# STATE OF MICHIGAN

# COURT OF APPEALS

*In re* S. A. CLARK, Minor.

UNPUBLISHED
March 15, 2018

No. 336834
Oakland Circuit Court
Family Division
LC No. 2015-829205-NA

Before: M. J. KELLY, P.J., and JANSEN and METER, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to her minor child pursuant to MCL 712A.19b(3)(b)(*i*), (j), and (k)(*iii*). We affirm.

Petitioner filed a petition requesting court jurisdiction over respondent's 10-month-old child after the child suffered second-degree scalding or chemical burns over approximately 10 percent of her body. The petition was later amended to request termination of respondent's parental rights to the child. It is undisputed that the burns occurred while the child was in respondent's sole custody at respondent's home in Pontiac, which is in Oakland County. At the time the initial petition was filed, the child was receiving treatment for the burns at Children's Hospital in Wayne County. Following a hearing, the trial court found that statutory grounds for termination were established under MCL 712A.19b(3)(b)(*i*), (j), and (k)(*iii*), and that termination of respondent's parental rights was in the child's best interests.[1]

## I. JURISDICTION

Respondent asserts that the Oakland Circuit Court lacked jurisdiction over this matter because the child was not physically present in Oakland County at the time the petition was filed, but rather, was at a hospital in Wayne County. We disagree.

[1] Four of respondent's other children were also involved in this proceeding. The court declined to terminate respondent's parental rights to three older children, who were living with their father. The court exercised jurisdiction over a younger child, who was born while this proceeding was pending, and scheduled a future hearing to determine that child's disposition. Only respondent's parental rights to her child SAC are at issue in this appeal.

" 'Whether the trial court had . . . jurisdiction is a question of law that this Court reviews de novo.' " *Bank v Mich Ed Ass'n-NEA*, 315 Mich App 496, 499; 892 NW2d 1 (2016), quoting *Rudolph Steiner Sch of Ann Arbor v Ann Arbor Twp*, 237 Mich App 721, 730; 605 NW2d 18 (1999).

MCL 712A.2(b) provides, in relevant part, that a court has jurisdiction

> in proceedings concerning a juvenile under 18 years of age *found within the county*:
>
> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. [Emphasis added.]

Respondent does not dispute that the child was burned while at her home in Pontiac, which is in Oakland County. She argues, however, that the Oakland Circuit Court lacked jurisdiction over this case because the child was hospitalized at Children's Hospital, which is in Wayne County, on the date the petition was filed. Respondent contends that the child was not "found within the county" when petitioner filed the petition.

As the parties observe, the phrase "found within the county" is not defined in the statute. That is, the statute does not specify whether the term "found" refers to the physical location of the child at the time an offense is committed by or against the child, or the physical location of the child at the time a petition is filed. MCR 3.926(A), however, defines the same phrase as follows:

> As used in MCL 712A.2, a child is "found within the county" in which the offense against the child occurred, in which the offense committed by the juvenile occurred, or in which the minor is physically present.

In denying respondent's motion to dismiss, the trial court relied on MCR 3.926(A) to conclude that the child was "found within the county" because the offense against the child occurred at her mother's home in Oakland County.

Respondent argues that the trial court erred by relying on the definition in MCR 3.926(A) because that rule, according to respondent, pertains only to transfers of jurisdiction to the county where a child resides. MCR 3.926 is indeed titled "Transfer of Jurisdiction; Change of Venue." In addition, subrule (B) of the provision pertains to the transfer of jurisdiction to the county where the child resides. Despite the title of the provision and the text of subrule (B), subrule (A) provides three definitions of "found within the county" and states that the definitions apply to that phrase as it is used in MCL 712A.2. Court rules are interpreted in the same manner as statutes, and courts must give effect to every word in accordance with its plain and ordinary meaning. *In re Leete Estate*, 290 Mich App 647, 655-656; 803 NW2d 889 (2010). Applying the

definition in MCR 3.926(A), it follows that a child is "found within the county" as used in MCL 712A.2(b) if an offense was committed against the child in that county.

Respondent cites *In re Mathers*, 371 Mich 516; 124 NW2d 878 (1963), to argue that physical presence in the county is required to establish jurisdiction under MCL 712A.2. In that case, a mother claimed that the Washtenaw County Probate Court lacked jurisdiction because the child had been born in Wayne County, the mother resided in Wayne County, and the child's legal residence was in Wayne County. *Id*. at 525-526. However, the child was physically present in Washtenaw County at the time the petition was filed. *Id*. at 527. The Supreme Court concluded that the phrase "found within the county" in a former version of MCL 712A.2 meant that the child's physical presence was sufficient to confer jurisdiction. *Id*. at 526. *In re Mathers* is inapposite to the case at hand. Although the decision supports that physical presence within a county at the time a petition is filed will suffice to confer jurisdiction within that county, it does not state that a child's physical presence at the time a petition is filed is the *only* test for jurisdiction, and the Court did not address whether jurisdiction exists in a county where an offense against the child occurred, even if the child was not physically present in that county at the time a petition was filed. Moreover, the decision in *In re Mathers* predates the adoption of the relevant definition in MCR 3.926(A). After that definition was adopted, this Court has applied it to determine that jurisdiction under MCL 712A.2 is proper in a county where an offense against a child was committed, regardless of the child's physical presence in the county at the time a petition is filed. See, e.g., *In re BZ*, 264 Mich App 286, 292; 690 NW2d 505 (2004).

The Oakland Circuit Court had jurisdiction over the petition because the offense against the child occurred in respondent's home in Oakland County. The trial court did not err by denying respondent's motion to dismiss with respect to this issue.[2]

## II. STATUTORY GROUNDS FOR TERMINATION

Next, respondent argues that the trial court erred by finding that a statutory basis for terminating her parental rights to the child existed. We disagree.

A statutory ground for termination must be established by clear and convincing evidence. MCL 712A.19b(3). This Court reviews for clear error the trial court's determination regarding statutory grounds for termination. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). "When reviewing the trial court's findings of fact, this Court accords

[2] We note that the trial court relied on an alternative basis for its decision—that the older children lived in Oakland County. "This Court will not reverse an order of the trial court if the court reached the right result for the wrong reason." *Grand Trunk W R, Inc v Auto Warehousing Co*, 262 Mich App 345, 354; 686 NW2d 756 (2004).

deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

The trial court found that statutory grounds for termination were established under MCL 712A.19b(3)(b)(*i*), (j), and (k)(*iii*), which permit termination under the following circumstances:

> (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
>
> (*i*) The parent's act caused the physical injury or physical or sexual abuse and the court finds that 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.
>
> * * *
>
> (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.
>
> (k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:
>
> * * *
>
> (*iii*) Battering, torture, or other severe physical abuse.

The trial court found that respondent abused the child and the abuse qualified as severe physical abuse under MCL 712A.19b(3)(k)(*iii*). There is no dispute that respondent was the only person caring for the child on the day of her injuries. Throughout the proceedings, respondent claimed that she could only speculate how the injuries occurred, and she maintained that they were accidental, although she accepted responsibility for the injuries.

Respondent pleaded guilty to third-degree child abuse, thereby supporting that she abused the child. The abuse also qualifies as severe. "Severe physical abuse" is not defined in MCL 712A.19b(3)(k)(*iii*), but " '[c]hild abuse' means harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy." MCL 722.622(g). "Severe" is commonly defined, in relevant part, as "very painful or harmful." Merriam-Webster's Collegiate Dictionary (11th ed). The evidence indicates that respondent caused second-degree burns over at least 10 percent of the small child's body. The burns were from a scalding hot liquid or chemical, and would have caused immediate pain to a degree that a person experiencing such pain would scream. Respondent recalled bathing the child because she had been suffering from diarrhea, but could not explain when or how the burns occurred. Dr. Mary Lu Angelilli opined that the injuries were intentional. She stated that no reasonable parent could possibly be unaware of how such drastic burns occurred on a baby under the parent's care for the day. She stated, "There's no possibility that anyone in this room would not notice something that would cause a ten percent plus burn to the baby's body." The trial court found

the doctor's opinion credible.[3] The extent and severity of the burns required the child to be hospitalized for 10 days in the burn program at Children's Hospital. Afterward, the child required additional care for her wounds and follow-up appointments. Considering all of these facts, we are not left with a definite and firm conviction that a mistake was made when the trial court found that respondent abused the child and that the abuse qualified as severe physical abuse. The court did not clearly err in finding that the record supported termination of respondent's parental rights pursuant to MCL 712A.19b(3)(k)(*iii*).

Because only one statutory ground need be established to terminate parental rights, and termination was appropriate under MCL 712A.19b(3)(k)(*iii*), it is unnecessary to consider the additional grounds on which the trial court based its decision. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

## III. BEST INTERESTS

Finally, respondent argues that the trial court erred in finding that termination of her parental rights was in the child's best interests. We disagree. This Court reviews for clear error the trial court's determination regarding a child's best interests. MCR 3.977(K); *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

"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." *Id*. "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court should weigh all the evidence available in determining a child's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Factors relevant to this determination include the child's bond to the parent; the parent's compliance with his or her case-service plan; the parent's parenting ability; the parent's visitation with the child; the child's need for permanency, stability, and finality; the advantages of a foster home over the parent's home; and the possibility of adoption. *Id*. at 713-714. A trial court may also consider a parent's history. See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

Respondent disputes the trial court's finding that there was no "credible evidence of a significant bond" between respondent and the child. The child was 11 months old when she was removed from respondent's care and she spent almost twice that length of time living with her foster family. The evidence indicated that respondent consistently visited the child, and the foster-care worker testified that respondent was attentive to the child, who called respondent

[3] Respondent disputes the trial court's finding that the injuries were intentional. She maintains that the injuries were accidental. She notes that she took the child to the hospital when she discovered blistering and she did not attempt to hide the injuries. We are required to accord deference to a trial court's credibility determination. *In re Fried*, 266 Mich App at 541. We will not second-guess the trial court's finding solely because it is at odds with respondent's self-serving claims.

"mom." The worker agreed that there was a bond between respondent and the child. But the child's father, MDC, also observed respondent with the child outside a supervised setting. According to MDC, respondent "was always tired" and "wasn't really a part of [her children] like that," so he encouraged respondent to take the child out to "try to get about with her." Given this evidence, the trial court did not clearly err in finding that, to the extent there was a bond between the child and respondent, it was not a "significant bond."

Respondent's demonstrated parenting ability also weighed in favor of finding that termination was in the child's best interests. The record demonstrates that respondent frequently changed residences. A psychologist, Sylvie Bourget, who evaluated respondent and three of her older children, opined that such moves had a detrimental effect on the children's stability. Respondent never told the older children's father, MJD, where she was moving, but called him for help repeatedly after moving. MJD recalled rescuing the children from unsuitable living arrangements on numerous occasions. Their son also missed too much school when he was with respondent. MJD ultimately obtained custody of the three older children, and respondent had not lived with them for six years.

Psychological testing of respondent revealed strong narcissism, as well as some depression and anxiety. Respondent would put her own needs ahead of her children's needs. She also displayed lack of insight and poor decision-making by failing to recognize how the child had been injured and by allowing MDC into her life after he had been abusive. Bourget testified that there were negative behavioral and developmental consequences for children exposed to domestic violence. Respondent claimed she was working toward becoming a better person for her children, citing counseling and parenting classes she began shortly before the dispositional hearing. But as petitioner argues, these short-term steps have not demonstrated that respondent can consistently provide long-term care for the child given her psychological disposition to put her own needs first, run from problems, and make poor decisions.

The child was 2-1/2 years old at the time of the dispositional hearing. She had been in foster care for more than half her life. The child was at an age where she required stability, which respondent could not provide.

Although respondent was employed and had a three-bedroom duplex with functioning utilities, her prior home had been so filthy at one point that the bathroom was soiled with dog excrement. At the time of the child's injuries, respondent's home lacked a refrigerator, did not have suitable beds for respondent's other children, and was not baby-proofed. Respondent also smoked in her home in the presence of her children. In contrast, the child was doing well with her foster family, who were interested in adopting the child. The trial court also considered the opinions of experts, Bourget and the guardian ad litem, who recommended that the child not be returned to respondent's care. Considering all the facts in the record, we are not left with a definite and firm conviction that a mistake has been made. The trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Michael J. Kelly
/s/ Kathleen Jansen
/s/ Patrick M. Meter