STATE OF MICHIGAN

COURT OF APPEALS

In re LOVE, Minors.

UNPUBLISHED
November 26, 2019

No. 346407
Genesee Circuit Court
Family Division
LC No. 17-134645-NA

Before: TUKEL, P.J., and SAWYER and RIORDAN, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to the minor children, AL, JL, and ANL, pursuant to MCL 712A.19b(3)(b)(*ii*), (c)(*ii*), (g), (j), and (k)(*iv*). Because there are no errors warranting relief, we affirm.

In 2013, respondent lived in Arizona with her then husband, J. Love, and their three children, AL, JL, and ANL. In 2016, the family traveled to Michigan for a family funeral. Before they returned to Arizona, Love was diagnosed with a terminal illness. Consequently, the family remained in Michigan. Love eventually died in November 2016.

All three of respondent's children have significant special needs. AL has been diagnosed with schizophrenia and low cognitive function, and JL has been diagnosed with attention deficit hyperactivity disorder ("ADHD") and oppositional defiant disorder (ODD). ANL has been treated for defiant behavioral issues and sexual acting out. The record demonstrates that respondent struggled with parenting her special-needs children. Both before and after Love's death, this family had several contacts with Child Protective Services ("CPS"), primarily related to allegations that respondent physically abused AL and JL. Following each CPS complaint, petitioner, the Department of Health and Human Services (DHHS), declined to seek court intervention, but instead referred respondent for a multitude of voluntary services. In 2017, respondent participated in parenting classes, the Families First program, and the Families Together Building Solutions program.

In March 2017, four months after Love's death, respondent met and began a relationship with J. Price. By May 2017, they were engaged. Although they did not live together, respondent and the children frequently stayed at Price's home. The children referred to Price as their stepfather.

Sometime in April 2017, AL, then 13 years old, became pregnant. In August 2017, AL disclosed the pregnancy to respondent. Respondent claims that she did not know at the time who fathered AL's child. According to respondent, AL refused to disclose the identity of her child's father.

In November 2017, JL revealed to a school social worker that he had observed Price and AL engaging in "inappropriate behavior." After these disclosures, the social worker contacted CPS. Later that evening, JL and respondent allegedly engaged in a physical altercation. JL reported that respondent dragged him down the stairs after he claimed to have observed Price and AL in the shower and in bed together. That evening, CPS arrived at the home to investigate the reports of physical and sexual abuse. Because JL was out of control, the police transported him to a residential treatment facility.

Thereafter, DHHS filed a petition requesting that the court take jurisdiction of the children. The court authorized the petition and removed the children from respondent's care. In January 2018, respondent entered a plea of admission, enabling the court to exercise jurisdiction over the children. The court ordered respondent to comply with a treatment plan that included participating in parenting classes, attending a psychological evaluation, and participating in therapy.

In January 2018, AL, then 14 years old, gave birth to a daughter. Sometime in early 2018, Price confessed and was charged with criminal sexual conduct. DNA testing confirmed that Price fathered AL's daughter.

In late January 2018, after Price's arrest, respondent participated in an unauthorized "video chat" with AL. During their conversation, respondent repeatedly informed AL that she was under no obligation to speak with anyone about anything that had happened. Respondent told AL that Price loved her and missed her, and that he "doesn't deserve what's happening to him." After these events, the trial court suspended respondent's parenting time.

Between June and July 2018, while Price was awaiting resolution of his criminal matter, respondent participated in several video conferences with Price at the Genesee County Jail. During six visits between June 17, 2018 and July 9, 2018, which were recorded, respondent repeatedly and consistently professed her love for Price, expressed her desire to have him home, and reassured him that she would be there when he was released from prison.

On July 17, 2018, petitioner filed a supplemental petition seeking termination of respondent's parental rights. After eight days of hearings, the court found clear and convincing evidence to terminate respondent's parental rights. Thereafter, this appeal ensued.

After respondent filed her claim of appeal, petitioner filed a motion to remand to the trial court to supplement the record regarding the trial court's in-chambers interview of AL and JL during the termination hearing. Petitioner asserted that it was necessary to settle the record because, during off-the-record discussions, respondent and her attorney not only agreed to the interviews, but also agreed to the procedure employed by the court. This Court granted petitioner's motion and directed the trial court to settle the record with respect to the procedure employed for interviewing the children and whether respondent agreed to the procedure. *In re*

Love, unpublished order of the Court of Appeals, entered August 21, 2019 (Docket No. 346407). At the hearing on remand, respondent and the parties' attorneys presented their recollections of the events. Thereafter, the court settled the record with several findings of fact regarding the circumstances surrounding its in-chambers interview of AL and JL.

For her first issue on appeal, respondent argues that the trial court erred by conducting an "*in camera*" interview of AL and JL during the termination hearing. She asserts that proceeding in this manner violated her right to due process.

At the outset, we conclude that respondent has waived the right to challenge the manner in which the trial court questioned AL and JL. A "waiver" "is the 'intentional relinquishment or abandonment of a known right' as distinct from a litigant's failure to timely assert that right." *In re Ferranti*, ___ Mich ___, ___; ___ NW2d ___ (2019) (Docket No. 157907); slip op at 26, quoting *People v Carines*, 460 Mich 750, 762 n 7; 597 NW2d 130 (1999). The Court in *In re Ferranti*, while addressing the use of *in camera* interviews in child protective proceedings, devoted much of its discussion to whether the respondents in that case had waived their right to object to the manner in which the court conducted its interview of the children. In that case, the Court held that the respondents had not waived their rights.

During the termination hearing in *In re Ferranti*, the trial court indicated that it was "inclined to speak with [JF]." *In re Ferranti*, ___ Mich at ___; slip op at 25. In response, the respondents' counsels stated that they did not object to the court speaking with the child. Thereafter, however, the trial court did not discuss with the respondents' counsels the logistics related to the court interviewing JF. On the basis of that record, the Supreme Court concluded that the respondents in *In re Ferranti* did not waive any challenge relating to the interviews, explaining:

> Here, the respondents' agreement to the general idea of the court speaking to JF did not waive their right to have that interview comport with due process. The respondents endorsed only the court's initial proposal that the court was "inclined to speak to [JF]." But the court never sought – and the respondents never gave—their agreement about how that conversation would take place.
>
> Those details matter. It is not apparent from the record whether the respondents thought they were agreeing to an on-the-record interview with counsel and with the opportunity for their own examination of JF, or if the respondents knew that the court's process would entail none of that. The record supports only that the respondents were consenting to a conversation between the judge and JF, with the specifics yet to be determined. Because the court could have conducted that interview in a way that would *not* have triggered due-process concerns, we cannot conclude that the respondents' support of the court's general suggestion amounted to the "intentional relinquishment or abandonment of a known right." [*Id.*, ___ Mich at ___; slip of at 27 (citation and footnotes omitted).]

The Court in *In re Ferranti* found compelling the fact that the respondents were not aware of the manner in which the interviews would be conducted when they agreed to have the court question

the children. Indeed, in *In re Ferranti*, the respondents' counsel did not even learn that the court had already interviewed JF until he was presenting his closing argument. *Id.* at ___ n ___; slip op at 27 n 15. By contrast, in this case, the record clearly confirms that respondent was consulted and not only agreed to the interviews but consented to the manner in which the trial court questioned AL and JL.

On remand, the trial court took testimony and then unequivocally found that the parties and their counsel discussed and mutually agreed upon the procedure employed by the trial court. According to the trial court's findings of fact, the parties considered the difficulties the special-needs children would have testifying in court and the potential harm it would have on their well-being. The court suggested that it interview the children in chambers, and that it would ask any questions submitted by the parties. In addition, the interviews would be broadcast into the courtroom and a record would be made. On remand, the court also found that respondent met privately with her attorney, after which she and counsel consented to this procedure.

Moreover, even before this matter was remanded for settlement of the record, the then-existing record supported a finding that the manner in which the children would be questioned was discussed with and approved by respondent and her counsel. At the conclusion of petitioner's case-in-chief on October 3, 2018, respondent's attorney represented that she intended to call perhaps four witnesses. She was still unsure whether she intended to call the minor children. The court and respondent's counsel indicated that further discussions should be held in the court's chambers. Indeed, the court recessed to have the in-chambers discussion. When the matter reconvened 45 minutes later, no record was made of the in-chambers discussion, but respondent's counsel indicated that she would let the court know the following day if she intended to call the children as witnesses. Thereafter, petitioner filed a motion for a protective order in which it requested that should respondent call the children as witnesses, their testimony be taken out of respondent's presence. Petitioner argued that testifying in respondent's presence would likely cause the children psychological harm. In support of this position, petitioner attached to its motion a correspondence authored by Vista Maria therapist Kim Craighead. The therapist opined that if AL were to testify, it was highly likely that she may mentally decompensate given her current fragile mental health status. With regard to JL, petitioner directed the court's attention to the testimony that had already been elicited regarding his fragile mental health. At the termination hearing on October 16, 2018, respondent's counsel acknowledged receipt of the motion and further indicated that respondent intended to call her two oldest children as witnesses. At the conclusion of the hearing that day, the court revisited the issue of petitioner's motion for a protective order, stating:

> Okay, so I think that's it for the morning. I think we've got a game plan for what we're going to do Thursday. I'll give you a ruling and I'll give you folks, depending on the ruling – if I grant the request – If I grant the request of the prosecutor, I'll let you folks see if you can come up with some kind of a format.

The court then reaffirmed, and the parties agreed, that the hearing would resume at 9:00 a.m. on October 18, 2018, and that the children would be present at the hearing at 1:30 p.m.

When the termination hearing resumed on the morning of October 18, 2018, it was clear that the court and the parties had met off the record and resolved the issue of the children testifying. However, when the court opened the hearing it simply stated in this regard:

> So, let's see. Let's get back on the record of the Love matter, 17-134645-NA, and I think before we have mother come back to the witness stand that we're all set for the afternoon. I think I talked to the attorneys privately. So, we're all set there, right?

In response to the court's question, the prosecutor replied, "Yes, your Honor." Respondent's counsel did not reply in the affirmative, but she notably did not object or reject any of the court's representations. Thereafter, respondent took the stand to complete her testimony from two days earlier.

At the conclusion of respondent's testimony at 12:40 p.m., the court reaffirmed that the children were to arrive at 1:30 that afternoon. Thereafter, the hearing recessed. When the hearing reconvened at 2:00 p.m., according to the existing transcript, it opened with the court, in chambers, questioning AL and JL separately. CASA worker Hannah Crimm was present in chambers during the court's questioning of AL, and Wolverine Youth Care Worker Mrs. Hubbard was present in chambers during the questioning of JL. The attorneys and parties were not present in the judge's chambers, but they were able to view the children as they testified through video technology.

Although resolution of the logistics associated with the court's interviewing of the children occurred mostly off the record, an examination of the record in its entirety reveals that an agreement was reached on how the court would conduct the interviews and that respondent acquiesced in the process. Unlike the situation in *In re Ferranti*, there is no suggestion that respondent simply agreed to the general idea that the court would speak with the children. Similarly, there is no indication that the court failed to seek an agreement about how the conversations would take place. See *In re Ferranti*, ___ Mich at ___; slip op at 27. On the contrary, the record indicates that the parties were all consulted regarding the manner in which the children would be interviewed, that respondent agreed to the proposed procedure, and that the interviews were then conducted in accordance with that consultation and agreement. "Respondent may not assign as error on appeal something that she deemed proper in the lower court because allowing her to do so would permit respondent to harbor error as an appellate parachute." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). Accordingly, respondent has waived the right to challenge the manner in which the trial court interviewed the children.

Even if this issue had not been waived, however, respondent has not demonstrated that her due-process rights were violated. Because respondent did not object to the trial court's decision to conduct the interviews, review of this issue is limited to plain error effecting substantial rights. *In re HRC*, 286 Mich App 444, 450; 781 NW2d 105 (2009). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings."

In re Utrera, 281 Mich App 1, 9; 761 NW2d 253 (2008). Further, whether the court's decision to conduct an interview of the children violated a respondent's due-process rights presents a question of constitutional law that this Court reviews de novo. *In re HRC*, 286 Mich App at 450.

In *In re HRC*, this Court held that the trial court erred by conducting *in camera* interviews of the children when making its best-interest determination. Initially, this Court recognized that *in camera* interviews are permitted under the Child Custody Act ("CCA"), MCL 722.21 *et seq*., to determine a child's parental preferences. *In re HRC*, 286 Mich App 451. However, this Court noted that *in camera* interviews had several due-process implications:

> A court's concern for a child's well-being in a custody proceeding, however, must not outweigh considerations of fundamental fairness in proceedings that affect parental rights. While questioning in an in camera interview does not constitute a due process violation as long as the interview is limited to the child's parental preferences, it is not difficult to see how the use of an in camera interview for fact-finding presents multiple due process problems: Should questions or answers arise concerning disputed facts unrelated to the child's preference, there is no opportunity for the opposing party to cross-examine or impeach the witness, or to present contradictory evidence; nor is there created an appellate record that would permit a party to challenge the evidence underlying a court's decision. And, as this Court has noted, even an interview limited appropriately in its scope, "will result in information that affects other child custody factors. . . ." Nonetheless, this Court has concluded that due process, in the context of custody disputes, permits in camera interviews of children for the limited purpose of determining their parental preference. [*Id*., 286 Mich App at 452 (citations omitted).]

This Court then noted, by contrast, that under the juvenile code, MCL 712A.1 *et seq*., there is no authority that permits a trial court presiding over a juvenile matter to conduct *in camera* interviews with the children. *Id*. at 453. Consequently, this Court held that the trial court erred by conducting the *in camera* interviews, stating:

> The court erred by conducting the in camera interviews. A trial court presiding over a juvenile matter must abide by the relevant substantive and procedural requirements of the juvenile code. See *In re AP*, 283 Mich App 574, 595, 770 NW2d 403 (2009). It is not free to pick and choose procedures from the CCA and implant them into juvenile proceedings. Stated simply, the CCA's substantive and procedural requirements are not applicable to proceedings conducted under the juvenile code. *Id*. As noted, nothing in the juvenile code, the caselaw, the court rules, or otherwise permits a trial court presiding over a termination of parental rights case to conduct in camera interviews of the children for purposes of determining their best interests. Accordingly, we hold that a trial court presiding over a juvenile proceeding has no authority to conduct in camera interviews of the children involved. [*In re HRC*, 286 Mich App at 454.]

After finding that the trial court plainly erred, this Court balanced several due-process factors and then concluded that "the use of unrecorded, in camera interviews in termination

proceedings violates parents' due process rights." *Id*. at 455. This Court stated that "given the characteristics of the in camera interview, the risk of an erroneous deprivation of these fundamental rights is substantial, while the value of an in camera procedure is low." *Id.* This Court was particularly concerned that "unrecorded, off the record, in chambers interviews" could potentially unduly influence a court's decision with regard to statutory grounds, as well as best interests. *Id.* This Court also found compelling that off-the-record, unrecorded proceedings provided no opportunity for cross-examination or meaningful appellate review, explaining:

> Respondents had no opportunity to learn what testimony was elicited or to counter the information obtained, and no way of knowing how that information may have influenced the court's decision. In addition, the trial court's decision to use in camera interviews resulted in an inadequate record for meaningful judicial review at the appellate level. Accordingly, we conclude that the trial court's decision to interview the children in camera fundamentally and seriously affected the basic fairness and integrity of the proceedings below and the decision regarding the children's best interests must be vacated. [*Id*. at 456-457 (footnote omitted).]

In *In re Ferranti*, our Supreme Court agreed with this Court's holding in *In re HRC* that the "use of unrecorded *in camera* interviews in termination proceedings violates parents' due process rights." The Supreme Court also acknowledged this Court's concerns that *in camera* interviews may unduly influence the trial court's factual findings, provide no opportunity for cross-examination, and foreclose meaningful appellate review. *In re Ferranti*, ___ Mich at ___; slip op at 25. However, the Supreme Court also recognized that a trial court's interview of a child could be conducted without triggering due-process concerns: "Most obviously, the court might have examined JF on the record, in the presence of the parties and counsel, and with the opportunity for examination of the witness." *Id*. at ___; slip op at 27 n 16.

Applying the foregoing, we conclude that respondent has failed to demonstrate a due-process violation in this case. Unlike *In re Ferranti* and *In re HRC*, the trial court in the present matter did not actually conduct an *in camera* interview. Moreover, because of the manner in which the court did conduct its questioning of the children, the due-process concerns recognized in *In re HRC* are not present in this case.

In *In re HRC*, this Court defined an "*in camera* interview" as "an ex parte communication that occurs *off the record* in a judge's chambers and *in the absence of the other interested parties and their attorneys*." *In re HRC*, 286 Mich App at 451, citing Black's Law Dictionary (8th ed) (emphasis added). In this case, while the interview was in the judge's chambers, it was not off the record. A transcript of the questioning was generated. Indeed, in her brief on appeal, respondent admits that it was not off the record, and that a transcript was prepared.

Moreover, there is no credible evidence that the interviews occurred in the absence of the parties or their attorneys. When respondent indicated she was considering calling the children as witnesses, the court advised the parties that it had the technological capabilities of having the children testify in its chambers while broadcasting the testimony to the courtroom. In her brief on appeal, respondent admits that the court "allow[ed] the attorneys to view the interview." She further states: "It is unclear from the record, if the Appellant-Mother was able to view the children as they testified. It appears as though she was, and that is assumed for the purpose of

this appeal." When settling the record, the trial court expressly found that the interviews were broadcast into the courtroom. While respondent apparently testified on remand that the interview was not broadcast simultaneously into the courtroom, the court found that she was not credible in this regard because her testimony was inconsistent with the recollection of both respondent's and petitioner's attorneys. Thus, a review of both the original and supplemented records indicates that the parties and their attorneys were able to observe the court's questioning of the children.

Finally, it is clear that respondent had the opportunity to examine the witnesses. As part of the procedure employed by the court, each party had the opportunity to submit questions if they wished and the court would then ask the questions. A review of the transcript from the in-chambers interview does not reveal what questions were presented by the parties as opposed to the court. However, because the court complied with the agreed-upon procedure, it is clear that respondent had, at the very least, the opportunity to present questions to her children. In any event, according to the court, respondent testified on remand that she did not have any questions to ask her children.

In sum, the circumstances in this case confirm that the trial court did not actually conduct an *in camera* interview because its questioning of the children was on the record and in the virtual presence of the parties. Moreover, it is clear that the method employed by the court to question the children did not implicate the due-process concerns expressed by this Court in *In re HRC*. Unlike the respondents in *In re HRC*, respondent in this case did have an opportunity to learn what testimony was elicited and she had an opportunity to counter that testimony. See, by contrast, *In re HRC*, 286 Mich App at 456-457. Further, a record of the court's questioning was made to allow for adequate appellate review if necessary. Respondent has not demonstrated that the manner in which the court questioned her two oldest children violated her right to due process.

Next, respondent argues that the trial court erred by finding that the statutory grounds for termination were established by clear and convincing evidence. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Trejo,* 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(K). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been committed. *In re Miller,* 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(b)(*ii*), (c)(*ii*), (g), (j), and (k)(*iv*), which permit termination of parental rights when the following conditions are satisfied.

> (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.

* * *

(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:

* * *

(*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, 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.

* * *

(k) The parent abused the child or a sibling of the child, the abuse included 1 or more of the following, and there is a reasonable likelihood that the child will be harmed if returned to the care of the parent:

* * *

(*iv*) Loss or serious impairment of an organ or limb.

Preliminarily, the trial court found clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(g). This particular subsection was amended by 2018 PA 58, effective June 12, 2018. The current version of MCL 712A.19b(3)(g) replaces "without regard to intent" with "although, in the court's discretion, financially able to do

so[.]" The supplemental permanent custody petition, filed on July 17, 2018, cited the preamendment version of the statute. In its oral ruling from the bench, issued on October 24, 2018, the court similarly relied on the preamendment language of the statute. However, the filing of the supplemental petition, the hearings on that petition, and the entry of the order terminating parental rights all occurred after the effective date of the amendment. On appeal, respondent cites the amended language but does not challenge the trial court's reliance on the preamendment version of § 19(b)(3)(g). Because the amendment became effective on June 12, 2018, the trial court erred by failing to make findings consistent with the amended statute. However, only one statutory ground is required to terminate parental rights. See *In re Trejo*, 462 Mich at 350. As will be discussed, the trial court did not err when it terminated respondent's parental rights under §§ 19b(3)(b)(*ii*) and (j). Accordingly, the court's error with respect to §§ 19b(3)(g) does not warrant reversal.

The trial court did not err when it found clear and convincing evidence to terminate respondent's parental rights under § 19b(3)(b)(*ii*). This section "is intended to address the parent who, while not the abuser, failed to protect the child from the other parent or nonparent adult who is an abuser." *In re LaFrance*, 306 Mich App 713, 725; 858 NW2d 143 (2014). Respondent admits that AL was sexually abused by Price, but argues that there was no evidence that she had an opportunity to prevent the abuse. We disagree.

AL disclosed to her foster mother that she tried to tell respondent, right after the abuse happened, what was going on with Price, but respondent did not believe her. There was evidence that AL told respondent that she wanted a baby and then she started hanging around Price more "so that they could take their relationship to the next level." Further, respondent's adult son testified that while he was living in the home, he knew that Price was, at the very least, inappropriately touching AL in a sexual manner. Moreover, he testified that for months JL was attempting to persuade AL to disclose the sexual touching. Given that other members of the household, indeed another minor child, knew that Price was sexually abusing AL, the trial court did not clearly err by finding that respondent was aware of what was going on in her own home, particularly because she claimed to have never left her children alone with Price. The evidence indicates that respondent simply ignored what was clearly there to be seen, that her 13-year-old daughter was being sexually abused by a sexual predator.

Further, contrary to respondent's assertions, there was overwhelming evidence that there existed a reasonable likelihood that the children would suffer injury or abuse in the foreseeable future if placed in respondent's home. Although respondent testified that she had ended her relationship with Price, the evidence supports the trial court's finding that she continued to be involved with him, despite knowing that he repeatedly sexually abused and impregnated her 13-year-old daughter. After Price confessed and was convicted of criminal sexual conduct and sentenced to 51 to 180 months' imprisonment, respondent continued to plan for a future with him and her children upon his eventual release. During visits at the county jail, respondent professed her love for Price, expressed her desire to have him home, and reassured Price that she would be there when he was released. She also provided Price with financial assistance and attended his criminal hearings. Respondent's claim that she had severed her ties with Price lacked credibility.

Because respondent intended to build a life with a sexual predator after his release from prison, the trial court did not clearly err by finding that the second prong of MCL

712A.19b(3)(b)(*ii*) had been proven. i.e., that there existed a reasonable likelihood that the children would suffer injury or abuse in the foreseeable future. Indeed, respondent's future plans with Price were particularly alarming considering that when Price is expected to be released from prison, ANL will have reached the age that AL was when Price first sexually abused her.

Respondent suggested at the termination hearing that there was no realistic risk of future harm because Price was to be incarcerated for more than three years and, when he was released, he would not legally be permitted to have contact with the children. Respondent's argument ignores that probationers, parolees, and felons sometimes do not comply with the terms of their release. Moreover, it is not simply the risk that respondent will actually permit Price to have contact with her children in the future that is of concern. The mere fact that respondent has evidenced an intent to remain in a relationship with the man who sexually abused her daughter would likely cause extreme emotional damage to AL's already fragile mental health. Indeed, the CASA volunteer testified that AL would be devastated if she learned that respondent had maintained contact with her abuser. AL, in particular, will be at risk of future harm because it is likely that respondent's conduct will cause AL to be re-traumatized.

Because the evidence supports the trial court's finding that respondent failed to protect her daughter from a sexual predator, and there was overwhelming evidence that respondent was unwilling to protect her children from known risks of abuse and emotional injury in the future if returned to her care, the trial court did not clearly err when it found clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(b)(*ii*).

There was also clear and convincing evidence to support termination of respondent's parental rights pursuant to MCL 712A.19b(3)(j). In addition to the evidence regarding respondent's inability to protect her children from a sexual predator, there was also evidence that respondent's children would be a risk of physical harm at respondent's hand if returned to her care. CPS investigated respondent numerous times after receiving complaints that she had physically abused both AL and JL. Several of the complaints were substantiated. Before the court became involved, petitioner worked with respondent in an effort to improve her parenting skills and educate her on appropriate discipline. Respondent participated in three different parenting classes and she had the benefit of in-home services through Families First on two occasions. She also participated twice in the Families Together Building Solutions program. However, it is clear that respondent has not benefited from any of these services. Respondent continued to demonstrate poor and impaired judgment as evidenced by the fact that she still wished to marry Price and was willing to expose her children to him on a regular basis. Further, while respondent was participating in services specifically designed to address discipline techniques, she continued to physically abuse JL.

Respondent's testimony regarding the physical abuse of JL demonstrates that she still has gained no insight into her own actions. During her testimony, she described the incident in July 2017 that resulted in JL suffering two fractures to a finger. Apparently, JL wanted to go outside with his friends and respondent believed it was too late to do so. The argument escalated and, as respondent first explained, she "picked up a stick off the floor and accidentally hit [her son] and fractured his finger." She then admitted that she picked up the stick in anger or frustration and hit him on the top of his hand. As a result of this event, respondent pleaded guilty of attempted third-degree child abuse. In response to the court's questioning, respondent admitted the

allegation of physical abuse against JL but she clarified that she struck JL "out of anger, not intentional." Respondent testified that she had benefited from services and she would now never again use physical discipline with JL. However, the fact that she would still describe picking up a stick and striking a child's hand as "an accident" and was unable to differentiate between an accidental and intentional act casts serious doubt on her parenting skills and her ability to properly and safely care for her children.

The foregoing evidence demonstrated that respondent, on multiple occasions, physically abused JL and was unable to recognize a known risk of harm to all three of her children. Moreover, she was clearly unwilling to put her children's needs ahead of her own. Under these circumstances, the trial court did not clearly err by finding that there existed a reasonable likelihood that respondent's children would be harmed if returned to her care. Accordingly, the trial court did not clearly err by finding clear and convincing evidence to terminate respondent's parental rights under §§ 19b(3)(b)(*ii*) and (j).[1]

Lastly, respondent challenges the trial court's finding that termination of her parental rights was in the children's best interests. Because a preponderance of the evidence supports the trial court's finding, we find no merit to this challenge.

"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 the parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Whether termination of parental rights is in a child's best interests must be proven by a preponderance of the evidence. *In re Moss,* 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court reviews for clear error a trial court's finding that termination of parental rights is in a child's best interests. *In re Jones,* 286 Mich App 126, 129; 777 NW2d 728 (2009).

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[1] The trial court also apparently terminated respondent's parental rights under MCL 712A.19b(3)(k)(*iv*), which permits termination where a parent abuses a child and the abuse resulted in the loss or serious impairment of an organ or limb. The court's reliance on this ground was apparently based on respondent's act of striking JL's hand and fracturing one of his fingers. We disagree that termination under § 19b(3)(k)(*iv*) was proper. We question whether a finger constitutes a limb, but even if the definition of "limb" included simply the finger, there was no evidence that JL lost his finger or that the function of the finger was seriously impaired. The court also terminated respondent's parental rights under § 19b(3)(c)(*ii*), but neither the parties nor the trial court have identified what "other conditions" supported termination. Therefore, we cannot find a basis for termination under that ground. But because the evidence amply supports termination under two alternate statutory subsections, and only one statutory ground is required to terminate parental rights, the court's invocation of subsections (c)(*ii*) and (k)(*iv*) qualify as harmless error. See *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

The court may consider several factors when deciding if termination of parental rights is in a child's best interests, including the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. *In re Olive/Metts,* 297 Mich App 35, 42; 823 NW2d 144 (2012). The court may also consider psychological evaluations, the child's age, continued involvement in domestic violence, and a parent's history. *In re Jones,* 286 Mich App at 131.

The trial court did not clearly err when it found that termination of respondent's parental rights was in the children's best interests. Respondent asserts that the existence of a bond weighed in favor of preserving her parental rights. However, other factors can outweigh the import of that bond. *In re LE*, 278 Mich App 1, 29-30; 747 NW2d 883 (2008). In this case, there was overwhelming evidence that respondent was unable and unwilling to protect her children from a known risk of harm. Further, respondent was willing to further jeopardize her child's fragile stability by maintaining a relationship with the predator who sexually abused and impregnated that child. Finally, while respondent had been offered a multitude of services, she failed to benefit from the services. Respondent was unable to demonstrate that she had gained the necessary skills and insight to properly discipline and safely parent her children.

The children's needs in this case are particularly acute because they have all been traumatized by a multitude of factors including the death of their biological father and the physical and sexual abuse experienced by the children. Both JL and AL have been diagnosed with post-traumatic stress disorder. To further add to the complexity of the trauma, AL was diagnosed with schizophrenia and low cognitive function. JL suffers from ADHD and ODD. At the time of the termination hearing, both children were in residential facilities where they were being treated for their severe mental health issues. The youngest child, ANL, was placed in a foster home, but she too was being treated for defiant behavioral issues and sexual acting out. All three children were going to require a supportive, caring, and competent adult to assist them in overcoming, among other things, the effects of the trauma. Respondent was simply ill-equipped to provide proper care for her children because she was unable to put her children's needs ahead of her own. Considering the foregoing evidence, the trial court did not clearly err when it found, on the basis of a preponderance of the evidence, that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Jonathan Tukel
/s/ David H. Sawyer
/s/ Michael J. Riordan