (2010). The record, however, evidences that respondent did not do so. After respondent's arrest and incarceration in late 2009, the minor child remained with the minor child's mother until removal from the mother's home in March 2010. The child's mother had substance-abuse problems and was on probation; yet, respondent did not have the child placed with another relative. Ultimately, the trial court placed the minor child with the child's maternal aunt and uncle. Respondent had no role in the placement.

Accordingly, we are not left with a definite and firm conviction that the trial court erroneously determined that respondent failed to provide proper care and custody for the minor child and that there was no reasonable expectation that he would be able to provide proper care and custody within a reasonable time considering the child's age. See MCL 712A.19b(3)(g)-(h).

In addition to determining that two statutory grounds supported termination of respondent's parental rights, the trial court also concluded that termination was in the child's best interest. See MCL 712A.19b(5). A court may terminate parental rights in lieu of placing a child with relatives if termination is in the child's best interest. *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999). Here, there is no evidence in the record that the trial court considered whether termination was in the child's best interest given the child's placement with his maternal aunt and uncle.

In *Mason*, our Supreme Court emphasized that a child's placement with a relative is "an explicit factor to consider in determining whether termination was in the [child's] best interests." *Mason*, 486 Mich at 164. Indeed, the court stated that "a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a), which expressly establishes that, although grounds allowing the initiation of termination proceedings are present, initiation of termination proceedings is not required when the children are 'being cared for by relatives.'" *Id.*

Later, in *In re Mays*, 490 Mich 993; 807 NW2d 307, 308 (2012), our Supreme Court reversed a judgment of this Court holding that a trial court did not clearly err in its best-interest analysis where the court did not consider the effect of the children's placement with a relative.

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was on waiting lists for both parenting classes and sex-offender counseling. Moreover, the minor child did not celebrate a birthday in the time period between the court's orders and the termination hearing to justify a birthday card from respondent. But, notwithstanding these clearly erroneous findings of fact, we still conclude that §§ 19b(3)(g) and (h) were established by clear and convincing evidence.

The Supreme Court opined: "The factual record in this case is inadequate to make a best interests determination. In particular, there is no evidence in the record that the trial court considered whether termination of the respondent's parental rights was appropriate given the children's placement with their maternal grandmother." *Id.*, citing *Mason*, 486 Mich at 164.

As in *Mason* and *Mays*, the factual record in this case is inadequate to make a best-interest determination. With regard to the minor child's best interest, the trial court simply opined as follows:

> The petitioner, the child's guardian ad litem and the caseworker all recommend termination of parental rights.
>
> It is doubtful [the minor child] even remembers his father and he is three years old and he needs and deserves permanence in an adoptive home. [The minor child] is very bonded with his foster parents and they have indicated a desire to adopt [the child].

Although the court considered the bond between the minor child and the child's maternal aunt and uncle, the court plainly failed to consider whether termination was appropriate given the child's placement with relatives. Therefore, we vacate the court's best-interest determination and remand for further consideration of this issue in accordance with *Mason* and *Mays*.

Finally, respondent argues that he was denied due process of law. While respondent has provided this Court with citation to appropriate legal authority concerning the principles of due process, respondent does not explain in his appellate brief how he was denied due process, i.e., he does not provide an adequate factual basis for his argument. An appellant may not merely leave it to this Court to search for a factual basis to sustain or reject his position and to unravel and elaborate his arguments. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 424; 576 NW2d 667 (1998). Furthermore, respondent did not raise this due-process issue in his statement of questions presented. Accordingly, this issue is abandoned, and we decline to address it. See *Wilson*, 457 Mich at 243; *Great Lakes*, 227 Mich App at 424; *Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 553; 730 NW2d 481 (2007) (issues are abandoned when not raised in statement of questions presented).

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Amy Ronayne Krause