STATE OF MICHIGAN

COURT OF APPEALS

In re HEMPHILL/POLLENITZ, Minors.	UNPUBLISHED November 28, 2017 No. 337441 Wayne Circuit Court Family Division LC No. 10-492588-NA
In re J. J. POLLENITZ, Minor.	No. 337442 Wayne Circuit Court Family Division LC No. 10-492588-NA

Before: METER, P.J., and BORRELLO and RIORDAN, JJ.

PER CURIAM.

In these consolidated appeals involving two minor children, JP and CH, respondent-mother and respondent-father appeal as of right an order terminating their parental rights. The court terminated respondent-mother's parental rights to JP and CH pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j), and terminated respondent-father's parental rights to JP pursuant to §§ 19b(3)(g), (h), and (j). Because we conclude that there were no errors warranting relief, we affirm in both appeals.

In June 2009, respondent-mother, then two-weeks shy of her fifteenth birthday, gave birth to JP. At the time, a third party, CP, was identified as JP's putative father. In January 2010, respondent-mother and JP came to the attention of Child Protective Services (CPS) when the police responded to a domestic altercation between respondent-mother and the maternal grandmother. At that time, it was discovered that respondent-mother and JP were living in the maternal grandmother's environmentally unfit home and that respondent-mother was not regularly attending school. In addition to the initiation of a delinquency action involving respondent-mother, a child-protective petition was filed seeking judicial intervention relative to her child. Eventually, respondent-mother and JP were removed from the maternal grandmother's home and enrolled in a mother-baby program designed to assist underage mothers.

CP failed to comply with ordered DNA testing to confirm his paternity of JP, and he never provided for JP's needs. CP died in October 2010, without having established paternity of JP.

When respondent-mother was admitted to the mother-baby program in July 2010, she was pregnant with CH. After CH's birth in January 2011, this child also was found to come within the court's jurisdiction. Respondent-mother was provided with a treatment plan and, by mid-2012, both JP and CH were in respondent-mother's care. Respondent-mother was regularly attending parenting classes and individual therapy.

By all indications, respondent-mother was making progress toward independently parenting her children. Tragically, however, on August 1, 2012, respondent-mother sustained a spinal-cord injury in a motor-vehicle accident, resulting in paralysis from the waist down. Respondent-mother was temporarily placed in a medically-induced coma and, consequently, was unable to care for either herself or her children. The children were placed with their maternal great-grandparents.

Four months after the accident, respondent-mother was able to attend a December 2012 hearing. At that time, respondent-mother admitted that because she was in a wheelchair, medicated, and devoting a great deal of time toward rehabilitation, she was unable to care for her children. Consequently, the permanency plan was amended to reflect petitioner's intent to pursue a guardianship for the children.

After the children's initial placement with their maternal great-grandparents, review hearings were held at frequent and consistent intervals. The children were doing well in their relative placement and respondent-mother was granted the full range of unsupervised parenting time with her children, including overnight visits. Respondent-mother participated in physical therapy, vocational rehabilitation services, recreational therapy, and individual therapy. She received transportation services and 24-hour attendant care. The Department of Health and Human Services (DHHS) monitored respondent-mother's rehabilitation efforts, but there were no child-related services required of her by DHHS.[1] Although the creation of a formal guardianship was frequently contemplated, it was never actually consummated. This "holding pattern" represented the status quo from approximately August 2012 until January 2014.

Respondent-mother's visits with her children were not necessarily smooth or uneventful. It was noted, for example, that respondent-mother made poor parenting decisions, she allowed her own caregivers to eat food so that none was available for the children, and she engaged in verbal altercations with her own mother and her attendants. The caregivers also expressed to the foster-care caseworkers their opinion that respondent-mother was not able to care for her children even with her own attendants assisting her and present in the home. In December 2013, a CPS referral was made when JP and CH both sustained minor injuries while in respondent-

[1] Following the automobile accident, the court found that the services provided by AKare, and funded through that applicable insurance, were sufficient; consequently, the court did not order DHHS or the private foster-care agency to provide additional services.

mother's care. Overnight visits were briefly suspended while the CPS investigation ensued. Eventually, in January 2014, the court ordered that respondent-mother begin taking in-home parenting classes.

In 2014, respondent-mother continued to participate in medical rehabilitation as well as DHHS services. Her progress toward reunification was inconsistent. Petitioner was concerned with respondent-mother's emotional stability. Her participation in therapy was so poor that it was difficult for the therapist to evaluate respondent-mother's emotional health.

In January 2015, respondent-mother failed to visit the children during the entire month. However, by April 2015, the children were staying with her from Thursday until Sunday each week. Respondent-mother was consistently taking them to school on Fridays and then returning them to their relative foster home. The children were clean and fed. The decision was made to expand respondent-mother's parenting time to assess her ability to respond to the increased responsibility and challenges.

In July 2015, petitioner concluded that respondent-mother had made significant progress on her treatment plan. Petitioner recommended that the children be returned to respondent-mother's care with Family Reunification Services in place. However, a Court Appointed Special Advocate (CASA) was not convinced that reunification was prudent. Also during this time, the foster mother (i.e., the children's great-grandmother) decided that then-six-year-old JP was no longer welcome in her home and she was no longer willing to provide placement for him. Eventually, the children were placed in a non-relative foster home on July 1, 2015. It was also discovered during this period that respondent-mother was pregnant with her third child. She concealed her pregnancy from petitioner's caseworker, but did disclose it to the CASA advocate. Respondent-mother gave birth to her third child, JT, in October 2015. Respondent-mother was uncertain who fathered her child.

On November 17, 2015, during parenting time with her newborn son, respondent-mother became upset when the caseworker admonished her about the preparation of a bottle for the infant. Respondent-mother threatened the caseworkers and, as a result, her parenting time was suspended and would remain suspended throughout the remainder of the case.

In April 2016, respondent-mother finally identified respondent-father as JP's biological father. At the time of this identification, respondent-father was in prison. Subsequent DNA testing confirmed that he was in fact JP's biological father. Respondent-mother later admitted that she suspected earlier that respondent-father was JP's father. She was, however, reluctant to disclose this suspicion because she did not want to jeopardize the help she was receiving from CP's family when they thought CP was JP's father.

On September 9, 2016, a petition was filed seeking termination of the parental rights of respondent-mother, respondent-father, and another individual who was CH's legal father. On February 23, 2017, the trial court entered an order terminating all of the respondents' parental rights to JP and CH. Thereafter, these appeals ensued.

Both respondents argue that the trial court erred when it concluded that there existed clear and convincing evidence to support a statutory ground for termination. They further argue that

the trial court erred in finding that termination of their respective parental rights was in the children's best interests. We disagree. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000), superseded by statute on other grounds as stated in *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). Once a statutory ground for termination has been established, the trial court must then find that termination of parental rights is in the child's best interests before it can terminate parental rights. MCL 712A.19b(5); *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). Whether termination of parental rights is in a child's best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App at 90. This Court reviews the trial court's findings under the clearly-erroneous standard. MCR 3.977(K); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been committed. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court terminated respondent-mother's parental rights pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j), which permit termination of parental rights when the following conditions are satisfied:

> (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:
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> (*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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> (*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, 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.

The trial court did not clearly err when it terminated respondent-mother's parental rights on these grounds.

The evidence established that JP had been in care for close to six years and CH had been in care for close to five years. We acknowledge that respondent-mother's August 2012 accident significantly interfered with the reunification efforts. There was an extended period during which respondent-mother was primarily devoted to spinal-cord rehabilitation efforts rather than any DHHS services. However, when respondent-mother was physically able to work toward reunification, her efforts were insufficient to establish that she would ever be able to safely and appropriately care for her children. Between 2014 and 2017, respondent-mother was offered a multitude of services to address the barriers to reunification. To the extent that respondent-mother participated in these services, she failed to benefit from them.

Although respondent-mother participated in therapy and domestic-violence counseling, she did not adequately address her anger-management issues and her emotional stability. Respondent-mother had a history of domestic violence involving family members and her boyfriend. She concealed much of this history from her caseworkers. In November 2015, she threatened to harm the caseworkers, leading to the suspension of visits with her children. Even during a psychological evaluation in 2017, respondent-mother presented with a disruptive attitude and initially would not cooperate with the evaluation. The evaluating psychologist questioned whether respondent-mother had the capacity "to develop a moral compass or inhibit her impulses to more closely coincide with the mores and values of society." Ultimately, he concluded that respondent-mother's behaviors threatened the children's safety. Respondent-mother's own treating therapist clearly did not believe that she had achieved an acceptable level of emotional stability; indeed, at the time of the termination hearing, the therapist was requesting an authorization for at least 12 more therapeutic sessions.

Respondent-mother's parenting skills had not improved despite having participated in multiple parenting classes. Respondent-mother frequently demonstrated poor judgment that increased the likelihood that the children would be harmed both physically and emotionally if left in her care. Respondent-mother admitted during a psychological evaluation that she illegally sold her prescription pain medication, and she conceded that she would have continued to do so if her physician had not become suspicious and discontinued prescribing the medication. Respondent-mother attempted to purchase a gun and apply for a concealed weapons permit, which she intended merely to "hide" in the home.[2] While not illegal, this demonstrated poor decision-making by a mother with three small children. Respondent-mother also subjected at least one of her children, JP, to emotional abuse. On one occasion she told JP that he would be arrested if he continued to hug her. After she became pregnant with her third child in 2015, respondent-mother told JP that she would have to give all of her love to the new baby. At the

[2] The evaluator noted that while respondent-mother could "verbalize that guns should be kept in a safe," respondent-mother merely stated that she was a "good hider" when asked how she would keep the children from the weapon.

time of the termination hearing, respondent-mother had not improved her parenting skills to the point where it would be safe to return the children to her care.

Finally, at the time of the termination hearing, respondent-mother did not have suitable housing for her children. She initially attempted to mislead the court by suggesting that she was soon to move into a five-bedroom home suitable for her children, when in fact the home was a group home in which the children would not be permitted to reside. Respondent-mother had to move into the group home because she could not afford independent housing and could no longer rely on financial assistance from her grandmother. Although there was some evidence that respondent-mother had signed a lease for a two-bedroom apartment in February 2017, only her name and that of her youngest son, JT, appeared on the lease. Neither JP nor CH was included.

Based on the foregoing, there was clear and convincing evidence to terminate respondent-mother's parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j). The evidence supported a finding that despite a multitude of services over a multiple-year period, respondent-mother had not adequately addressed the barriers to reunification. As a result of this failure, respondent-mother could not demonstrate that she was in a position to properly parent her children or that she would be able to do so within a reasonable time. Moreover, these unresolved issues would pose a risk of harm to the children if they were returned to respondent-mother's care.

Further, the trial court did not clearly err when it found that termination of respondent-mother's parental rights was in the children's best interests. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of the parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The court may consider several factors when deciding if termination of parental rights is in a child's best interests, including "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." *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). The court may also consider psychological evaluations, the child's age, continued involvement in domestic violence, and a parent's history. *In re Jones*, 286 Mich App at 131.

At the time of the termination hearing, the children had been in care for an inordinate amount of time. JP had been placed in three foster homes and was experiencing depression, sleep issues, and preoccupation with his living situation. In addition, CH's foster parents wanted to adopt him and he wanted to stay with them.

During the time the children were in care, respondent-mother was offered a multitude of services that she either failed to participate in or failed to benefit from. In addition to failing to address her parenting skills and emotional stability, respondent-mother had not obtained suitable housing. Respondent-mother was simply unable to properly parent her children and adequately provide for their needs.

Respondent-mother contends that the bond between her and the children weighed in favor of preserving her parental rights. However, respondent-mother's bond with her two children was

minimal. As a result of respondent-mother's threats toward caseworkers, the children had not even seen respondent-mother since November 2015. CH was bonded with his foster family and the family had expressed a desire to plan permanently for the child. At a psychological session, JP did not choose respondent-mother as a caregiver in a hypothetically-presented scenario. The evaluating psychologist noted that JP frequently sought the approval of other adults around him and that this conduct was indicative of a questionable bond with respondent-mother.

After having been in care for an extraordinary period of time, these two children were entitled to stability, permanency, and finality. Considering the circumstances, termination of respondent-mother's parental rights was warranted. Indeed, it was the only viable avenue that would ensure the consistency and finality necessary to foster the children's continued growth and development.

With respect to respondent-father, in addition to relying on §§ 19b(3)(g) and (j) as statutory grounds for termination, the trial court found that termination was also justified under § 19b(3)(h). Termination of parental rights is proper under § 19b(3)(h) when there exists clear and convincing evidence that (1) the parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding two years, (2) the parent has not provided for the child's proper care and custody, and (3) there is no reasonable expectation that the parent will be able to do so within a reasonable time considering the child's age. *In re Mason*, 486 Mich 142, 160-161; 782 NW2d 747 (2010). For purposes of § 19b(3)(h), the Supreme Court has looked to the date DHHS first sought termination as triggering the start date of the two-year period. *Id*. at 162.

JP was born in June 2009. Respondent-mother did not identify respondent-father as the biological father of JP until April 2016. Paternity testing confirmed that respondent-father was JP's biological father in September 2016. During these events, respondent-father was incarcerated and apparently unaware that he had fathered this child until the DNA results were revealed. The petition seeking to terminate respondent-father's parental rights was filed on September 9, 2016. Respondent-father testified that he had been incarcerated since January 2015 and would be eligible for parole, at the earliest, in November 2018. Respondent-father admitted, however, that there was no guarantee that he would be released in 2018. Indeed, it was possible that respondent-father, who was a third-offense habitual offender, would remain incarcerated until his maximum discharge date of November 2025. Respondent-father acknowledged that he could not presently care for his son. Thus, there was evidence elicited at the termination hearing to support the trial court's finding under MCL 712A.19b(3)(g) and (h) that respondent-father could not personally care for his child and that he was imprisoned for such a period of time that the child would be deprived a normal home for at least two years.

Respondent-father argues that the trial court erred when it terminated his parental rights because his own mother (i.e., the child's parental grandmother) was willing to care for JP. In *In re Mason*, 486 Mich at 160, the Michigan Supreme Court noted that "the mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination." The Court explained that an incarcerated parent could provide proper care and custody for a child by "voluntarily granting legal custody to his relatives" during a term of incarceration, noting that "a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a) . . . ." *Id.* at 163-164. After reviewing the record, however, we conclude

that there was insufficient evidence from which the trial court could find that respondent-father had made adequate arrangements for the care and custody of the child in his absence. He also failed to explain how he would support and house the child upon his release from prison.[3]

At the time of the termination hearing, respondent-father testified that he hoped JP could be placed with the paternal grandmother. The caseworker testified that respondent-father's "family" wished to care for JP. There was no definitive testimony that placement with the paternal grandmother was a foregone conclusion. Moreover, the caseworker testified that she was still recommending termination of respondent-father's parental rights despite the fact that family members had expressed an interest in planning for JP. She noted that respondent-father was to be incarcerated for at least two years and his future after that was still uncertain. Moreover, it is important to note that in both 2015 and 2017, the evaluating psychologist opined that the children had been in care for an unconscionable length of time, and JP had expressed distress over his unstable living situation. The trial court considered the fact that respondent-father had offered the paternal grandmother as a possible placement when making its decision, but ultimately determined that the statutory grounds had still been met by clear and convincing evidence. Under the unique facts in this case, we conclude that the trial court did not clearly err.[4]

Respondent-father further argues that termination of his parental rights was not in his child's best interests. However, respondent-father fails to make any specific legal argument, supported by facts and legal authority, challenging the trial court's conclusion that termination of his parental rights was in JP's best interests. Respondent-father cannot announce in a perfunctory fashion his position and then leave it up to this Court to rationalize the basis for the claim, or search for applicable authority to support his argument. *In re TK*, 306 Mich App 698, 712; 859 NW2d 208 (2014). In any event, upon review of the record, we conclude that the trial court did not clearly err in finding that termination of respondent-father's parental rights was in JP's best interests. JP had been in care for many years. He had never met respondent-father. JP also had special needs, including ADHD, depression, sleep issues, and insecurities regarding the

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[3] Further, the record discloses that the trial court did not terminate respondent-father's parental rights *solely* because of his current incarceration. The court further noted that respondent-father was a repeat offender, indeed a third-offense habitual offender, and he had demonstrated that he did not have the capacity to play a constructive parenting role in JP's life. This finding is supported by the psychologist's opinion that respondent-father lacked insight into the reasons for his incarceration and had a tendency to externalize responsibility for his current predicament. Thus, termination of respondent-father's parental rights was not merely based on respondent-father's present inability to parent his child because of his incarceration.

[4] Because only one statutory ground is necessary to support termination of parental rights, *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000), it is unnecessary to address respondent-father's contention that the trial court erred in finding that § 19b(3)(j) also supported termination of respondent-father's parental rights. We acknowledge, however, that there is no evidence that respondent-father was likely to harm his child if JP were placed with him upon his release. In *In re Mason*, 486 Mich at 165, the Court held that "just as incarceration alone does not constitute grounds for termination, a criminal history alone does not justify termination."

permanency of his living arrangements. The evaluating psychologist concluded that even if respondent-father were released on the first date he was eligible for parole in November 2018, "it would not be clearly contrary" to JP's best interests to terminate respondent-father's parental rights. Importantly, the psychologist noted that there had already been "an unconscionable delay in stability and permanence . . . ." Considering the extraordinary length of time JP had been in care, the trial court did not clearly err when it concluded that termination of respondent-father's parental rights was in the child's best interests.

Affirmed.

/s/ Patrick M. Meter
/s/ Stephen L. Borrello
/s/ Michael J. Riordan