

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

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*In re* HUTCHINSON, Minors.

UNPUBLISHED  
July 23, 2019

No. 347383  
Wayne Circuit Court  
Family Division  
LC No. 18-000875-NA

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Before: O'BRIEN, P.J., and FORT HOOD and CAMERON, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor children, BH and AH, under MCL 712A.19b(3)(b)(ii) (parent had the opportunity but failed to prevent sexual abuse).<sup>1</sup> The sole issue raised on appeal is whether or not termination of respondent's rights was in the children's best interests. We affirm.

This case arises out of the sexual abuse of BH by respondent's husband and stepfather to BH and AH, Brian Turrill. During a Kids Talk interview in May 2018, BH stated that Mr. Turrill made her expose her breasts approximately 8 to 10 times. BH also stated that Mr. Turrill fondled her breast and made her perform oral sex and that she does not feel safe at home. In April 2018, BH reported the sexual abuse to her school counselor and then informed respondent about the abuse.

But, thereafter, respondent failed to act in a way to keep the children safe. She refused to comply with the request of Child Protective Services (CPS) to remove Mr. Turrill from the home during the investigation. Respondent also indicated that she would not consent to protective intervention for the children. In addition, respondent failed to file a police report regarding BH's allegations against Mr. Turrill. At a family team meeting in May 2018, respondent told the CPS specialist that she did not believe BH. BH also reported that Mr. Turrill pressured her to change her story after a visit from CPS.

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<sup>1</sup> The biological father to BH and AH was also a respondent in the trial court, but he is not a party to this appeal.

In June 2018, petitioner filed a petition to terminate respondent's parental rights to the children. The petition asserted that termination was warranted because respondent failed to keep BH and AH safe or to intervene and eliminate the risk of Mr. Turrill's sexual abuse. The trial court authorized the petition. At the adjudicatory hearing on October 2, 2018, respondent pleaded to the trial court's jurisdiction over the minor children and to the statutory bases for termination. Specifically, respondent acknowledged that in April 2018, she became aware that Mr. Turrill had touched her fifteen-year-old daughter BH's breasts. She further admitted that despite having knowledge of the sexual assault, she did not respond appropriately and continued to reside in the marital home with Mr. Turrill. In fact, respondent continued to live in the marital home even after the petition was filed, and did not move out of the home until August 2018. She further admitted to reporting that she did not believe BH's allegations of sexual abuse against Mr. Turrill. Based on these admissions, the trial court found that there was clear and convincing evidence to terminate respondent's rights pursuant to MCL 712A.19b(3)(b)(ii). The trial court then scheduled a separate best-interest hearing to allow respondent to participate in an evaluation at the Clinic for Child Study with the children.

On October 18, 2018, respondent attended the clinical evaluation with the children. During BH's interview with the clinician, she indicated that she wanted to return to respondent's care now that she had left Mr. Turrill. During AH's interview, he stated that he loved respondent and wished to return to her care. Both children reported that they did not want to have any further contact with Mr. Turrill. In respondent's interview, she stated that she had left the marital home, was residing with her aunt since August 2018, and started the divorce process. She noted that Mr. Turrill was verbally abusive and domineering and that she was enjoying her freedom. Additionally, she informed the clinician that she believed her husband was inappropriate toward BH and she felt extremely remorseful that she did not immediately leave Mr. Turrill upon learning of BH's allegations against him. She stated that she was seeking to obtain her own housing and planning to comply with all of the court's requirements to regain custody of the children.

At the subsequent best-interest hearing in November 2018, respondent testified that she started living with Mr. Turrill again approximately 10 days after the clinical evaluation. Respondent testified that she had a car service pick her up and take her back to the marital home with Mr. Turrill despite reporting to the clinician that she felt remorse for not leaving the marital home sooner, and discussing her plan to divorce Mr. Turrill and obtain her own housing to be with the children. She did not tell the children when she left to go back to Mr. Turrill, she did not answer their numerous phone calls, and she did not see them or contact them for two weeks, until the evening prior to the best-interest hearing, even though she had a car, did not work, and was staying 35 minutes from where the children were living. When asked why she returned to Mr. Turrill, respondent answered "I don't know." When asked why she had not visited the children in two weeks, she responded "I don't know." Respondent admitted that she thought the effect on BH and AH of her returning to Mr. Turrill would not be good. Further, she testified that she was not sure how she would have a relationship with BH and AH while living with Mr. Turrill, as she understood that the children wanted nothing to do with him. However, she still loved the children and desired to continue to parent them on a full-time basis, but she did not have a plan as to how that would work while she remained married to Mr. Turrill.

The children also testified at the best-interest hearing. BH testified that she did not want to continue her relationship with respondent because respondent continued to live with Mr. Turrill. BH also testified that she did not believe that counseling would repair her relationship with respondent because “there’s so much damage that’s already been done.” She testified that even if respondent’s rights were not terminated, she preferred to stay permanently with her grandfather. AH testified that he was not sure whether he wanted the trial court to terminate respondent’s parental rights, but AH also stated that his answer would change if respondent continued her relationship with Mr. Turrill because he did not want to be around him. AH also testified that he wanted to remain living with his grandfather.

The trial court found that termination of respondent’s parental rights was in the best interests of BH and AH. The trial court found that respondent’s relationship with Mr. Turrill was mutually exclusive to her relationships with BH and AH. Yet, respondent refused to separate or distance herself from Mr. Turrill, despite petitioner’s intervention. The trial court stated that respondent’s “prognosis for rehabilitation as a parent is extremely poor. Furthermore, she continues to harm and demoralize these children.” The trial court found that termination of respondent’s parental rights “is necessary to stop the harm caused by mother and to assist the children in healing from the trauma inflicted by her and her choices.”

Respondent argues that the trial court clearly erred when it concluded that termination of her parental rights to BH and AH was in their best interests. We disagree.

After a trial court finds that a statutory basis for termination exists by clear and convincing evidence and that a preponderance of the evidence shows that “that termination of parental rights is in the best interests of a child, the court must terminate the respondent’s parental rights to that child.” *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). “The trial court’s decision on the best interests question is reviewed for clear error.” *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). A trial court’s decision “is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

The best-interest analysis focuses on the child rather than the parent. *In re Schadler*, 315 Mich App 411. “In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, 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) (citations omitted). “The trial court may also consider a parent’s history of domestic violence, 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, and the possibility of adoption.” *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

The trial court found that termination was in the best interests of BH and AH because respondent chose to live with and stay married to Mr. Turrill, who sexually abused BH, over keeping the children safe. When respondent first learned that Mr. Turrill sexually abused BH, she did nothing to separate or protect BH and AH from Mr. Turrill. At the evaluation with the Clinic for Child Study on October 18, 2018, respondent stated that her relationship with Mr. Turrill was over and that she began the divorce process. However, less than two weeks after

expressing remorse for not leaving Mr. Turrill sooner, respondent returned to Mr. Turrill's home, choosing to live with him instead of the children. Respondent knowingly risked her relationships with the children; she had heard at the clinical evaluation that they both wanted to be returned to her care, yet neither wanted any contact with Mr. Turrill. As the trial court stated, respondent's relationship with the children and her relationship with Mr. Turrill "are mutually exclusive."

At the best-interest hearing in November 2018, BH testified that she wanted respondent's parental rights terminated because her relationship with respondent was beyond repair and she did not feel safe with respondent. BH testified that even though she had high school, college, prom, and many other life milestones ahead of her, she did not want respondent to be involved in any of them. Instead, she wanted to permanently live with her grandfather. BH also testified that she was "totally upset" and "furious" about respondent's decision to move back in with Mr. Turrill. She wished that she had the chance to stop respondent from going back to Mr. Turrill, but she protected respondent for 10 years of her life and was "sick of it." She admitted that she played a parental role for respondent. In addition, AH testified at the hearing that he wanted to continue living with his grandfather and did not know whether he wanted the trial court to terminate respondent's parental rights, but stated that his opinion would change if respondent continued to stay with Mr. Turrill.

Respondent's decision to continue to live with Mr. Turrill after learning of BH's allegations against him shows a complete disregard for her relationship with the children. Respondent could have immediately left the marital home with the children or demanded that Mr. Turrill leave the home. Instead, the trial court was required to order that BH and AH be removed from respondent's care so that they would be separated and protected from Mr. Turrill. Once removed, respondent regularly visited the children and ultimately decided to move out of the marital home. However, when respondent returned to live with Mr. Turrill, she chose a life with Mr. Turrill instead of a life with the children. Respondent did not visit the children or communicate with them after returning to Mr. Turrill, save for a text message the night before the best-interest hearing. Even then, BH testified that she did not think the text message was from respondent because she tried calling twice after asking respondent via text why she went back and respondent did not answer the phone. The trial court noted that respondent's return to Mr. Turrill was devastating to the children. Also, by living with Mr. Turrill, the trial court ruled that respondent continued to harm and demoralize the children. As a result, the record supports that it is in the best interests of BH and AH to have respondent's parental rights terminated because respondent's past choices involving Mr. Turrill show her inability to prioritize the children's well-being over her relationship with the man who sexually abused BH. Thus, all of the evidence supports that the trial court did not clearly err in terminating respondent's parental rights to BH and AH.

Respondent argues that the trial court clearly erred because (1) she loved the children and they were bonded to her and (2) she was correcting the conditions that led to adjudication by receiving mental health services and working toward maintaining safe housing, so she should have been given more time and opportunity to keep the family together.

While respondent may love the children, her decision to return to Mr. Turrill suggests that she loves Mr. Turrill more than she loves the children. Additionally, BH testified that she did not believe that her relationship with respondent could be repaired, and AH stated that his

neutral opinion toward termination would change if respondent did not leave Mr. Turrill. Although respondent was receiving mental health services at the time of the best-interest hearing in an attempt to create a safe environment for the children, the safe environment that the children need is an environment without Mr. Turrill, and respondent maintained at the best-interest hearing that she had no plan to leave him. Further, respondent's past decisions to return to and stay with Mr. Turrill, including her disbelief that Mr. Turrill sexually abused BH and her failure to protect the children after she was aware of the abuse, indicate that an environment without Mr. Turrill is unlikely. Respondent testified that she does not want to be with Mr. Turrill more than the children, but her words do not match up with her actions, and she wasted the opportunity and time that she had to prove otherwise. Respondent argues that for those with mental health issues such as depression, rehabilitation treatments may take significantly longer and that two years is not unreasonable. Although her statement regarding mental health and treatment may be true, at the clinical evaluation in October 2018, respondent denied ever being diagnosed with a mental illness. Then in November 2018, respondent again testified at the best-interest hearing that she had never been diagnosed with a mental issue or cognitive impairment. Moreover, giving respondent additional time to correct the conditions that led to adjudication would not be in the best interests of the minor children, who are in need of permanency, stability, and finality. The children cannot wait any longer for respondent to permanently leave Mr. Turrill. Thus, respondent's argument lacks merit. The trial court did not clearly err when it determined there was sufficient evidence to support termination of respondent's parental rights in order to serve the minor children's best interests, despite respondent's love for the children, any remaining bond between the children and respondent, and respondent's alleged attempts to correct the conditions that led to adjudication.

Respondent further argues that the trial court erred because she was not offered a service plan before termination. We disagree.

Respondent's claim relating to the adequacy of the service plan in the trial court is unpreserved. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). Therefore, this Court's review of the issue is limited to plain error affecting respondent's substantial rights. *In re England*, 314 Mich App 245, 263; 887 NW2d 10 (2016). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Although a parent's compliance with a case service plan is a factor that the trial court may consider in its best interests determination, *In re White*, 303 Mich App at 714, a service plan is not required in all situations. *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000). In this case, petitioner was not required to provide reunification services because termination of respondent's parental rights was petitioner's goal. *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Petitioner was required to submit a petition for termination because of Mr. Turrill's sexual abuse of BH and respondent's failure to intervene. MCL 722.638 (1) and (2). Moreover, the trial court noted that petitioner took reasonable steps to prevent removal of BH and AH, including establishing a safety plan and conducting a family team meeting. Accordingly, respondent's claim regarding the inadequacy of her service plan and opportunity to participate in such a plan is without merit.

Affirmed.

/s/ Colleen A. O'Brien  
/s/ Karen M. Fort Hood  
/s/ Thomas C. Cameron