

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* R. D. M. GRAY, Minor.

UNPUBLISHED  
February 27, 2018

No. 338984  
Wayne Circuit Court  
Family Division  
LC No. 16-523913-NA

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Before: RIORDAN, P.J., and BOONSTRA and GADOLA, JJ.

PER CURIAM.

Respondent appeals as of right the order of the trial court terminating his parental rights to his minor child under MCL 712A.19b(3)(b)(i) (physical injury to the child), (b)(ii) (failure to prevent physical injury to the child), (g) (failure to provide proper care), and (j) (risk of harm if returned to the parent).<sup>1</sup> We affirm.

When the child in this case was four months old, she was hospitalized after she was determined to have suffered severe physical injuries including a skull fracture, swelling in the brain, bruises on her face, two fractured ribs, and a fractured knee. According to the radiologist reviewing the child's records, the child's injuries were in various stages of healing and therefore not attributable to a single event. The radiologist further testified that these injuries were highly suspicious for non-accidental trauma.

At the time the child was injured, respondent lived with his mother and father and ten siblings. The child had been in the care alternately of the child's mother (who sometimes lived with respondent), respondent, and respondent's mother and siblings. Respondent testified that he discovered the child's injuries when he arrived home and observed bruises and swelling on the child's face. Respondent called emergency services, who then transported the child to the hospital. The child's mother was not present at that time, and the child had been in the care of respondent's mother and siblings immediately prior to respondent discovering the injuries. The child's mother's explained that the head injury might have occurred the day before when the child had rolled from a bed and become wedged between the bed and dresser at her home. The foster care worker, however, testified at trial that this explanation was not consistent with the

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<sup>1</sup> The trial court also terminated the parental rights of the child's mother who is not a party to this appeal.

placement of furniture in the room where the mother alleged the injury had occurred. The mother had no explanation for the additional injuries. Respondent denied that he had inflicted any injuries, and testified that he had not noticed any injuries until he saw the facial bruises that caused him to call emergency services. Respondent's mother, the child's paternal grandmother, refused to meet with the foster care worker or to permit the foster care worker to enter her home.

## I. REASONABLE EFFORTS

On appeal, respondent first argues that the trial court erred in terminating his parental rights because the record shows that petitioner failed to make reasonable efforts for reunification. We disagree. Initially, we note that respondent raises this issue for the first time on appeal. This Court has repeatedly held that to preserve for appellate review the issue of an allegedly inadequate opportunity to participate in services, the respondent must raise the issue when services are offered, being when the trial court adopts the service plan or soon thereafter. See *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Here, respondent did not raise this issue at any time before the trial court and therefore failed to preserve this issue for review. *Id.* We therefore review this issue for plain error affecting substantial rights, being clear or obvious error that prejudiced respondent or affected the outcome of the lower court proceedings. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

Generally, the petitioner is required to make reasonable efforts to reunify a child with his or her family before seeking termination of the parent's parental rights. MCL 712A.18f(3)(b) and (c); *In re Hicks/Brown*, \_\_\_ Mich \_\_\_, \_\_\_; 893 NW2d 637 (2017), slip op 4. Reasonable efforts must include the petitioner's creation of a service plan that outlines the steps that it, along with the parent, will take "to rectify the issues that led to court involvement and to achieve reunification." *Id.* The parent then has a commensurate obligation to participate in the offered services. *In re Frey*, 297 Mich App at 248.

But the petitioner is not required to provide reunification services when the goal of the agency is termination of the parent's parental rights. *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009); see also MCR 3.977(E). In this case, respondent was suspected of either perpetrating severe physical abuse upon the child or failing to intervene to eliminate the risk of such harm. Petitioner therefore sought termination of respondent's parental rights in the initial petition, see MCR 3.977(E) and *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013), and was not obligated to provide reunification services. We therefore conclude that no plain error occurred and respondent's substantial rights were not affected.

## II. BEST INTERESTS OF THE CHILD

Respondent next contends that termination of his parental rights was contrary to the child's best interests. We disagree. Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court must find that termination of parental rights is in the child's best interests before it can order termination. MCL 712A.19b(5); *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). Whether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App at 90. This Court reviews a trial court's decision regarding

a child's best interests for clear error. *In re Laster*, 303 Mich App 485, 496; 845 NW2d 540 (2013).

In determining the child's best interests, the trial court should consider a wide variety of factors including, potentially, the existence of a bond between the child and parent, the parent's ability to parent, the child's need for permanency and stability, the advantages of a foster home over the parent's home, the parent's history of domestic violence, the parent's compliance with the service plan, the parent's visitation history, the child's well-being, and the possibility of adoption. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). At this stage in the proceedings, the best interests of the child in having "a normal family home is superior to any interest the parent has." *In re Moss*, 301 Mich App at 89.

Respondent argues that the trial court erred in finding that termination was in the best interests of the child because the trial court failed to consider the child's placement with relatives, specifically with the paternal grandmother. This Court has stated that "because 'a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a),' 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." *In re Olive/Metts Minors*, 297 Mich App at 43, quoting *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). But in this case, the child had not been placed with relatives, and was in foster care at the time of termination. Indeed, the foster care worker testified that no qualified relative<sup>2</sup> had volunteered to care for the child. And specifically, the paternal grandmother had not only failed to volunteer to care for the child, but had refused to even meet with an agency representative or to allow the foster care worker into her home. Further, the child had been in the care of the paternal grandmother shortly before the child's injuries were discovered. We therefore conclude that the trial court did not err in declining to consider relative placement as determinative of the child's best interests in this case.

Respondent also argues that termination was not in the best interests of the child because there was no evidence of any risk of harm in reuniting the child with respondent. We find this argument unpersuasive. The record indicates that the child's injuries had occurred over a period of time in which respondent shared in the care of the child and that the injuries were not the result of accidental trauma. Although it is unknown whether respondent caused any of the injuries, his failure to notice the injuries earlier and to protect the child showed that she would be at risk of harm if placed with him. *In re Ellis*, 294 Mich App 30, 35-36; 817 NW2d 111 (2011); see also *In re VanDalen*, 293 Mich App 120, 139-140; 809 NW2d 412 (2011).

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<sup>2</sup> Although one of respondent's aunts had volunteered to parent the child, the foster care worker testified that her medical concerns precluded her from caring for the child.

The trial court did not clearly err in finding by a preponderance of the evidence that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Michael J. Riordan

/s/ Mark T. Boonstra

/s/ Michael F. Gadola