

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of G. A. WRIGHT, JR, Minor.

UNPUBLISHED  
November 21, 2013

No. 316481  
Saginaw Circuit Court  
Family Division  
LC No. 08-031471-NA

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Before: WHITBECK, P.J., and WILDER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent, G. Wright, appeals as of right the trial court's order terminating his parental rights to his minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

**I. FACTS**

**A. THE CHILD'S 2008 REMOVAL**

The trial court first removed the child in April 2008, less than a month after he was born. At that point, Wright had pending charges for domestic violence and aggravated assault, and the child's mother, T. Shorter, had tested positive for drugs while she was pregnant with the child. The trial court eventually returned the child in May 2009.

**B. THE CHILD'S 2011 REMOVAL**

In February 2011, the Department petitioned the trial court to again remove the child, alleging that both parents engaged in substance abuse and domestic violence. The trial court conducted a termination hearing in April 2011. At the hearing, LeeAnn Barrett, a Child Protective Services worker, testified that Shorter told her that she and Wright had smoked crack cocaine late into the afternoon on February 14, put the child to bed, and continued to use cocaine throughout the evening and next morning. Barrett testified that Wright acknowledged that he had been smoking crack cocaine. Shorter testified that on February 15, she and Wright used cocaine, argued, Wright struck her, and she called the police.

The trial court found that clear and convincing evidence supported terminating Wright's parental rights, but determined that termination was not in the child's best interests.

### C. REVIEW AND PERMANENCY PLANNING HEARINGS

At a permanency planning hearing on July 5, 2011, Wright testified that he intended to address his substance abuse issues by participating in inpatient treatment at SHAR House. On December 22, 2011, the trial court found that Wright had made significant progress toward stability and remaining substance free.

However, Wright tested positive for cocaine in January 2012 and stopped consistently attending his parenting time in February 2012. Wright failed to attend the March 16, 2012 hearing. The trial court found that Wright was not making progress.

In April 2012, Jones testified that Wright had submitted an "exit letter" to Jones that appeared to be written by Aldena Goodspeed, the SHAR House outpatient therapist. The letter indicated that Wright had completed treatment with SHAR House. Goodspeed testified that the letter was altered and falsely stated that Wright met all of SHAR House's program requirements. Goodspeed testified that Wright had completed the inpatient part of treatment at SHAR House, but he was terminated from the outpatient part of treatment after he stopped attending. Wright testified that he had accidentally submitted a rough draft of a letter that he was helping Goodspeed to write. Goodspeed testified that Wright never spoke with her about drafting such a letter. The trial court found that Wright was not making progress.

In May 2012, the trial court found that Wright was having trouble maintaining stable housing and that he had missed parenting times since February. It ordered the Department to petition to terminate Wright's parental rights. However, in July 2012, the trial court judge disqualified herself on the basis of an ex parte communication with the Department. Ariane Dodak replaced Jones as the child's foster care caseworker, and the trial court no longer required the Department to petition to terminate Wright's rights.

In August 2012 and September 2012, Wright tested positive for cocaine. A test in November 2012 revealed trace levels of cocaine. In February 2013, Wright again tested positive for cocaine. In March 2013, the Department informed the trial court that it would petition to terminate Wright's parental rights.

### D. SECOND TERMINATION HEARING

At the termination hearing, Wright acknowledged that he had tested positive for cocaine and struggled with relapse. He testified that he had made progress on his substance abuse issues, had participated in an inpatient treatment program and halfway house, was attending AA and NA meetings, and was participating in psychiatric treatment. Wright submitted a letter from his therapist that indicated that he was an active participant in treatment and continued to demonstrate progress, despite his relapse.

According to Dodak, Wright had made progress and continued to participate with AA and NA, but in her opinion he had not benefitted from services because he continued to test positive for substances. She had offered Wright another opportunity to complete an inpatient substance abuse program, but he refused. Her only concern about Wright's ability to parent was his substance abuse. She did not think that Wright would be able to resolve his substance abuse problem in the near future.

Dodak testified that the child had been in foster care for two years and needed permanency. Dodak also testified that Wright interacted well with the child during parenting visits, but that he had missed several parenting visits and, “because of the no shows, the child was having severe behaviors, [and] disturbances in school . . . .”

## II. STATUTORY GROUNDS

### A. STANDARD OF REVIEW AND ISSUE PRESERVATION

This Court reviews for clear error the trial court’s factual findings and determinations on statutory grounds for termination.<sup>1</sup> A factual finding is clearly erroneous if the evidence supports it, but we are definitely and firmly convinced that the trial court made a mistake.<sup>2</sup>

### B. LEGAL STANDARDS

The trial court may terminate a parent’s rights if it finds that clear and convincing evidence supports at least one statutory ground for termination.<sup>3</sup> MCL 712A.19b(3)(c)(i) provides that the trial court may terminate a parent’s rights if

[t]he 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.

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent’s rights if

[t]he 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.

And MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights if

[t]here 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.

### C. APPLYING THE STANDARDS

Wright contends that the trial court erred when it determined that clear and convincing evidence supported terminating his parental rights under these statutory grounds because he made significant progress with his service plan. We disagree.

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<sup>1</sup> MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

<sup>2</sup> *In re Mason*, 486 Mich at 152.

<sup>3</sup> *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000).

We conclude that the trial court properly found that Wright's continued relapses, after over two years of trying to address his substance abuse problems, supported terminating Wright's parental rights. Courts may consider a parent's failure to demonstrate significant progress with a service as evidence that a parent will not be able to provide proper care and custody and that the child will be harmed if returned to the parent's home.<sup>4</sup>

Here, the trial court removed the child from Wright's care in February 2011 after he engaged in substance abuse and domestic violence. Wright participated in substance abuse treatment at SHAR House, but he did not successfully complete it. Wright also participated in AA, NA, and therapy. However, by February 2013—two years after the child's removal—Wright was still testing positive for controlled substances. Dodak testified that Wright had refused to consider further inpatient treatment. Given the length of time that Wright had to address his substance abuse issues and his failure to do so, we are not definitely and firmly convinced that the trial court made a mistake when it determined that Wright was unlikely to rectify his substance abuse issue within a reasonable time.

Wright also contends that the trial court erred because there was no evidence that his substance abuse affected his ability to parent. We disagree.

We conclude that the trial court properly determined that Wright's substance abuse would affect his ability to parent. Every parent must demonstrate that he or she can meet his or her child's basic needs, once that child comes into the trial court's jurisdiction.<sup>5</sup> The trial court may consider the parent's substance abuse when determining whether it is reasonably likely that the child will be harmed if returned to the parent's home.<sup>6</sup> The trial court may also consider the potential emotional harm to the child caused by the parent's conduct or capacity.<sup>7</sup>

Here, the circumstances of the child's removal in 2008 and 2011 both linked Wright's substance abuse to domestic violence. Further, when Wright began testing positive for substances again during the pendency of this case, he began to fail to exercise his parenting times. Dodak testified that this failure in turn negatively affected the child, who began exhibiting "severe behaviors" and acting out in school as a result. Wright admitted that the child should not be returned to his care while he was using substances. We are not definitely and firmly convinced that the trial court erred by finding that Wright's substance abuse made it reasonably likely that the child would be harmed if returned to his care because the evidence linked Wright's substance abuse to domestic violence and instability.

Thus, we conclude that the trial court did not clearly err when it found that MCL 712A.19b(3)(c)(i), (g), and (j) supported terminating Wright's parental rights.

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<sup>4</sup> MCL 712A.19a(5); *In re Trejo Minors*, 462 Mich at 362-363.

<sup>5</sup> *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000).

<sup>6</sup> See *In re AH*, 245 Mich App 77, 87; 627 NW2d 33 (2001).

<sup>7</sup> *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

### III. THE CHILD’S BEST INTERESTS

#### A. STANDARD OF REVIEW

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 evidence on the whole record that termination is in the child’s best interests.<sup>8</sup> We review for clear error the trial court’s determination regarding the child’s best interests.<sup>9</sup>

#### B. LEGAL STANDARDS

The trial court may consider all the evidence available to determine the children’s best interests.<sup>10</sup> To determine whether termination is in a child’s best interests, the 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.”<sup>11</sup> The trial court may also consider the parent’s visitation history and compliance with court-ordered plans, and the child’s well-being while in care.<sup>12</sup>

#### C. APPLYING THE STANDARDS

Wright asserts that the trial court clearly erred by finding that termination was in the child’s best interests because he had a strong and loving bond with the child. We disagree.

We recognize that the child was Wright’s only child, that Wright interacted positively with the child during parenting visits, and that Wright testified extensively about their loving bond. However, “[i]f a parent cannot or will not meet [his or] her minimum parental responsibilities, the needs of the child must prevail over the needs of the parent.”<sup>13</sup> We conclude that the trial court’s finding that terminating Wright’s parental rights was in the child’s best interests was not clearly erroneous.

The trial court primarily based its best-interests determination on the child’s need for stability. Here, the child had been in and out of foster care since he was less than a month old. At the time of the second termination hearing, the child had been in foster care for two

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<sup>8</sup> MCL 712A.19b(5); *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012); *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

<sup>9</sup> MCR 3.977(K); *In re Trejo Minors*, 462 Mich at 356-357.

<sup>10</sup> *In re Trejo Minors*, 462 Mich at 353.

<sup>11</sup> *In re Olive/Metts Minors*, 297 Mich App at 41-42 (internal citations omitted).

<sup>12</sup> See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App at 89.

<sup>13</sup> *In re Terry*, 240 Mich App at 28, quoting *In re AP*, 1999 PA Super 78; 728 A2d 375, 379 (1999).

consecutive years. Wright's unresolved substance abuse issues, the effect those issues had on his ability to exercise parenting time, and the effect that Wright's failure to exercise parenting time had on the child also supported the trial court's finding that Wright would be unable to meet the child's need for stability. Considering the evidence in the whole record, we are not definitely and firmly convinced that the trial court made a mistake when it found that terminating Wright's parental rights was in the child's best interests.

We affirm.

/s/ William C. Whitbeck

/s/ Kurtis T. Wilder

/s/ Amy Ronayne Krause