STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
May 5, 2011

In the Matter of K. JONES, Minor.

No. 300518
Wayne Circuit Court
Family Division
LC No. 05-446717

Before: BECKERING, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(*i*), (3)(g) and (3)(j). On appeal, respondent argues that this Court must reverse the trial court's order because she has been deprived of the right to an appeal by several missing transcripts. She also argues that the trial court erred when it terminated her parental rights because petitioner failed to establish any of the grounds for termination by clear and convincing evidence and because it was not in the child's best interest to terminate her parental rights. We conclude that respondent failed to demonstrate that she was deprived of the right to an appeal by missing transcripts and that there were no other errors warranting relief. For those reasons, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Although the child at issue in this appeal was not born until 2010, the present termination case has its origins in a petition that the Department of Human Services (the Department) filed in September 2005. Respondent, who was 32 at the time, had her ninth child in June 2005. The child tested positive for marijuana at birth. The Department petitioned for the child's removal from respondent's care, along with the removal of eight siblings, who were from one to 17 in age. In addition to the allegation involving the positive drug test, the Department alleged that respondent did not have suitable housing or utilities for her nine children and was neglecting their medical and educational needs. The Department also noted that respondent had been the subject of 16 neglect complaints dating back to 1989—of which seven had been substantiated—and that she had received in-home services, parenting classes, money management classes, educational support, payment of utilities, and housing services after each complaint. The Department also listed the names of the six men who were the legal or putative fathers of the nine children.

At a preliminary hearing, a witness for the Department testified that respondent lived in a two-bedroom home that had only two beds for everyone. She stated that the home was roach infested and had no other furniture. In addition, respondent had had her electricity shut off and was receiving utilities illegally. The witness noted that the baby tested positive for marijuana and stated that the three oldest children, including one who was missing at the time, were not in school.

Respondent testified at a later hearing and waived her right to have a trial to determine whether her children fell within the provisions of the juvenile code. She admitted that she and her baby both tested positive for marijuana at his birth. She also admitted that she had been involved with the Department in the past. Respondent testified that her home was roach infested and admitted that one of her children had been repeatedly "excluded" from school for fighting. The court found that the admissions established by a preponderance of the evidence that the children came within the provisions of the juvenile code and, as such, it ordered the children to be made temporary wards of the court.

In October 2005, the trial court accepted the Department's proposed service plan. The plan required respondent to attend therapy, attend parenting classes, submit to substance abuse assessment, take weekly drug screens, attend sessions designed to improve her literacy and job skills, to have a legal source of income, and submit to a psychological evaluation and cooperate with the clinician's recommendations.

For the remainder of 2005 through 2006, respondent repeatedly failed to comply with her scheduled drug screens. Respondent would often turn in her screens late, and she tested positive for marijuana on days when she complied with the scheduling requirements. In addition, the caseworkers had problems with some of the children running away from their placements to be with respondent. There was also evidence that respondent helped her oldest daughter evade the caseworkers. A caseworker testified that the problems were getting serious—particularly respondent's refusal to inform them about the whereabouts of her children—and that the problems posed a risk to the children.

At a December 2006 hearing, respondent testified that she had not been complying with the drug screens because she had to "drop" for two people. Respondent admitted that the marijuana was not making her smarter, not solving her problems, and not paying her bills. When asked where she gets the money for her marijuana, respondent explained: "I hang out." She also admitted that she had only worked for one month in the last four years.

In April 2007, the Department petitioned the court to terminate respondent's parental rights to six of respondent's children. The Department also asked the court to terminate the parental rights of the children's fathers. In the petition, the Department alleged that respondent had not benefited from her drug counseling and was not consistent with her drug screens. It also alleged that she failed to obtain suitable housing and employment.

The trial court held a termination trial in December 2007. Deborah Rice testified that children became wards in October 2005 and had never been returned to respondent's care. Rice stated that respondent completed the ordered clinic, parenting classes, psychological and psychiatric evaluations, and completed her therapy sessions and substance abuse counseling. However, she noted that respondent completed her substance abuse counseling in December

2006 and then tested positive for marijuana in January 2007. She also tested positive for marijuana in September 2007 and October 2007. Rice said that respondent only completed 34 of the 51 drug screens requested. In addition, although ordered to retake the substance abuse program, respondent stopped attending in March 2007 and did not complete the program. Since October 2007, respondent was required to submit four additional screens, but only submitted two screens.

Rice also testified that respondent had not maintained suitable housing as required by the service plan. She explained that respondent had obtained housing, but it had an illegal electricity hook-up and no meter. Rice stated that respondent did work at Taco Bell from May 2007, but that she was asked to leave on October 27, 2007. As such, she did not have a source of income as required under the service plan. Rice stated that it was her opinion that respondent had had plenty of time and services to come into compliance, but had not been able to and would not be able to within the foreseeable future.

The court continued the termination trial in May 2008. Respondent testified that she completed the therapy and counseling portions of her service plan and made a good faith effort to obtain employment. Respondent admitted that she was fired from Taco Bell and, after she got fired, she was unable to pay her rent. Respondent also admitted that she did not have safe and suitable housing and could not find such housing because she had no job. However, she believed that she would be welcome at her grandmother's home, which is where two of her children were currently placed, if the children were returned to her. She said she loved her children and wanted to plan for them and have them all live together with her.

At the conclusion of the proofs, the court found that there was clear and convincing evidence to terminate the parental rights of the fathers and that it would be in the children's best interests to terminate the fathers' parental rights. However, the court found that respondent substantially complied with her service plan and that there was not clear and convincing evidence that established any of the proffered grounds for terminating her parental rights. The court also found that it would clearly not be in the children's best interests to terminate respondent's parental rights. Instead, the court concluded that respondent should participate in drug counseling and continue to submit to drug screens and participate in a work program.

The court held another hearing in July 2008. At the hearing, a caseworker indicated that respondent had not been providing drug screens and had not provided documentation that she was participating in the work program. The court scheduled the next hearing for July 2008. At a hearing held in August 2008, the Department's lawyer noted that the court ordered respondent to get an immediate drug screen at the July hearing, which then tested positive for marijuana.

The court held another hearing in October 2008. A caseworker reported at the hearing that respondent did not submit any drug screens since the last hearing. And the children's lawyer stated that respondent had admitted to using marijuana again. Indeed, a caseworker testified that respondent had not completed a drug screen for her agency in approximately a year. [The positive test from July was ordered by the court, not the agency.]

In February 2009, the court took additional evidence. Mary Corace testified that she was responsible for providing services to respondent and five of her children. She said that respondent gave a drug screen on January 6, 2009, that was positive for marijuana. She also testified that respondent's continued involvement with the children appears to generate negative feelings in them toward their foster parents. She noted that respondent's drug abuse counseling was terminated early and that she did not provide any documentation that she had a legal source of income and has not kept in contact with the agency. Corace stated that she believed respondent was not committed to reunification.

At the close of the hearing, the court noted that it had given respondent a chance for reunification after the last termination trial, but that she had not "sustained" "her efforts at reunification" since the trial. The court also acknowledged that there was now testimony that her interference with the placements is causing the children emotional harm. The court stated that it was concerned that respondent was not using her opportunity to seek reunification, but rather appeared to be content with the status quo. For these reasons, the court ordered the Department to amend and refile its petition for termination.

The Department filed a new petition for termination in March 2009. The court set a trial date for June 2009. However, the trial court postponed that date to August and then to September 2009 as a result of problems with the notice.

The trial court held a termination trial on September 1, 2009. Corace testified that respondent was given a service plan back in November 2005, and that the current plan was substantially the same plan. Corace stated that, although respondent completed her parenting classes, she did not believe that respondent had benefited from those classes. She explained that respondent did not control the children at visitation, caused the children to become "frenzied about their environment"—that is, about the way that they were being cared for in foster care, and would sometimes focus all her attention on one child at visitation. Corace said she referred respondent to parenting classes, but she was terminated from the program in June 2009 for failing to attend scheduled sessions.

Corace also testified that respondent was repeatedly referred to substance abuse therapy, but did not enroll in some programs and failed to complete the one program in which she did enroll. Respondent was also required to submit random drug screens and out of the 35 required in 2008, she submitted three. Of the three actually submitted, all were positive for marijuana. In 2009, she was required to submit 50 screens, but only submitted 4 and of those four, two were positive for marijuana.

Corace stated that, because respondent did not submit negative drug screens or drug screens with decreasing concentrations of marijuana, she had not been permitted to attend visitations since February 2, 2009. She also said that there was no evidence that respondent had obtained suitable housing or a legal source of income and she did not enroll in a GED program as the court had required. Corace testified that she felt that her agency had made every effort to help respondent, but that it was now important to give the children some stability in their lives by terminating her parental rights.

On January 20, 2010, the court entered two orders terminating respondent's parental rights to 7 of her 9 children.

On March 1, 2010, respondent gave birth to the child, K.J., at issue in the present case. On April 29, 2010, the Department filed a petition to terminate respondent's parental rights to K.J. In the petition, the Department alleged that K.J. tested positive for drugs and that respondent admitted to having used drugs during her pregnancy.

The court held a hearing on the new petition on June 17, 2010. At the hearing, the Department's lawyer indicated that respondent appeared to be avoiding service. A case worker also stated that K.J. had been placed with the father. The lawyer for the child stated that the father had indicated that he had had a one-night-stand with respondent and did not want anything more to do with her. The court then ordered additional efforts to serve respondent, which included publication, and set the termination trial for August 2010.

On August 3, 2010, the trial court held a termination trial. The court took judicial notice of its prior findings and conclusions of law and took judicial notice of all the evidence presented at the hearings in the prior case. The court then accepted the birth records from K.J.'s delivery at the hospital.

Mychael Foster testified that he was the investigator assigned to the case. Foster said he contacted respondent by phone, but that she was not at the hospital when he arrived. However, she admitted that she used drugs while pregnant. Respondent did identify the father and told Foster that the father was taking full responsibility for the baby. Foster said that respondent told him that she did not have any provisions for K.J., did not have a job, and did not have any housing that she wanted him to assess. Rather, although interested in being involved with K.J., she seemed to promote the father as the proper placement for the child. Foster stated that respondent did not have any prenatal care for K.J. Finally, Foster said that the baby needed stability considering her young age and that he thought it was in her best interests to have respondent's parental rights terminated.

At the close of proofs, the court found that the Department had proved by clear and convincing evidence grounds for termination under MCL 712A.19b(3)(b)(*i*), (g),and (j). The court then found that, because respondent had a history of interfering with her other children's progress, it would be in K.J.'s best interests to terminate respondent's parental rights.

The court entered an order terminating respondent's parental rights to K.J. on August 5, 2010. The court ordered that K.J.'s father have sole physical and legal custody of her on September 22, 2010, and dismissed the petition on January 21, 2011.

This appeal followed.

II. MISSING TRANSCRIPTS

A. STANDARDS OF REVIEW

Respondent first argues that this Court cannot fairly assess whether the trial court erred in terminating her parental rights because the transcripts for two hearings—and possibly many more—are missing. These transcripts might have revealed a "basis for appeal" and might have "illustrated" respondent's compliance with the court ordered substance abuse treatment. This Court reviews de novo the proper interpretation of court rules. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). This Court also reviews de novo questions of law, such as whether missing transcripts have deprived a party of his or her right to an appeal. *Ross v Auto Club Group*, 481 Mich 1, 7; 748 NW2d 552 (2008).

B. ANALYSIS

This Court is a court of review "that is principally charged with the duty of correcting errors." *Up & Out of Poverty Now Coalition v Michigan*, 210 Mich App 162, 168; 533 NW2d 339 (1995). This Court generally relies on a review of the lower court proceedings, as found solely in the lower court record, to determine whether there was error warranting relief. See MCR 7.210(A); *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002) ("This Court's review is limited to the record established by the trial court, and a party may not expand the record on appeal."). The lower court record includes the transcript of any testimony or other proceeding in the case appealed from. MCR 7.210(A)(1). But it is the responsibility of the appellant to secure the filing of the transcripts with this Court. MCR 7.210(B)(1)(a). This Court will not consider a claim of error that arises from a proceeding for which the appellant has not secured a transcript. See *McLemore v Detroit Receiving Hosp and University Med Ctr*, 196 Mich App 391, 401-402; 493 NW2d 441 (1992) (stating that the failure to provide this Court with a transcript precluded review of the claim of error); *Brown v Jojo-Ab, Inc*, 191 Mich App 208, 210; 477 NW2d 121 (1991) ("[W]e will not conclude that the trial court erred in making a ruling where the appellant has failed to secure a transcript of the hearing at which that ruling is made."). Even if a transcript cannot be obtained from the court reporter or recorder, the appellant must nevertheless take steps to secure a "settled statement of facts to serve as a substitute for the transcript." MCR 7.210(B)(2).

In this case, respondent argues that she has been deprived of her right to appeal as a result of missing transcripts. Yet she admits that she has not attempted to create a settled statement of facts for the missing transcripts, as required by MCR 7.210(B)(2).[1] Instead, she invites this Court to reverse the trial court's order terminating her parental rights on the basis of pure

[1] Respondent acknowledged that MCR 7.210(B)(2) "provides the procedure for dealing with the unavailability of transcripts," which includes a requirement that the appellant submit "a settled statement of facts as a substitute" for the missing transcripts. Nevertheless she admits that "there was no settling of the record." Instead, she essentially argues that she did not have to comply with the requirements because "a stipulation or settlement of the facts could never take the place of the actual hearing transcripts."

speculation—speculation that the missing transcripts would reveal a serious appealable error or show that respondent had made progress that precluded termination of her parental rights. In order to establish the right to relief, respondent needed to do more than offer speculation; she needed to show that the missing transcripts prejudiced her appeal. See *Brown v Forrester Constr Co*, 372 Mich 204, 213-214; 125 NW2d 315 (1963) (stating that the defendant in that case was not entitled to relief because it failed to show that an irregularity in the transcription prejudiced its appeal).

After reviewing the existing record, we agree that some hearing transcripts appear to be missing, but it is not clear that there was a transcript for every date that respondent requested and it is equally unclear whether any missing transcripts prejudiced her appeal. The parties' discussions on the record suggest that there were no hearings on some of the dates. For example, respondent requested transcripts for hearings allegedly held on December 6 and 8, 2006. However, there is no record of any such hearings and, at a hearing held on December 18, 2006, the lower court noted—without objection—that the last review hearing was in August 2006. Likewise, although the lower court apparently scheduled proceedings for June 6, 2007, August 2, 2007, August 16, 2007, and October 2, 2007, the orders and statements made on the record suggest that the proceedings scheduled on those dates were postponed. Hence, for those dates, it is possible that there is no record. Even for those dates where there is clear evidence that a transcript for a hearing is missing, there is also evidence that suggests that any information to be found in the transcript would not benefit respondent's appeal. For example, after the January 1, 2006, and June 9, 2008 hearings, the court entered orders that suggested that respondent had not made progress or was non-compliant with the service plan. In the case of the July 31, 2008 hearing, there is record evidence that the court ordered respondent to take an immediate drug screen after the hearing, which in itself suggests that respondent was not complying with the court-ordered drug screens, and that the screen came back positive.

Given this record, it is evident that respondent could have followed the procedures required under MCR 7.210(B)(2) to establish whether there was a hearing held on any of the given dates and, for those that were actually missing a transcript, she could have established a settled statement of fact. By failing to determine which transcripts were actually missing and to establish a settled statement of fact for those that were missing, respondent deprived this Court of the ability to assess this claim of error. For that reason, we conclude that respondent waived any claim that missing transcripts deprived her of her right to a meaningful appeal. *McLemore*, 196 Mich App at 401-402.

Even if respondent had not waived this claim of error, the error would not automatically warrant reversal. This Court could remand the case to the lower court in order to determine whether any transcripts were missing and to create a settled statement of facts as to the proceedings for which transcripts were missing. See, e.g., *People v Vaughn*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 292385, issued December 10, 2010) (noting that the Court had remanded the matter to the trial court in order to reconstruct the missing portion of the record and to reconcile discrepancies between the register and the actual events below). Likewise, where it is evident that the surviving record is sufficient to allow meaningful evaluation of her claims of error, respondent will not be entitled to any relief. See *Elazier v Detroit Non-Profit Housing Corp*, 158 Mich App 247, 250; 404 NW2d 233 (1987) ("[B]efore a court grants a new trial based upon a failure of the transcription process, it must determine that the existing record

and any possible settlement or reconstruction of the record is insufficient to allow evaluation of the specific allegations of error."); *People v Audison*, 126 Mich App 829, 835; 338 NW2d 235 (1983) ("If the surviving record is sufficient to allow evaluation of defendant's claims on appeal, defendant's right is satisfied.").

As already noted, there is evidence that the lower court held some hearings for which there are no transcripts. However, all the allegedly missing transcripts involved evidence concerning respondent's compliance with the service plan applicable to the case involving her parental rights to her older children and not to the child at issue here. And there are indications in the record that suggest that the reports and evidence presented at those hearings showed that she was not complying with that service plan. In addition, the record contains numerous reports about respondent's progress as well as the progress of her children, and she has not presented any evidence that the reports contained in the lower court record do not accurately reflect her compliance with the service plan. Finally, respondent's primary claim with regard to the missing transcripts is that the transcripts might have shown that she was making progress or that she substantially complied with her prior service plan and, therefore, should be given an opportunity to receive services before having her parental rights to K.J. terminated. Yet, even if the missing transcripts might have shown some progress on respondent's part, the record is sufficient for this Court to evaluate her claims that the trial court erred when it proceeded to terminate her parental rights to the child at issue here without ordering the Department to provide respondent with a new service plan and the opportunity to comply with that plan.

The trial court terminated respondent's parental right to K.J., in part, on the basis of her prior record of noncompliance with her case service plan—specifically with her inability to cease using marijuana—as well as evidence that she still did not have a job and did not have suitable housing. As for her inability to comply with her prior service plan, the trial court held two separate termination trials before it proceeded to terminate her parental rights to the children at issue in the prior case. At the trial that started in December 2007, the parties presented evidence concerning every aspect of respondent's compliance with the service plan, including a summary of her compliance with the trial court's order that she obtain drug abuse counseling and submit to random drug screens. At the September 2009 termination trial, the court took additional evidence that updated the court as to respondent's level of compliance since the earlier termination trial. Thus, the evidence from these two trials included a complete history of respondent's compliance with her service plan throughout the period leading to the termination of her parental rights in the prior case. Accordingly, the evidence from these trials addressed the same evidence that might have been covered in the transcripts that were allegedly missing. Consequently, the lower court record is sufficient to evaluate any claim of error with regard to the order terminating respondent's parental rights to K.J. And, for that reason, respondent is not entitled to any relief. *Elazier*, 158 Mich App at 249-250.

III. TERMINATION

A. STANDARDS OF REVIEW

Respondent next argues that the trial court clearly erred when it determined that there was clear and convincing evidence that established grounds for termination. Specifically, for MCL 712A.19b(3)(b)(*i*), she argues that the trial court erred when it found that smoking marijuana while pregnant constitutes physical injury or abuse of the child because there was no evidence

that the child was harmed by the marijuana. Likewise, for MCL 712A.19b(3)(g), she argues that the trial court clearly erred when it concluded that there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time considering the child's age. K.J., she maintains, is "fairly young," "not even of school age yet," as such, this Court surely "cannot be convinced that [K.J.'s] age" will be a barrier to respondent "being able to provide proper care and custody." As for MCL 712A.19b(3)(j), she argues that the trial court erred because there was no evidence that her marijuana use actually harmed her children; she never appeared "high" at court, there was no evidence that she used marijuana in front of the children or that it affected their relationship, and there was no evidence that it contributed to her lack of housing or unemployment. Finally, she argues that the trial court erred when it found that it would be in K.J.'s best interests to have respondent's parental rights terminated. Specifically, she notes that there was evidence that her other children were "unusually bonded to her" despite the length of time that they were in foster care and they even "ran away from their placements to be with her." And it would not hurt to give K.J. the opportunity to "experience such love."

This Court reviews de novo the proper interpretation and application of statutes. *Granger Land Dev Co v Dep't of Treasury*, 286 Mich 601, 608; 780 NW2d 611 (2009). This Court reviews for clear error a trial court's findings that one or more statutory grounds for termination have been established. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). This Court also reviews for clear error the trial court's finding that it is in the child's best interests to terminate a parent's parental rights. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). A finding is clearly erroneous when this Court is left with the definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich at 152.

B. ANALYSIS

Once a trial court properly exercises jurisdiction over a child, see MCL 712A.2(b); *In re Utrera*, 281 Mich App 1, 15-16; 761 NW2d 253 (2008), the court must terminate a parent's parental rights to the child if it finds by clear and convincing evidence that at least one statutory ground for termination under MCL 712A.19b(3) has been met and finds that termination is in the child's best interests. MCL 712A.19b(5). In the present case, the trial court found that the Department had established three statutory grounds for termination by clear and convincing evidence: MCL 712A.19b(3)(b)(*i*), (g), and (j).

A parent's parental rights may be terminated under MCL 712A.19b(3)(b)(*i*) if the parent physically injured or abused the child and "there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home." Here, the trial court apparently found that respondent's use of marijuana while pregnant physically injured or abused K.J. This Court has held that a parent's decision to expose a child to illegal narcotics in utero can constitute grounds for asserting jurisdiction over a child. See *In re Baby X*, 97 Mich App 111, 115-116; 293 NW2d 736 (1980) (stating that a child has a legal right to begin life with a sound mind and body and "a newborn suffering narcotics withdrawal symptoms as a consequence of prenatal maternal drug addiction may properly be considered a neglected child within the jurisdiction of the probate court."). Nevertheless, prenatal neglect will not normally be sufficient standing alone to terminate a parent's parental rights. *Id.* at 116 ("We pass no judgment upon whether such conduct will suffice to permanently deprive a mother of custody. Such custody determinations will be resolved at the dispositional phase where prenatal conduct

will be considered along with postnatal conduct."). Because there was no evidence that respondent would *continue* to physically abuse or injure K.J.—through exposure to illegal narcotics or otherwise, the trial court clearly erred in finding that MCL 712A.19b(3)(b)(*i*) had been established by clear and convincing evidence. And the Department concedes as much on appeal.

Nevertheless, a parent's parental rights may also be terminated if 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." MCL 712A.19b(3)(g). In this case, a caseworker testified that he contacted respondent shortly after K.J. birth and she admitted that she did not have suitable housing, did not have a job, and did not have the resources to care for the child. In addition, respondent admitted to having smoked marijuana while she was pregnant and there was evidence that she and K.J. both tested positive for marijuana shortly after K.J.'s birth. This was clear and convincing evidence that respondent had already failed to provide proper care and custody to K.J.

The trial court also took judicial notice of the evidence submitted in respondent's prior termination case. This evidence established that respondent had abused marijuana since at least June 2005, when her last child tested positive at birth for marijuana, and that she repeatedly failed to benefit from drug abuse counseling and repeatedly failed to provide court-ordered drug screens. It also included evidence that respondent had not been able to obtain suitable housing or employment for any significant length of time during the pendency of her last case, which spanned several years. This evidence supported a finding by clear and convincing evidence that respondent would be unable to provide proper care and custody to K.J. within a reasonable time considering her age.

On appeal, respondent argues that termination under MCL 712A.19b(3)(g) was inappropriate because the evidence showed that K.J. was a newborn infant and, for that reason, the court could afford to give her time to benefit from the provision of new services and show that she could provide proper care and custody at some point in the future. We believe the opposite to be true; because K.J. is so young, she has an even stronger need for permanency and stability. K.J. should not be made to languish in the foster system for years, as did her half-siblings, while respondent struggles again—possibly for years—with whether she really wants to shoulder the burden of being a responsible parent. The evidence in this case showed that respondent did not benefit from more than four years of services offered in an effort to preserve her parental rights to seven of her nine older children. And, although her last child was just months old when that child came into the system, she could not bring herself to comply with the court's orders over those four years in order to return him to her care. This evidence, along with the fact that the exact same problems persisted during respondent's pregnancy and after K.J.'s birth, convincingly established that there was no reasonable likelihood that respondent was willing or able to provide proper care and custody to K.J. within a reasonable time. See, e.g., *In re JL*, 483 Mich 300, 330-331; 770 NW2d 853 (2009) (noting that a parent's inability to benefit from the recent provision of services in a prior case can be relevant to a respondent's situation and ability to parent in a pending case). Accordingly, the trial court did not err when it found that MCL 712A.19b(3)(g) had been established by clear and convincing evidence.

The trial court also found that MCL 712A.19b(3)(j) had been established by clear and convincing evidence. Under that subsection, a trial court may terminate a parent's parental rights where 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." MCL 712A.19b(3)(j). The evidence that supported a finding that MCL 712A.19b(3)(g) had been met also supported the same finding as to MCL 712A.19b(3)(j).

The evidence showed that respondent did not have suitable housing and did not have the resources to adequately provide for K.J. It also showed that respondent continued to abuse marijuana. Evidence from the prior case showed that her other children came under the court's jurisdiction, in part, after respondent's home was found to be roach infested, without proper utilities, and inadequately furnished. Although she argues that there is no evidence that her abuse of marijuana has directly harmed her children, the fact that she refused to cease using marijuana even though it could result in the termination of parental rights is powerful evidence that she placed a higher value on the use of marijuana than she did on caring for her children or being a parent. The evidence showed that respondent was persistently unwilling or unable to place the needs of her children above her own desires. When considered as a whole, this evidence clearly and convincingly established a reasonable likelihood that K.J. would be harmed if returned to respondent's home. MCL 712A.19b(3)(j).

Once the trial court properly found that at least one ground for termination had been established, the trial court had to terminate respondent's parental rights if it also found that termination was in the child's best interests. See MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich App 341, 355-356; 612 NW2d 407 (2000). Here, the trial court did not clearly err when it found that the Department had presented clear and convincing evidence that termination was warranted under MCL 712A.19b(3)(g) and (j). As such, if it did not clearly err when it found that termination was in K.J.'s best interests, this Court must affirm the order.

At the termination trial concerning K.J., respondent's counsel argued that the court should not find that termination was in K.J.'s best interests. She noted that the child was quite young and that the child was currently placed with the father, which appeared to be a good placement. Given these facts, K.J. was in no current danger and the court could decline to terminate respondent's parental rights so that she could develop a relationship with K.J. while working towards solving her personal problems. In this way, the court could protect K.J. while not foreclosing the possibility that respondent might eventually be able to parent the child. However, the court rejected that argument on the basis of respondent's prior conduct. The evidence from the prior termination proceedings demonstrated that respondent's continued involvement with her older children injected instability into their lives and prevented the children's foster parents from establishing a stable home environment. There was also evidence that respondent aided her oldest child in evading the court's jurisdiction until she reached the age of majority and might have encouraged some of the younger children to run away from their foster parents. This was strong evidence that respondent's involvement—even on a limited and supervised basis—in K.J.'s life could be detrimental to her well-being. As such, we cannot conclude that the trial court clearly erred when it found that it would be in K.J.'s best interests to terminate respondent's parental rights. MCL 712A.19b(5).

There were no errors warranting relief.

Affirmed.

/s/ Jane M. Beckering
/s/ William C. Whitbeck
/s/ Michael J. Kelly