

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* A R HENDRIX, Minor.

UNPUBLISHED  
July 19, 2016

No. 331184  
Wayne Circuit Court  
Family Division  
LC No. 14-516557-NA

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Before: STEPHENS, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

The circuit court terminated respondent-father's parental rights to his six-year-old daughter, AH, pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We discern no error in the court's conclusions that respondent had not adequately complied with nor benefitted from his case service plan and that termination was in the child's best interests. Accordingly, we affirm.

I. BACKGROUND

The Department of Health and Human Services (DHHS) took AH into care in spring 2009, after Child Protective Services (CPS) investigated several reports of drug abuse, domestic violence, and child neglect in the home respondent-father shared with his girlfriend, AH's mother. The DHHS initially placed AH in the care of her maternal grandmother. When that placement proved inappropriate, the DHHS moved AH into the care of her maternal great-uncle and aunt.

The circuit court initially took jurisdiction over AH based on her mother's plea of admission to the charges raised in the child protective petition. Two months later, respondent participated in an adjudication trial telephonically from an inpatient substance abuse treatment center. Respondent admitted that he lacked suitable housing in which to raise AH and was then unable to care for his child due to his drug addiction and because criminal domestic violence charges were then pending against him.

The court ordered respondent to cooperate with a service plan developed by the DHHS. Under this plan, respondent was required to submit to a psychological evaluation, participate in therapy focusing on substance abuse and domestic violence, appear for drug screens, attend parenting classes, visit regularly with his daughter, and secure a source of income and housing. Respondent's initial efforts at pursuing recovery were short lived. For at least the next five months, the DHHS caseworker was unable to locate respondent and he made no contact with the

worker or his child. The various providers assigned to assist respondent terminated services due to respondent's lack of contact.

At some point before May 20, 2015, respondent re-engaged. He attended and completed parenting classes and regularly visited AH under the supervision first of her grandmother and then of her great-uncle and aunt. These visits went well by all reports and respondent developed a bond with AH. Respondent submitted to a psychological evaluation. However, he did not follow through with the recommendations of the evaluator. Respondent did not regularly attend counseling for his substance abuse and domestic violence issues. He also failed to appear for several drug screens and tested positive at others. Overall, during the 20-month child protective proceedings, respondent either tested positive, or was deemed positive for failure to appear, 40 times. While respondent never secured a legal source of income, his grandmother allowed him to stay in an apartment connected to her home. Respondent subsequently cancelled four scheduled home visits, preventing the caseworker from assessing whether this home would be a suitable placement for the child.

Ultimately, the DHHS successfully petitioned for termination of both parents' rights to AH.<sup>1</sup> In relation to respondent, the court conceded that he had completed parenting classes and a psychological evaluation, but noted that he and the child's mother "really haven't done anything else" despite having 20 months to comply with the court's orders. The court cited respondent's unresolved substance abuse issues, failure to establish the suitability of his home, and inability to financially provide for AH in determining that statutory grounds for termination had been established. Despite that the child had been placed with relatives, the court found termination of respondent's rights to be in AH's best interests. Given the child's age, she required stability and permanence and her relatives were willing to adopt her. Moreover, the court noted, AH's bond with respondent need not be severed as the uncle indicated his willingness to foster the parent-child relationship. Respondent now appeals.

## II. STATUTORY GROUNDS

Respondent contends that insufficient evidence supported the statutory factors upon which the court's termination decision was based. Pursuant to MCL 712A.19b(3), a circuit court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

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<sup>1</sup> The child's mother has not appealed the termination of her parental rights.

In terminating respondent's parental rights, the court found clear and convincing evidence that:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

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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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(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

As found by the circuit court, the grounds that led to respondent's adjudication continued to exist at the time of the termination hearing and there was no reasonable likelihood that respondent would rectify these conditions within a reasonable time. Although respondent had entered an inpatient treatment center early in the proceedings, he did not continue services to address his heroin addiction. He was terminated from counseling based on poor attendance and continued to test positive or fail to appear for drug screens throughout the proceedings. Overall, respondent showed a complete lack of interest in achieving sobriety, supporting termination. See *Williams*, 286 Mich App at 272-273 (holding that unresolved addiction can form the basis of a termination decision even where the parent actively but unsuccessfully works toward sobriety).

Respondent also had not addressed his aggressive tendencies. Days before AH was taken into care, respondent physically assaulted his girlfriend in front of their child. The court ordered respondent to participate in domestic violence counseling and services were initiated but were cancelled because respondent failed to attend. The DHHS offered respondent additional opportunities to engage in such services, but respondent failed to follow through. The record therefore supports the circuit court's conclusion that respondent could not rectify this condition within a reasonable time and that termination was supported by factor (c)(i).

Termination was also supported under factor (g). While respondent completed parenting classes and developed a bond with AH during supervised visitation, he never provided financial or in-kind support nor did he earn unsupervised parenting time. When AH was removed from respondent's care, the family home was filthy and littered with hypodermic needles used to inject narcotics. Yet, respondent prevented the DHHS from assessing his residence (the same home he had previously shared with the child's mother) to ensure that he had rendered it suitable for his

child. Moreover, despite 20 months of services and no evidence that respondent was physically or intellectually incapable of maintaining employment, respondent still had not secured a legal source of income to provide for his child. These conditions, along with respondent's continued substance abuse and missed drug screens, demonstrated that respondent will not be able to provide proper care and custody within a reasonable time considering AH's age. See *In re LE*, 278 Mich App 1, 27-28; 747 NW2d 883 (2008) (holding that consistent failure to participate in drug screens can establish an inability to provide proper care and custody).

And respondent's lack of effort in overcoming substance abuse and domestic violence issues established the potential danger AH would face if returned to respondent's care, supporting termination under factor (j). Again, before AH was taken into care, her home was a gauntlet. Dirty needles were left within her reach, her parents were often too intoxicated to supervise her, and her father physically abused her mother in her presence. Respondent admitted these conditions but failed to cooperate with services to overcome his substance abuse and violent past. Absent any demonstration that respondent had rectified these conditions, the court had no choice but to find termination proper on this ground.

### III. BEST INTERESTS

Respondent contends that termination of his parental rights was not in AH's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *Moss*, 301 Mich App at 90. The lower court should weigh all the evidence available to it in determining the child's best interests. *Trejo*, 462 Mich at 356-357. Relevant factors in this consideration 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." *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). "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 701, 714; 846 NW2d 61 (2014). However, "a child's placement with relatives weighs against termination," and accordingly, "the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *Olive/Metts*, 297 Mich App at 43.

Both AH's bond with respondent as well as AH's placement with her great-uncle and aunt weighs against termination and the court gave due consideration to these facts. Even so, the court found termination to be in AH's best interests and we discern no error in this regard. Although respondent completed parenting classes and demonstrated appropriate behavior during parenting time, he never earned unsupervised visitation where he alone would be required to care for his child's needs. Accordingly, respondent's parenting ability is uncertain.

AH had been in the care of relatives for 20 months and given her young age, required permanence and stability. AH's great-uncle and aunt were willing and able to provide a permanent home for the child. They had provided financially and emotionally for AH for several

months, taking custody of AH after her maternal grandmother's home was deemed an unfit placement. Given the substance abuse of AH's parents, her aunt and uncle wished to adopt AH and provide for her permanently. AH's great-uncle even intended to allow AH to have a relationship with her parents following the adoption, supporting that this situation was in the child's best interests.

Moreover, respondent's failure to cooperate with services geared toward achieving sobriety and ensuring that he would not employ violence in his home weighed in favor of termination. Absent evidence that respondent was at least on the road to recovery, termination of his parental rights was in the child's best interests.<sup>2</sup>

We affirm.

/s/ Cynthia Diane Stephens  
/s/ Deborah A. Servitto  
/s/ Elizabeth L. Gleicher

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<sup>2</sup> Respondent argues that the circuit court's remark that "20 months is a really long time, and the Foster Care Review Board seems to target ones where things get drawn out this long" was evidence that its decision was based on outside pressure rather than respondent's performance during the proceedings. We are convinced after a careful review of the record that this comment related to the court's consideration of the child's need for permanency, stability, and finality, and was not a judgment that state agencies required termination under the circumstances.