

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

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*In re* BOOTHE, Minors.

UNPUBLISHED  
June 18, 2019

No. 346358  
Oakland Circuit Court  
Family Division  
LC No. 2015-834054-NA

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Before: BECKERING, P.J., and CAVANAGH and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent father appeals by right the trial court's order terminating his parental rights to his children, HLB and ETB, under MCL 712A.19b(3)(c)(i) (adjudication conditions continue), (g) (failure to provide proper care and custody), and (j) (risk of harm if returned). The children's mother voluntarily released her parental rights and is not a party to or at issue in this appeal. Finding no error requiring reversal, we affirm.

**I. BACKGROUND**

Before respondent's parentage was established, HLB was removed from her mother's care 11 days after birth based on anticipatory neglect. The mother had an open neglect and abuse case regarding two other children who had been removed from her care. Respondent executed an affidavit of parentage and ultimately pleaded to allegations in the petition. While the case was pending, the mother became pregnant with ETB, and respondent and the mother married. The court took jurisdiction over ETB immediately after her birth. Respondent has a history of perpetrating domestic violence.

During the course of the proceedings, respondent failed to participate in and benefit from his parent-agency treatment plan (PATP) during a three-year period. The PATP required that he attend parenting times, obtain suitable housing, obtain income, attend all court hearings, maintain weekly contact with the caseworker, participate in individual therapy, participate in domestic violence counseling, and participate in a psychiatric evaluation. Respondent completed a parenting class, and he visited the children throughout the case. However, the instructor of the parenting class indicated that respondent did not benefit from it. Respondent lived with the mother in a house that was appropriate, but he continued to perpetrate domestic violence and moved out after one incident. He was then homeless, lived in a shelter, and ultimately went to

live with his cousin. Respondent refused to give petitioner his cousin's address so that a home study could be completed. Respondent was also incarcerated at one point, which caused him to lose his job and miss a substantial amount of parenting visits, twenty-seven visits in total. Respondent was sporadically employed, but the longest period he was able to maintain income was about seven months. He was mostly uncooperative with individual counseling, which included a domestic violence component. Respondent was also diagnosed with schizophrenia, but he refused to take his medication as prescribed. After approximately three years of working with respondent, petitioner sought termination of his parental rights.

## II. STATUTORY GROUNDS FOR TERMINATION

Respondent first argues on appeal that the trial court clearly erred in finding that a statutory ground for termination of his parental rights was proven by clear and convincing evidence. We disagree.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. MCL 712A.19b(3); *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). Only one statutory ground need be proven to terminate a parent's parental rights. *In re Laster*, 303 Mich App 485, 495; 845 NW2d 540 (2013). This Court reviews the trial court's determination for clear error. *In re VanDalen*, 293 Mich App at 139. "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which state:

(3) 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:

\* \* \*

(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:

(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.

\* \* \*

(g) 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.

\* \* \*

(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.

"Harm" includes physical as well as emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). "[A] parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home." *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014).

Initially, we note that MCL 712A.19b(3)(g) was amended by 2018 PA 58, effective June 12, 2018. The pre-amendment language stated: "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." (Emphasis added). The termination proceeding in this case took place on September 24, 2018 and therefore, subsection (g) should have been analyzed under the amended language. However, the trial court relied on the pre-amendment language. Although the trial court did state that respondent had income for at least seven months during the case, it did not properly analyze subsection (g). Thus, we conclude that the trial court clearly erred with respect to MCL 712A.19b(3)(g). However, a remand is not necessary because only one statutory ground need be proven in order to terminate parental rights. *In re Laster*, 303 Mich App at 495. As we discuss below, we conclude that MCL 712A.19b(3)(c)(i) and (j) were proven by clear and convincing evidence.

The primary issue that led to adjudication for HLB was respondent's commission of domestic violence. The evidence demonstrated that domestic violence continued to be a problem in respondent's relationship with the mother during the pendency of the case, with respondent being both the aggressor and a victim.<sup>1</sup> The domestic violence began before HLB was born, and it continued during the three years that this case was pending before the court.

The primary issue that led to adjudication for ETB was respondent's non-compliance with his PATP. The evidence indicated that respondent continued to be non-compliant with the PATP. He perpetrated domestic violence against the mother, which led to his eventual incarceration.<sup>2</sup> His incarceration caused him to miss at least 27 visitations with the children.

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<sup>1</sup> Parental rights may not be terminated solely on the basis of a parent being a victim of domestic violence, but may be based on the parent's own conduct that endangers the child. See *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119 (2011).

<sup>2</sup> Respondent correctly points out, however, that he was never criminally convicted of domestic violence, a fact of which the trial court was made aware. However, the absence of a criminal conviction is not dispositive. See *In re Schadler*, 315 Mich App 406, 410; 890 NW2d 676 (2016). A finding of not guilty beyond a reasonable doubt is not necessarily a finding of innocence. See *People v Ewing (After Remand)*, 435 Mich 443, 451-452; 458 NW2d 880 (1990)

There was no indication at the time of termination that respondent had an appropriate home to which the children could be returned. Although respondent had some income during the case, albeit intermittently, he became unemployed after his incarceration, and there was no indication that he was employed at the time of the termination hearing. Respondent only minimally participated in individual counseling, and he had not participated in individual counseling for months before the termination hearing. Additionally, a psychiatrist prescribed medication to respondent to treat his schizophrenia, but he refused to consistently take it as prescribed.

The evidence demonstrated that respondent continued to have issues with domestic violence, and he continued to be non-compliant with the PATP throughout the case. Thus, we conclude that the issues that led to adjudication continued to exist. Moreover, the record gave no indication that respondent would resolve the issues within a reasonable time considering the children's ages. Accordingly, the trial court did not clearly err in finding that subsection (c)(i) was established by clear and convincing evidence. For the same reasons, we conclude that the evidence established a risk of physical or emotional harm if the children were returned to respondent's care. MCL 712A.19b(3)(j). Therefore, we hold that the trial court did not clearly err in finding that at least one statutory ground for termination of respondent's parental rights was proven by clear and convincing evidence.

### III. BEST INTERESTS

Respondent next argues that the trial court clearly erred in finding that termination was in the best interests of the children. We disagree.

The trial court must find by a preponderance of the evidence that termination was in the children's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's findings of fact are reviewed for clear error. *In re HRC*, 286 Mich App at 459.

"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 parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). In determining a child's best interests, the trial court may consider the child's bond to his parent; the parent's parenting ability; the child's need for permanency, stability, and finality; and the suitability of alternative homes. See *In re Olive/Metts* 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "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, the children's well-being while in care, [] the possibility of adoption," *In re White*, 303 Mich App at 714, the testimony and opinion of experts, see *In re Conley*, 216 Mich

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(BRICKLEY, J.). Furthermore, the "clear and convincing" evidentiary standard, although stringent, is a lesser standard than the "beyond a reasonable doubt" standard applied in criminal matters. See *In re Martin*, 450 Mich 204, 225-227; 538 NW2d 399 (1995). The trial court properly found that respondent committed domestic violence, irrespective of his lack of a criminal conviction.

App 41, 44-45; 549 NW2d 353 (1996), and a parent's unwillingness to participate in counseling. See *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). A trial court may also consider a parent's inability to control his temper and his lack of income. *In re Olive/Metts* 297 Mich App at 43.

In this case, petitioner became responsible for the care of both children at birth. The evidence demonstrated that respondent was bonded to the children and that he began applying the skills he learned in parenting classes at his visitations with the children. However, the evidence also demonstrated the respondent had not fully complied with the PATP, and that he had not benefitted from the majority of the services in which he did participate. Notably, respondent did not come prepared to provide food, diapers, or wipes. Furthermore, respondent did not appear for his psychological evaluation that his attorney requested for the best-interest hearing. As a result, the psychologist was not able to give an opinion about the best interests of the children. However, respondent's failure to appear was characteristic of his lack of participation in services and his lack of overall effort to reunify with his children.

Despite respondent's occasional participation in counseling, he continued to have domestic violence altercations with the mother. In one incident specifically, the mother sustained a closed head injury, broken nose, fractured finger, and stiches in her leg as a result of the respondent's domestic violence. And although respondent and the mother were not living together at the time of termination, they were still married, and their history demonstrated a pattern of instability and recurring violence. There was no indication that respondent was employed as of the date of the best-interest hearing, and there was similarly no indication that his home was appropriate.

The foster-care supervisor and the foster-care manager both opined that it was in the children's best interests to terminate respondent's parental rights. Notably, the children were thriving in their foster-care placements, where they had been for their entire lives. Both HLB and ETB recognized each of their foster families as their family, and it was evident that HLB did not at all recognize respondent as her parent. There was no doubt that ETB would be adopted by her foster parents. There was some hesitation by HLB's foster parents, but ETB's foster parents wished to adopt HLB as well if her own foster parents chose not to. Given this record, we are not "left with a definite and firm conviction that a mistake has been made," *In re HRC*, 286 Mich App at 459, in the trial court's finding that termination of respondent's parental rights was in the best interests of the children.

Affirmed.

/s/ Jane M. Beckering  
/s/ Mark J. Cavanagh  
/s/ Amy Ronayne Krause