

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* HUSTON/HUSTON-HUNTER/HUSTON-  
SCRUSE, Minors.

UNPUBLISHED  
January 9, 2018

No. 338591  
Wayne Circuit Court  
Family Division  
LC No. 16-523498-NA

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

PER CURIAM.

The circuit court terminated respondent-mother's parental rights to her five children and respondent-father's parental rights to his two based on mother's physical abuse of the children and father's failure to protect them. The evidence supported that mother suffers from severe mental illness but was required by her doctor to stop taking her medication during her five pregnancies. When off her medication, mother is angry and aggressive and has hurt at least her oldest two children. The abuse sometimes occurred in front of father, who took little action to stop it. Under these circumstances, we discern no error in the termination of the parents' rights. We affirm.

I. BACKGROUND

Mother has five children: A who is 12 years old, B who is nine, C who is five, D who is 25 months, and E who is now 15 months. The hospital contacted Child Protective Services (CPS) after E's birth because she was born with marijuana in her system. When the worker arrived, mother was disoriented. Mother was having a conversation on her cell phone although the battery was dead. She refused to tell the worker where her older four children were staying. The worker was able to track down the children without mother's assistance. A and B were covered in bruises, scratches, and human bite marks. They reported that their mother had beaten them with her hands and hangers and had even hit A in the head with a pan. A and B also alleged that their mother scratched them. A indicated that father did nothing to prevent the

abuse. E remained in the hospital for several days due to respiratory distress. During that time, the CPS worker visited the children in respondents' home. The home was bare of clothes, bedding and toys. Mother claimed she threw these items away because a worker said her home was infested with bed bugs. CPS removed the children from respondents' care on an emergency basis after A indicated that he was afraid of his mother and begged not to be left with her. A, B, and C were placed with relatives and D and E were placed in foster care.

During the proceedings, evidence revealed that mother has suffered from severe depression since childhood. She has been taking Abilify since the age of 13. Mother's doctor instructed her not to take her medication during pregnancy because of a risk of birth defects. Mother followed her doctor's orders but apparently resorted to using marijuana during pregnancy as two of her children were born with the drug in their systems. When mother is not on her medication, she admittedly gets angry. Mother also admitted that she cannot remember all of her actions when off her medication. Despite her impaired memory, mother adamantly denied that she abused her children. Rather, mother blamed A's and B's injuries on eczema and incidents at school. A also testified that father physically abused mother in the children's presence. On one occasion, A heard mother and father fighting in their bedroom and observed mother with blood on her face when she came out of the room.

The DHHS presented evidence that mother has a long history with CPS. A claim was filed and substantiated upon A's birth and when C was a baby in 2012. In 2012, mother had moved to Arkansas with her three children. She did not take her medication at that time because she was living in a rural area and claimed she had no means of transportation to pick up her medication. Neighbors contacted Arkansas authorities after observing signs of abuse. Mother fled the jurisdiction, however. A new claim was then made in this state.

The claims against father were more limited. Father is the parent of only D and E. He and mother have lived together for four years and intend to marry. Father denied that mother's conduct and behavior changed when she was off her medication during her pregnancies. He also denied ever seeing mother physically discipline the older three children. However, A testified that father was sometimes present when mother abused him and B. Father told mother to stop but took no further action when mother continued.

Ultimately, the Department of Health and Human Services (DHHS) sought termination at the first disposition given the history of abuse.<sup>1</sup> The court terminated mother's rights pursuant to MCL 712A.19b(3)(b)(i), (g), (j), and (k)(iii), and father's rights pursuant to factors (b)(ii), (g), and (j). They both appeal.

## II. STANDARDS OF REVIEW

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 by the DHHS. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d

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<sup>1</sup> Mother does not challenge the DHHS's failure to provide services.

407 (2000). When termination is sought at the initial disposition, the court’s decision must be based on legally admissible evidence. MCR 3.977(E)(3). 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).

“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 include “the child’s bond to the parent, the parent’s parenting ability, [and] the child’s need for permanency, stability, and finality. . . .” *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). “The trial court may also consider . . . the parent’s compliance with his or her case service plan, the parent’s visitation history with the child, [and] the children’s well-being while in care. . . .” *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). The advantages of the child’s foster placement over placement with the parent are a relevant consideration, *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009), as well as the length of time the child has been in care, *In re Payne/Pumphrey/Fortson*, 311 Mich App 49, 64; 874 NW2d 205 (2015). The court must explicitly consider a child’s placement with relatives, as well as whether it is in the children’s best interests to keep them together in one home. *Olive/Metts*, 297 Mich App at 42-43. “With respect to the trial court’s best-interests determination, we place our focus on the child rather than the parent.” *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016). And the court must consider each child’s best interests as an individual if their interests significantly differ. *White*, 303 Mich App at 715.

### III. STATUTORY TERMINATION GROUNDS

Clear and convincing evidence supported termination of mother’s parental rights under MCL 712A.19b(3)(b)(i), (g), (j), and (k)(iii), which provide:

(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.

\* \* \*

(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.

\* \* \*

(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 DHHS presented hospital records and photographs documenting the injuries suffered by A and B. The caseworker testified regarding the injuries and bruises she observed on A and B. And A testified about the abuse that he and his brother suffered at their mother's hands. Although mother denied causing these injuries, the court credited A's testimony. We may not interfere with that judgment. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The record therefore supports that mother had physically abused at least A and B in the past.

The DHHS also supported that mother's abuse was likely to continue in the future. Mother contends that if she ever harmed her children it only occurred when she was pregnant and was unable to take her psychotropic medications. Despite knowing that she needed her medication and would be unable to take her medication for an extended period, mother became pregnant five times. Mother testified that she had taken steps to prevent future pregnancy—"I have a Mirena, I can't get pregnant for five years. . . ." <sup>2</sup> But this was no guarantee that respondent would continue to take her medication as prescribed. In 2012, mother chose to move to a rural area of Arkansas without access to the medical treatment she needed and therefore was unable to take her medication for an extended period. There was evidence that mother abused A and B during this period. While mother's decision to avoid future pregnancy was certainly responsible, there still remains a danger of future harm to her children if left in her care.

This evidence of physical abuse of A and B supported termination of mother's parental rights under MCL 712A.19b(3)(b)(i) and (j). The perpetration of this abuse also meant that respondent had not provided proper care and custody for her children and danger of future abuse meant she could not provide proper care and custody within a reasonable time. Termination was therefore also supportable under factor (g).

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<sup>2</sup> According to the product manufacturer's website, "Mirena® is a hormone-releasing IUD that is over 99% effective at preventing pregnancy for as long as you want, for up to 5 years." Mirena, < <https://www.mirena-us.com/about-mirena/> > (accessed December 16, 2017).

Respondent contends that even if she had harmed her children, her conduct did not rise to the level of “[b]attering, torture, or other severe physical abuse” necessary to support termination under factor (k)(iii). To batter means to make a “willful and harmful or offensive touching of another person” by “an act intended to cause such a contact.” *People v Morris*, 314 Mich App 399, 410; 886 NW2d 910 (2016). Deliberately hitting a child in the head with a pan, beating one’s children with plastic hangers, biting them, and scratching them fall squarely within the definition of “battering.” Accordingly, termination was supportable under factor (k)(iii).

The circuit court terminated father’s parental rights to D and E under factors (g) and (j). The court also relied upon MCL 712A.19b(3)(b)(ii), which provides:

(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:

\* \* \*

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.

Although father denies the allegations, A testified that father witnessed the abuse he and his siblings suffered at mother’s hands and did little or nothing to stop it. Again, the court credited A’s testimony and we may not interfere with that assessment. Father still lived with mother at the time of the termination hearing and the two intended to marry. It was reasonable to assume that father would continue to be of little assistance to the children in the event of future emergencies. Moreover, A testified that father has physically assaulted mother in the home while the children were present. Father admitted that two of the mothers of his other six children have secured personal protection orders against him. This was evidence that the children were in danger of physical or emotional harm caused by father’s own violent behavior as well. Termination was therefore supported under all three statutory grounds.

Father challenges the DHHS’s decision to forego services as to him. “Generally, when a child is removed from the parents’ custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child’s removal by adopting a service plan.” *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). “Petitioner, however, is not required to provide reunification services when termination of parental rights is the agency’s goal.” *Id.* at 463. The DHHS may seek termination at the initial disposition without providing reunification services if the parent either abuses a child by “[b]attering, torture, or other severe physical abuse,” MCL 722.638(1)(a)(iii), “or is suspected of placing the child at an unreasonable risk of harm due to the parent’s failure to take reasonable steps to intervene to eliminate that risk,” MCL 722.638(2). As father stood accused of failing to intervene when mother hit A and B with a pan and hangers and committed other acts of abuse, reunification services were not required in this case.

#### IV. BEST INTERESTS OF THE CHILDREN

Respondents both contend that the circuit court erred in finding that termination of their parental rights was in the best interests of the children. We first note that the court explicitly

considered that the siblings were not all placed together as a family unit and that some of the children had been placed with relatives. Given the danger of physical abuse in their parents' home, the court determined that this situation was preferable to maintaining the family unit and sibling bonds and that termination was warranted despite relative placement.

The court considered mother's lengthy history of severe depression and decision to repeatedly get pregnant despite that this meant she would be unable to take her required psychotropic medications. While off her medications, mother was unable to safely care for her children. Mother assured the court that she had only stopped taking her medications during pregnancy and had taken steps to prevent pregnancy for the next five years. However, mother admitted that she had made unwise decisions in the past that limited her access to mental health care and prevented her from securing her medications even when she was not pregnant. And mother continued to deny that she had abused her children while off her medications. Mother's failure to take responsibility for her acts was evidence that she would continue her inappropriate discipline in the future.

Mother further notes that no family member had ever expressed concern about her treatment of the children. We find it irrelevant that none of mother's own relatives reported concerns of abuse. A's biological father testified that he travelled to Arkansas after learning that mother had been abusing her children in that state. Upon mother's return to Michigan, A was placed with the biological father's relatives. The father then noted signs that A had been physically abused before his arrival. A personally testified to the abuse he suffered at his mother's hands as well. Corroborating evidence from mother's relatives was not required to find termination to be in the children's best interests.

Father contends that he has a strong bond with D and E and notes that he attended all but one parenting time session during these proceedings. While father loves his children, he has demonstrated a history of domestic violence toward his children's mothers, including in the current matter. Father has not financially supported four of his older children and lacks the ability to provide for D and E. Most importantly, father has continued to live with mother and remains engaged to be married despite full knowledge of the allegations against her. At the final hour father indicated that he would separate from mother if required by the DHHS to regain custody of his children. But this declaration is too little, too late. The circuit court did not err in finding that whatever bond father shared with his children was significantly outweighed by the substantial risk of harm to the children if placed in father's custody.

We affirm.

/s/ Thomas C. Cameron  
/s/ Deborah A. Servitto  
/s/ Elizabeth L. Gleicher