STATE OF MICHIGAN

COURT OF APPEALS

In re I. R. HUGO, Minor.

UNPUBLISHED
December 17, 2019

No. 347785
Chippewa Circuit Court
Family Division
LC No. 09-013827-NA

Before: LETICA, P.J., and GADOLA and CAMERON, JJ.

PER CURIAM.

Respondent father appeals as of right an order terminating his parental rights to a minor child, IRH, under MCL 712A.19b(3)(c)(*i*) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (risk of harm to child).[1] Because IRH is Native American, provisions of the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq*., and the Michigan Indian Family Preservation Act (MIFPA), MCL 712B.1 *et seq*., were also triggered. These statutes impose certain requirements for terminating parental rights to an Indian child, including proof of "active efforts" to prevent the breakup of the family and proof beyond a reasonable doubt that continued parental custody of the child would harm her. *In re England*, 314 Mich App 245, 259; 887 NW2d 10 (2016).[2] Respondent argues that petitioner failed to establish statutory grounds for termination and also failed to establish the pertinent requirements of the MIFPA. We disagree and affirm.

I. OVERVIEW

In the eight years before IRH was born, OCS had six prior terminations or releases of her parental rights after Child Protective Services (CPS) initiated proceedings based on her mental-health issues, extreme housing instability, and lack of participation in services. After IRH was

[1] The court also terminated the parental rights of IRH's mother, OCS. But, because she withdrew her appeal, only respondent's rights remain in issue.

[2] We have stated that "the relevant provisions of the ICWA and the MIFPA are essentially identical[.]" *In re England*, 314 Mich App at 259.

born on September 28, 2016, CPS received a complaint in light of OCS's history. Thereafter, OCS and respondent voluntarily participated in services with the Department of Health and Human Services (DHHS) and CPS closed the case in December 2016. That same month, respondent tested positive for tetrahydrocannabinol (THC).

In January 2017, CPS investigated a new complaint—respondent's domestic violence in IRH's presence. Respondent was arrested for domestic violence against OCS—his third domestic-violence offense. OCS and respondent were arguing over IRH's care and OCS left with IRH in her stroller. Respondent followed OCS and took the stroller from her, resulting in OCS's phone falling. OCS reported that respondent pushed her into a snowbank and choked her. OCS went to the hospital for lacerations and contusions to her head and chest. There were visible red marks on OCS's neck. Respondent denied assaulting OCS, but admitted he had a history of domestic violence involving his sister and an ex-girlfriend, who had obtained a personal protection order against him. Respondent further admitted a history of substance abuse, stating he "would use anything he could shoot up." But respondent claimed to have been clean for about six years. Although CPS substantiated the complaint and filed a petition, the court did not authorize it and, again, a case was opened for voluntary services.

In the interim, OCS went to a domestic-violence shelter, where she failed to properly supervise IRH. OCS also obtained a no-contact order against respondent. Respondent made a suspected suicide threat and was taken to the hospital for evaluation. Respondent stopped engaging in services and had no contact with IRH for over a month. Once respondent returned in late February 2017, he again tested positive for THC and refused additional drug testing. In addition, respondent had a warrant for domestic violence as well as for four drug-related offenses, including maintaining a drug house.

On March 30, 2017, IRH was removed from her parents' care based on domestic violence, substance abuse, and improper supervision. DHHS concurrently filed a petition requesting the court to take jurisdiction with the portions pertaining to respondent alleging domestic violence and substance abuse. During the subsequent full removal hearing, the referee learned that IRH was affiliated with two different Native American tribes—the Bay Mills Indian Community (BMIC) through respondent and the Sault Ste. Marie Tribe of Chippewa Indians (SSMTCI) through OCS. The referee adjourned the case to afford the tribes time to determine which tribe would serve as IRH's tribe during this case. The tribes thereafter agreed that SSMTCI would act as IRH's tribe while BMIC remained involved as an intervening party.

Respondent pleaded guilty to domestic violence in April 20, 2017. A few weeks later, the criminal court sentenced respondent to six months' probation and ordered him to complete programs. At OCS's request, her earlier-requested no-contact order was lifted. About 90 minutes later, two people called 911 to report respondent was chasing OCS down the road with his hands cocked up in the air as if he was going to strike her.

At the May 2017 preliminary hearing and full removal hearing, the trial court authorized the petition. Soon thereafter, the court allowed IRH to return to the family home on the conditions that OCS continue the changes she had made and that she supervise IRH around respondent until he had another clean drug screen. Respondent had had another drug screen that was positive for marijuana—in violation of his bond in his then-pending criminal matters.

OCS later sought a personal protection order (PPO) against respondent and returned to the domestic-violence shelter. The PPO request followed a spat, causing OCS to think about IRH's well-being. Respondent was unhappy that OCS was at a friend's house and he wanted IRH despite the court's earlier order requiring supervised parenting time. A neighbor, who had overheard the heated exchange, called the police. According to OCS, respondent threatened her and called her a "wh*re" and a "piece of sh*t." Even so, she dropped the PPO request and she and respondent resumed their relationship. OCS admitted that she occasionally left their home to ensure "things calm[ed] down."

In June 2017, the court held an adjudicative hearing and exercised its jurisdiction over IRH, concluding, in part, that OCS minimized the significant domestic violence that had occurred in IRH's presence. By the time of the dispositional hearing, respondent had insufficiently complied with numerous services and was difficult to contact. Moreover, respondent had tested positive for his prescription Neurontin with his drug level far exceeding a therapeutic amount. Respondent had also tested positive for hydrocodone, resulting in the court continuing its order providing for OCS's supervision over respondent's interaction with IRH.

In July 2017, OCS returned to the domestic violence shelter after another domestic-violence incident. During OCS's time there, respondent called her up to 300 times and they soon reunited with OCS moving back to respondent's home.

On August 29, 2017, respondent was sentenced to 2 to 14 years' imprisonment for drug delivery. While out on bond for this earlier drug-delivery charge, respondent delivered hydrocodone, incurring a new charge.[3] Respondent's earliest parole eligibility date was August 26, 2019.

Before respondent was incarcerated, he had eleven drug screens. One was negative; he failed to call or appear for two; and eight were positive.

By December 2017, IRH was removed from OCS's care because OCS was arrested for drug-related charges. In March 2018, DHHS filed a supplemental petition seeking termination of respondent's parental rights. Following hearings that took place over several months, the trial court entered the termination order on January 25, 2019.

This appeal followed.

II. STANDARDS OF REVIEW

To terminate parental rights, the trial court must initially find, by clear and convincing evidence, a statutory ground for termination, MCL 712A.19b(3), and this Court reviews for clear error the trial court's factual findings and its ultimate determination that a statutory ground has been established, *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly

[3] This initial charge stemmed from an incident before IRH's birth. The prosecutor later dismissed the subsequent drug delivery charge.

erroneous if, even if some evidence supports it, we are nevertheless left with the firm and definite conviction that the lower court made a mistake. *Id*. As noted, in the case of an Indian child, termination requires a finding beyond a reasonable doubt that the child would be harmed if returned to the parent and we review this finding for clear error. *In re Beers*, 325 Mich App 653, 683; 926 NW2d 832 (2018); *In re England*, 314 Mich App at 261. We also review for clear error the trial court's findings regarding active efforts. *In re Beers*, 325 Mich App at 680; *In re England*, 314 Mich App at 260.

III. STATUTORY GROUNDS AND MIFPA'S BEYOND-A-REASONABLE-DOUBT STANDARD

MCL 712A.19b(3) states, in relevant part:

> 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:
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> * * *
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> (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 . . . the following:
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> (*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.
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> * * *
>
> (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.[4]
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> * * *
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> (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.

MCR 3.977(G)(2) explains that parental rights to an Indian child must not be terminated unless:

[4] Subparagraph (g) was amended by 2018 PA 58, effective June 12, 2018, to add the language about finances.

> [T]he court finds evidence beyond a reasonable doubt, including testimony of at least one qualified expert witness as described in MCL 712B.17,[5] that parental rights should be terminated because continued custody of the child by the parent or Indian custodian will likely result in serious emotional or physical damage to the child.[6]

A. MCL 712A.19b(3)(c)(*i*)

On June 22, 2017, the conditions that led to adjudication as to respondent were domestic violence and substance abuse.[7]

Respondent admitted to committing domestic violence in the past against his sister and an ex-girlfriend. In addition, the evidence showed that in January 2017, he pushed OCS into a snowbank and choked her in IRH's presence after they argued over IRH. Respondent and OCS engaged in a struggle over IRH's stroller to the point that OCS's phone was dislodged. IRH went to the hospital with lacerations and contusions. And, despite respondent's initial denial that he had assaulted OCS, he eventually pleaded guilty to a charge of domestic violence arising from the January 2017 incident.

Immediately after the cessation of an order prohibiting contact between them, respondent and OCS were together and a bystander, who observed a "heated" interaction between them, called the police. At the end of May 2017, OCS filed for a PPO against respondent because of his threats. Respondent had called OCS a "wh*re" and a "piece of sh*t" and did not want IRH to be at the residence where OCS had taken her. Respondent planned to take IRH in spite of the court's order that his parenting time be supervised. OCS testified that respondent "tried to take off with [IRH's] stroller and her car seat" and was "yelling and screaming."

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[5] MCL 712B.17 states, in part:

> (1) If the testimony of a qualified expert witness is required, the court shall accept either of the following in the following order of preference:
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> (a) A member of the Indian child's tribe, or witness approved by the Indian child's tribe, who is recognized by the tribal community as knowledgeable in tribal customs and how the tribal customs pertain to family organization and child rearing practices.
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> (b) A person with knowledge, skill, experience, training, or education and who can speak to the Indian child's tribe and its customs and how the tribal customs pertain to family organization and child rearing practices.

[6] See also MCL 712B.15(4).

[7] The 182-day period in MCL 712A.19b(3)(c)(*i*) had long passed by the time of the termination hearing.

A witness also testified that on or about July 25, 2017, OCS "had to leave the home because of a domestic violence incident and she was once again residing in [a] domestic violence shelter." While living at a shelter, OCS had received approximately 300 telephone calls from respondent in one stretch and she believed it would be easier to return to the home. On August 1, 2017, OCS once again went to a shelter because of respondent's behavior.

The record demonstrates that respondent had a serious long-standing issue with violence. Although respondent began participating in a "Men's Group" to address domestic violence, he missed appointments that resulted in termination of the service, even after he no longer had an employment conflict and before his August 29, 2017 incarceration.[8] Respondent simply never completed the group. Moreover, at the time of his incarceration, respondent had completed only four out of fourteen required parenting classes, despite having time to complete them. Respondent had also been hostile to his Family Continuity worker, resulting in her declining to provide transportation. Although there was evidence that respondent was participating in domestic-violence education in prison, his earliest release date was August 26, 2019. Even after that date, he would need to demonstrate that he had benefited from his classes before regaining custody of IRH.

Respondent contends that his long history of domestic violence and the resultant deprivation of stability for IRH are insufficient to support termination when there is no evidence that he had harmed IRH or would do so in the future. *In re Mason*, 486 Mich at 165 ("termination solely because of a parent's past violence or crime is justified only under certain enumerated circumstances, including when the parent created an unreasonable risk of serious abuse or death of a child, if the parent was convicted of felony assault resulting in injury of one of his own children, or if the parent committed murder, attempted murder, or voluntary manslaughter of one of his own children."). But this Court recognizes that "it is proper to scrutinize the likelihood of harm if the child were returned to the parent's home *after* the parent's release from prison." *In re Pops*, 315 Mich App 590, 600; 890 NW2d 902 (2016). Here, IRH was placed at risk of harm by respondent's violence. Verbal arguments and physical altercations ensued over her and in her presence. See e.g., *In re Dearmon*, 303 Mich App 684, 689-690, 700; 847 NW2d 514 (2013) (recognizing that witnessing on-going domestic violence places children at substantial risk of harm and renders their home environment unfit). And, in light of OCS's lack of stable housing and demonstrated inability to supervise IRH while in a domestic violence shelter, respondent repeatedly engaged in violent behavior that led OCS to seek refuge in a shelter again and again to protect IRH.

Moreover, domestic violence was not respondent's sole barrier to reunification. Respondent also abused substances, including marijuana and prescription medication. Although respondent initially reported being sober for six years, his limited drug tests showed otherwise. During the pendency of this matter, respondent pleaded guilty to a drug delivery charge, having

[8] While the instructor believed that missed appointments in August 2017 were due to the employment conflict or to incarceration, a caseworker contradicted this.

been charged with maintaining a drug house among other offenses. While on bond for those matters, respondent delivered hydrocodone. The criminal court sentenced respondent to two to fourteen years' imprisonment for his initial matter. His earliest parole eligibility date was August 26, 2019. Prior to his incarceration, respondent was repeatedly referred for services to address his substance abuse. As with his domestic-violence services, respondent failed to complete his substance-abuse services before he went to prison. While in prison, respondent reported completing a substance abuse program and attending Narcotics Anonymous and Alcoholics Anonymous. On appeal, respondent notes that he has not failed a drug screen since he went to prison. But even respondent's witness recognized that additional services would likely be required once respondent was released before he could safely parent IRH, and it remains to be seen if he has benefited from these services.

Respondent further argues that his substance abuse alone without any connection to abuse or neglect cannot justify termination. *In re Richardso*n, __ Mich App __; __ NW2d __ (2019) (Docket Nos. 346903 and 346904, rel'd July 25, 2019) (no clear and convincing evidence that mother continued to have an issue with substance abuse that presented an actual risk of harm to her child when she used medical marijuana to control her epileptic seizures); *In re LaFrance*, 306 Mich 713, 731; 858 NW2d 143 (2014) ("drug use alone, in the absence of any connection to abuse or neglect cannot justify termination"). Here, there was evidence that respondent was "belligerent" while abusing substances and that OCS feared having IRH near him while he was under the influence. Respondent's drug abuse and criminality absented him from IRH's life, leaving her without an appropriate caregiver. Respondent also had marijuana paraphernalia in his home, and, unlike the parent in *In re Richardson*, there is no evidence that he had a medical marijuana card and was under a doctor's care.

IRH was born in September of 2016, and was removed from her parents' care on March 30, 2017. In May 2017, IRH was returned to OCS, who was to supervise respondent's parenting time. Respondent went to prison in August 2017, and OCS was arrested in December, resulting in IRH's return to foster care. No appropriate caregiver for IRH was named by either parent. By the end of the termination hearing in January 2019, IRH had been in foster care for approximately half of her life.

Considering respondent's failures to make progress in services before imprisonment as well the additional time required to demonstrate any improvement resulting from respondent's yet-to-be-completed prison-based domestic-violence classes and his completed substance-abuse class before IRH could be safely returned to his care, we conclude that the trial court did not clearly err by finding that the conditions that led to the adjudication continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the child's age. MCL 712A.19b(3)(c)(*i*).

B. MCL 712A.19b(3)(j)

Although only one statutory ground need be established to justify termination of parental rights, *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011), the same evidence supporting termination under MCL 712A.19b(3)(c)(*i*) also supports termination under MCL 712A.19b(3)(j). Subsection (j) encompasses both physical *and* emotional harm to the child. See *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). Thus, even though there was no evidence that

respondent had laid hands on IRH, he had been repeatedly domestically violent toward OCS in IRH's presence and had destabilized IRH's living conditions. Respondent had also assaulted his sister and his ex-girlfriend. Respondent attended a few domestic-violence classes before he was incarcerated and continued to engage in behavior leading OCS to seek assistance at a domestic-violence shelter. Again, while there was evidence that respondent was attending domestic-violence classes while in prison, his lackluster participation in services before incarceration and the serious, longstanding, and persistent problem he exhibited, along with the recognition that additional after-incarceration services would likely be necessary, support the trial court's conclusion that IRH would likely be harmed if returned to respondent's care.

C. MCL 712A.19b(3)(g)

As for subsection (g), "a parent's failure to comply with the parent-agency agreement is evidence of the parent's failure to provide proper care and custody." *In re Gonzales/Martinez*, 310 Mich App 426, 432-433; 871 NW2d 868 (2015), citing *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Here, respondent failed to comply with the parent-agency agreement. And, as detailed above, respondent failed to provide proper care to IRH by being repeatedly domestically violent against OCS in IRH's presence. Given respondent's longstanding domestic violence and substance abuse as well as the length of time it would take for him to demonstrate his parental fitness, the trial court did not clearly err in finding that he would be unable to provide proper care and custody for IRH within a reasonable time considering her age. MCL 712A.19b(3)(g).

D. MIFPA FINDINGS

As for the additional required findings for an Indian child, *In re England* is instructive. In that case, we stated:

> Respondent caused serious physical harm to [the child] on more than one occasion. Throughout these proceedings, however, he failed to take responsibility for his actions and instead attempted to shift the blame to others and cast himself as the victim. Respondent failed to adequately participate in counseling services or maintain consistent contact with DHHS. At the time of termination, [a doctor] opined that respondent was a danger to the child and should not be around children. Moreover, based on [the doctor's] report and the fact that respondent failed to adequately participate in services or take responsibility for his actions, . . . a qualified expert witness[] opined that [the child] would be at risk of future harm if returned to respondent's care. [A child-protective-services worker] shared this opinion. On this record, the evidence, including the testimony of a qualified expert witness, proved beyond a reasonable doubt that returning [the child] to respondent's care would likely result in serious emotional or physical harm. [*In re England*, 314 Mich App at 261-262.]

While *In re England* involved physical harm to the child, respondent in the present case engaged in persistent and serious domestic violence against the child's mother, including while in the child's presence. Respondent's abuse resulted in OCS frequently moving IRH into a domestic-violence shelter, where OCS neglected her. Not only was IRH placed in harm's way during her

parents' confrontations, but respondent's continuous abusive behavior would also be likely to result in serious emotional harm to IRH. Although OCS had visible marks on her neck from respondent's January 2017 assault, he denied that he had "la[id] hands on" her; later, however, he pleaded guilty to domestic violence and continued to be domestically violent. Respondent also engaged in criminality, resulting in his imprisonment, and IRH was eventually left with no adequate caregiver. A qualified expert witness, AG, stated that respondent had been provided with services and "we still are in a position where the child is unable to be provided for adequately." She affirmed that there "would . . . be a likelihood of serious physical or emotional harm to the child if the child were returned to the parents." She testified that active efforts for family preservation had "absolutely" been employed in this case, in fact had been "exhausted," but had been "unsuccessful."

On this record, we reject respondent's assertion that petitioner and the trial court improperly focused solely on respondent's *past* actions. To the contrary, the trial court's focus was on respondent's past actions combined with more recent actions—his criminality and his failure to adequately avail himself of services. Under all the circumstances, the trial court did not clearly err by finding that the petitioner satisfied the beyond-a-reasonable-doubt standard of the MIFPA.

IV. ACTIVE EFFORTS

MCL 712B.15 states, in part:

> (2) An Indian child may be removed from a parent or Indian custodian, placed into a foster care placement, or, for an Indian child already taken into protective custody, remain removed from a parent or Indian custodian pending further proceedings, only upon clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, that the active efforts were unsuccessful, and that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. The active efforts must take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. The evidence must include the testimony of at least 1 qualified expert witness, who has knowledge of the child rearing practices of the Indian child's tribe, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.
>
> (3) A party seeking a termination of parental rights to an Indian child under state law must demonstrate to the court's satisfaction that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that the active efforts were unsuccessful.

MCL 712B.3(a) states: " 'Active efforts' means actions to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to reunify the Indian child with the Indian family. Active efforts require more than a referral to a service

without actively engaging the Indian child and family." *Id*. These active efforts may include engaging the Indian family in culturally appropriate services, identifying appropriate services and helping parents overcome barriers to compliance with those services, identifying relevant community services, and monitoring the parents' participation and progress with services. See MCL 712B.3(a)(*i*)-(*xii*); see also MCR 3.002(1).

We have previously noted that active efforts "require affirmative, as opposed to passive efforts, and 'active efforts' require more than the standard 'reasonable efforts' approach." *In re Beers*, 325 Mich App at 680 (citation omitted). We stated that active efforts "require more than a referral to a service without actively engaging the Indian child and family" and involve "a caseworker who takes a client through the steps of a treatment plan rather than requiring the client to perform the plan on his or her own." *Id*. (quotation marks and citations omitted).

As stated by the trial court, IRH's tribe was intensively involved in this case. Sault Tribe Anishnaabek Community and Family Services (ACFS), an SSMTCI organization, was the contracting agency for foster-care services. At the combined preliminary hearing and full removal hearing in May 2017, a child-protective-services worker, ES, stated that "the family" had been given transportation assistance "to and from services" and had been given supplies for IRH. ES made a specific reference to providing transportation to respondent and testified that she discussed reunification barriers with him and involved him in family team meetings (FTMs). She also testified about respondent's referrals to counseling and the Men's Group. An expert on tribal parenting, SO, stated that the services spoken about by ES were culturally appropriate. SO opined that active efforts had been expended with both parents. At the termination hearing, ES elaborated upon the services that had been offered and noted that an Indian Outreach worker and a Family Continuity worker had been available to help the family as a whole, and OCS verified that respondent had been offered services.

At a January 2018 hearing, KK, who worked for the ACFS placement agency, discussed respondent's two referrals to the Men's Group and his sporadic participation in ACFS parenting-education classes. She stated that respondent had been "closed out" of counseling and that she contacted his counselor to try to obtain information, but he had refused to sign a needed release. KK also spoke about FTMs with respondent, and she later testified about the transportation assistance provided to respondent. During a later January 2018 hearing, KK explained that she had contacted an aunt, a cousin, and a sister identified by respondent as possible placement options for IRH, but the contacts had not proven fruitful. One of respondent's own witnesses at the termination hearing acknowledged that the efforts at finding a relative placement for IRH likely met the standards for the SSMTCI.

Regarding respondent's incarceration, KK explained that prison officials were "trying to offer [respondent] services to the best of their abilities," that parenting education was the only needed service that was not available in prison, and that she had sent respondent a parenting workbook as a replacement. She indicated that she held FTMs with him and sent him photographs of IRH while he was in prison. Another worker spoke with respondent during a "My Team" meeting in February 2018, and a third worker mailed letters to him and held an FTM with him in September 2018.

Most significantly, and as noted earlier, AG, a qualified expert in SSMTCI tribal practices, testified that active efforts for family preservation had "absolutely" been employed in this case, in fact had been "exhausted," but had been "unsuccessful." AG identified the particular services offered to respondent, including services aimed at preventing further domestic violence and substance abuse.

In light of the above evidence, the trial court did not clearly err in its active-efforts findings. Respondent, however, contends that petitioner was focused on OCS and was only making halfhearted attempts with him, but this is simply not accurate—witnesses testified about the many services provided to respondent. Respondent asserts that, at the May 2017 hearing, SO was unable to verify whether he had been participating in the Men's Group. However, other witnesses adequately conveyed information about respondent's participation in the Men's Group. Respondent also asserts that he was not offered services for a certain period in early 2017, but the record indicates that respondent was away and out of contact from January 13, 2017, through February 22, 2017. We cannot fault petitioner for respondent's choice to leave the area.[9] Respondent further contends that caseworkers did not look into how respondent could possibly reconcile his work schedule with the Men's Group, but, after learning about the alleged conflict, KK testified that she would make another referral to the group for respondent. She did so, respondent re-started the service, and, even after losing his employment, he continued to miss sessions and was "closed out" of this service as a result.

Respondent also generally contends that petitioner did not engage in active efforts because it required the parents to seek services instead of actively providing them. As discussed above, the record belies this contention. Respondent is correct that JW, an investigator for petitioner, testified that the parents did not "indicate any additional services that they needed." But this was in the context of describing the many services that petitioner had actively offered to respondent. This indicates that petitioner believed it was providing all necessary services, not that respondent had to actively request them before they were provided. And contrary to respondent's assertion, at the dispositional review hearing KK described multiple services that respondent had been referred to and requested that the court order him to attend. Although KK stated that she would refer them to family therapy if the parents requested it, she also opined that it was not necessary in order to rectify the domestic-violence issues and that compliance with ordered separate services would resolve the issue.

Respondent further asserts that insufficient active efforts occurred during his imprisonment, but the evidence as set forth above shows that petitioner continued to actively engage with him during this period. AG testified that "efforts have been provided to him while incarcerated as much as they can be." In addition, one of respondent's own witnesses at the termination hearing admitted that it was difficult to provide services to a prisoner. Respondent contends that he was essentially "forced" to sign up for prison services on his own, but there is no evidence in the record that he had difficulty signing up for these services. Importantly, there

[9] We also note that this period was *before* IRH's removal from the home, and the active-efforts requirement is first triggered by removal. See MCL 712B.15(2).

is no evidence that petitioner could have done anything more to expand upon services offered by the prison. There was evidence that the prison did not allow in-person meetings and there were attempts to contact respondent while imprisoned regarding his services. Respondent's own witness stated, "I understand in [respondent's] case it's a lot more different because he can only go with whatever [the Michigan Department of Corrections] says he can utilize at the time." Based on this record, respondent's arguments on appeal are unavailing, and we find no basis for reversing the court's active-efforts findings.

Affirmed.

/s/ Anica Letica
/s/ Michael F. Gadola
/s/ Thomas C. Cameron