

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UNPUBLISHED  
December 13, 2018

*In re* SMITH, Minors.

Nos. 343940; 343941  
Newaygo Circuit Court  
Family Division  
LC No. 16-008876-NA

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

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the trial court's order terminating their respective parental rights to their minor children, DS and KS, pursuant to MCL 712A.19b(3)(g) (failure to provide proper care or custody for the children), and (j) (reasonable likelihood that the children will be harmed if returned to the home of the parents). We affirm.

**I. RELEVANT FACTUAL BACKGROUND**

Child Protective Services (CPS) initiated an investigation on July 19, 2016, because of an altercation between respondents and respondent-father's girlfriend while the children were present. CPS attempted to contact respondents to investigate the incident, but respondents evaded contact. Eventually, law enforcement made a traffic stop, found respondent-father in possession of methamphetamine, and arrested and jailed him in Newaygo County. The family was homeless at that time, and respondents refused to tell CPS where they were and prevented CPS from seeing the children. When CPS found them, the children were filthy, smelled of urine, and had not eaten for several hours. The Department of Health and Human Services (the DHHS) later petitioned for removal of DS and KS from respondents' care and custody because they both had a history of substance abuse and failed to provide adequate care and custody of the children by not appropriately cleaning, dressing, and feeding them.

Services were offered to assist achieving reunification, including domestic violence counseling, psychological evaluation, substance abuse assessment, random drug screens, counseling, housing and employment assistance. Respondent-mother initially failed to engage fully in services, but toward the end, she participated in services and obtained part-time employment and housing provided by her adoptive mother through a revocable trust. However, respondent-mother failed to fully benefit from services, never progressed past supervised parenting time, and continued to make poor choices. Respondent-father was incarcerated for a

majority of the proceedings, however he was eventually released. Following his release, respondent-father evaded contact with the DHHS and refused to engage in services. Following a termination hearing, the trial court terminated respondents' parental rights to DS and KS. This appeal followed.

## II. STATUTORY GROUNDS FOR TERMINATION

Respondents each argue that petitioner presented insufficient evidence and failed to prove the statutory grounds for termination of their respective parental rights. We disagree.

A person's parental rights may be terminated by the trial court if it finds by clear and convincing evidence at least one of the statutory grounds for termination set forth in MCL 712A.19b(3). *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review for clear error the trial court's determination of statutory grounds under MCL 712A.19b(3) for termination of parental rights. MCR 3.977(K); *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). A factual finding is clearly erroneous if this Court has a definite and firm conviction that a mistake was made. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). We defer to the trial court's "special opportunity to judge the credibility of witnesses." *Id.*

The trial court found by clear and convincing evidence that the facts alleged in the petition were true and established grounds for termination under MCL 712A.19b(3)(g) and (j), which provide:

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

\* \* \*

(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.<sup>1</sup>

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<sup>1</sup> MCL 712A.19b(3)(g) has been amended since the termination order was entered in this case. That section now reads:

The parent, although, in the court's discretion, financially able to do so, 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. [See 2018 PA 58, effective June 12, 2018.]

However, for purposes of this case, we apply the statutory language in force at the time that respondents' parental rights were terminated.

(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.

If this Court concludes that the trial court did not clearly err by finding one statutory ground for termination, this Court does not need to address the additional grounds. *In re HRC*, 286 Mich App at 461.

In this case, witnesses' testimonies and documentary evidence in the record established statutory grounds for termination of respondents' respective parental rights to the children. Clear and convincing evidence established that respondents failed to provide proper care and custody for the children and that no reasonable expectation existed that either of them would be able to do so within a reasonable time considering the children's ages. The record reflects that both respondents had domestic violence and substance abuse histories. The children came into care following an altercation between respondents and respondent-father's girlfriend in the presence of the children. During that incident, respondent-father smashed respondent-mother's rear car window while KS was inside the car. The record reflects that respondent-mother participated in some counseling for domestic violence, but the evidence does not establish that she gained sufficient insight and skills to prevent domestic violence in future relationships. Respondent-father admitted domestic violence, but he never participated in any services.

The record reflects that respondent-mother failed to maintain sobriety respecting alcohol consumption. Evidence established that respondent-mother drank alcohol to excess and injured herself on one occasion. Respondent-mother denied that she had an alcohol abuse problem and excused her behavior on the ground that she was of legal drinking age. She did not exhibit recognition that substance abuse impacted her ability to parent the children. Respondent-father had a more serious substance abuse problem. He used methamphetamine and only stopped while incarcerated. Evidence did not establish that he had resolved this problem.

During the pendency of this case, the family experienced periods of homelessness. Although respondent-mother completed a parenting class, the record does not indicate that she understood that her neglect of the children's basic needs caused the children to come into care. The record does not indicate that she gained insight and the ability to provide the children basic care and comfort.

The record establishes that respondent-mother failed to fully engage in services and reasonably benefit from them. Respondent-mother only began consistently complying with the requirements of her treatment plan well over a year after the children's removal. She initially participated sporadically in services. Although she endeavored to engage more at the end of 2017 and beginning of 2018, at the time of the termination hearing, the evidence did not establish that she benefited sufficiently to ensure that she could provide and care for the children if returned to her care and custody.

The record also reflects that over the 20 months that this case pended, respondent-mother never benefited sufficiently from services to enable her to have unsupervised parenting time with the children. Witnesses testified that they observed respondent-mother during parenting-time visits, and she lacked the requisite parenting skills to interact with the children to establish

appropriate parent-child relationships with them. The record also established that the children suffered trauma in anticipation of spending time with respondent-mother. The record indicates that after respondent-mother's parenting time was suspended the children's emotional issues significantly improved.

The record also indicates that respondent-mother failed to establish financial independence and secure long-term employment. She had a part-time job at Walmart, but during the pendency of this case she lost several jobs. No evidence in the record established that respondent-mother would be able to provide for the care and custody of the children within a reasonable time. "A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody." *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014). Accordingly, clear and convincing evidence established grounds for termination of respondent-mother's parental rights under MCL 712A.19b(3)(g).

Respecting respondent-father, the record reflects that he failed to engage in any services. Although he was incarcerated for periods during the pendency of this case, he was not incarcerated the entire time. When he was not in jail or prison, respondent-father had opportunity to engage in services, but he refused to communicate with the caseworkers who made repeated efforts to contact him so that he could become involved in services to enable his reunification with the children. The record indicates that he chose to evade contact and took no steps to rectify the conditions that led to the removal of the children. Further, the record indicates that during the pendency of this case he provided nothing toward the care and custody of the children. Moreover, respondent-father had a serious substance abuse problem, and he admitted in his statements to the trial court that he continued to have a substance abuse problem. Respondent-father made clear that he lacked insight and honesty regarding the conditions in which the children lived that brought them into care. He denied that the children suffered trauma and neglect while in the family home. Thus, clear and convincing evidence established grounds for termination of respondent-father's parental rights under MCL 712A.19b(3)(g).

Respondent-father's argument that the trial court improperly based its decision under MCL 712A.19b(3)(g) solely because of his incarceration lacks merit. The record clearly indicates that the trial court considered respondent-father's lack of engagement in services, his evasion of contact with the DHHS, and his general attitude that nothing he did was wrong. The record reflects that the trial court considered respondent-father's domestic violence problem, substance abuse problem, and that even if he obtained early release from his incarceration, he still faced a long process of engagement in services to rectify the conditions that led to the children's removal, as well as, likely difficulty obtaining employment and suitable housing. The record does not indicate that the trial court treated respondent-father's incarceration as a permanent barrier to reunification but only as one factor in its overall analysis. Nothing in the record indicated that respondent-father would be able to provide for the care and custody of the children within a reasonable time even if he obtained early release from incarceration.

For the first time on appeal, respondent-mother argues that the DHHS failed to accommodate her "mental retardation" disability and make modifications to her treatment plan and to the services to make reasonable efforts at reunification. We disagree.

Respondent-mother relies on *In re Hicks/Brown*, 500 Mich 79, 86-88; 893 NW2d 637 (2017), a case in which the Michigan Supreme Court explained that the DHHS must make reasonable modifications in policies, practices, and procedures to avoid discrimination against persons with disabilities as part of providing services to make reasonable efforts at reunification. In *In re Hicks/Brown*, the respondent identified a program that would have benefited her but the DHHS refused to consider the program. *Id.* at 89-90. Nothing of the sort happened in this case.

The record reflects that the DHHS made efforts to provide respondent-mother numerous services particularly designed to address the issues she faced and needed to correct to enable reunification with the children. Respondent-mother's psychological evaluation indicated that she had mild cognitive deficits. The record, however, does not indicate that she lacked the ability to participate in the services provided to her. The record reflects that respondent-mother graduated from high school and she acknowledged that she had the ability to understand and benefit from the services the DHHS provided to her. Further, to the extent she had some cognitive impairment, the record reflects that her caseworkers diligently worked with respondent-mother to ensure that she understood her treatment plan and what was required of her to obtain reunification with the children. Her caseworkers went over her treatment plan in person and over the phone to ensure she had every opportunity to engage and benefit from the services. Further, the DHHS provided respondent-mother a parenting partner to assist her with parenting. Respondent-mother also received parenting classes, individual counseling, and opportunity to participate in programs to assist her with substance abuse and anger management.

Respondent-mother does not specify what modification to the services and programs offered to her by the DHHS that she needed. The record indicates that the DHHS did not exclude respondent-mother from any services based on her cognitive deficits but provided her services reasonably related to the issues presented. Caseworkers encouraged respondent mother to participate with the disability office and referred her for extra support to Michigan Rehabilitative Services, an agency that provided special training and services to persons with disabilities. Respondent-mother, however, declined to engage in such services.

Respondent-mother fails to identify any services that would have benefited her to the extent that reunification would have been a possibility. Unlike in *In re Hicks/Brown*, respondent-mother has not shown that the DHHS failed to offer services to accommodate her disability. Therefore, the trial court did not clearly err in finding that the DHHS made reasonable efforts at reunification.

Because we conclude that statutory grounds existed under MCL 712A.19b(3)(g) to terminate respondents' parental rights, we decline to consider respondents' arguments respecting other statutory grounds. See *In re HRC*, 286 Mich App at 461.

### III. BEST INTERESTS

Respondents also argue that the trial court erred by finding that a preponderance of the evidence established that termination served the children's best interests. We disagree.

"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. We review for clear error the trial court’s determination that termination of respondents’ parental rights served the children’s best interests. MCR 3.977(K); *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). We give deference to the “trial court’s factual findings at termination proceedings if those findings do not constitute clear error.” *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009).

When considering best interests, the trial court must focus on the children rather than the parents. *Moss*, 301 Mich App at 87. The trial court may consider several factors including the children’s bonds to the parents, the parents’ parenting ability, and the children’s need for permanency, stability, and finality. *Olive/Metts*, 297 Mich App at 41-42. “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.” *White*, 303 Mich App at 714. The trial court may also consider how long the children lived in the present home and the likelihood that the children “could be returned to [the] parent’s home within the foreseeable future, if at all.” *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). Further, the children’s safety and well-being, including the risk of harm they might face if returned to the parent’s care, constitute factors relevant to a best-interest determination. *In re VanDalen*, 293 Mich App at 142.

Review of the entire record establishes that a preponderance of the evidence weighed in favor of finding that termination of respondents’ parental rights served the children’s best interests. In this case, the record reflects that respondent-mother had a bond with the children, but not a particularly healthy or strong bond. Evidence established that the children on occasion enjoyed seeing respondent-mother for parenting-time visits and gave her hugs and kisses. However, the record also indicates that during visits the children were not fully engaged with respondent-mother and seemed detached. Further, the children did not seek comfort from respondent-mother when they became distressed during the visits. The record also reflects that the children outwardly expressed that they did not desire to go to parenting-time visits with respondent-mother. They experienced stomachaches and other pains in anticipation of their visits with her.

The record also indicates that respondent-mother lacked parenting ability. She did not fully engage with the children during parenting time. Further, when the children had behavior issues during parenting time, respondent-mother did not demonstrate that she knew how or cared to provide comfort and appropriate structure for the children’s benefit. These factors weighed in favor of terminating respondent-mother’s parental rights, as does respondent-mother’s failure to benefit from her case service plan.

The record indicates that respondent-father did not have a bond with the children. The children never saw respondent-father during the pendency of this case, and they did not express an interest in him or his whereabouts. They never inquired whether he would visit. Similarly, the record reflects that respondent-father never made any effort to have contact with the children. Nor did respondent-father inquire about the children’s welfare. Respondent-father never engaged in parenting time. Interestingly, when respondent-father addressed the trial court at the close of the termination hearing, his statements indicated that he lacked understanding regarding

why the children were removed and how his conduct impacted them. These factors weighed in favor of terminating respondent-father's parental rights.

Although the trial court did not articulate at length its conclusions regarding the children's need for permanency, stability, and finality, the record establishes that the children lacked stability and a safe home while in respondents' care and custody. By contrast, while in the care and custody of their foster parents, the children received what they needed and had opportunity to progress from the trauma they experienced. The record indicates that the children were good candidates for adoption although they likely would face some trauma when they transitioned from their foster home to an adoptive home in the future. The children experienced homelessness and hunger while in the care of respondents. The instability of respondents' care and custody likely would continue if the children were returned to respondents. The record indicates that the children needed and would benefit from permanency, stability, and finality if respondents' parental rights were terminated. Therefore, these factors weighed in favor of terminating respondents' parental rights.

The record also reflects that respondents had a history of domestic violence and substance abuse. Respondent-mother progressed somewhat from participating in counseling and programs, but she had a long way to go to ensure that she could consistently make responsible life choices that would not risk harm to the children. Respondent-mother's relationship choices indicated that she lacked insight and personal strength to select partners with the kind of qualities that would be beneficial for respondent-mother and the children. Further, respondent-mother's alcohol abuse risked harm to the children in the future. Therefore, these factors weighed in favor of terminating respondent-mother's parental rights.

The record also indicates that, respondent-mother did not engage fully in services until after over a year following removal of the children. At the time of the termination hearing, approximately 20 months after the children came into care, respondent-mother complied with most of her plan requirements. However, she still needed additional time to develop adequate parenting skills. These factors weighed in favor of terminating respondent-mother's parental rights.

Respondent-father admitted that he and respondent-mother had a history of domestic violence, but he minimized his conduct without understanding the impact such conduct had on the children. Similarly, respondent-father admitted that he had a substance abuse problem, but he excused such conduct by asserting that it did not impact the children because he did not use in their presence. Respondent-father's remarks established that he lacked personal insight and awareness about how his conduct impacted the children and created a harmful environment for them. These factors weighed in favor of terminating respondent-father's parental rights.

The aforementioned factors weighed in favor of terminating both respondents' respective parental rights. The trial court did not err by finding that a preponderance of the evidence established that termination served the children's best interests.

Affirmed.

/s/ Mark T. Boonstra  
/s/ Kathleen Jansen  
/s/ Michael F. Gadola