

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

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UNPUBLISHED  
December 17, 2019

*In re* S. D. A. LEWIS, Minor.

No. 348707  
Wayne Circuit Court  
Family Division  
LC No. 17-000377-NA

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Before: FORT HOOD, P.J., and SERVITTO and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to his child, SL, under MCL 712A.19b(3)(c)(i) (the conditions that led to adjudication continue to exist), (g) (failure to provide proper care or custody for the child), and (j) (reasonable likelihood that the child will be harmed if returned to the home of the parent). We affirm.

I. STANDARD OF REVIEW

“The clear error standard controls our review of both the court’s decision that a ground for termination has been proven by clear and convincing evidence and . . . the court’s decision regarding [a] child’s best interest.” *In re Medina*, 317 Mich App 219, 226; 894 NW2d 653 (2016) (quotation marks and citations omitted). See also MCR 3.977(K). “Appellate courts are obliged to defer to a trial court’s factual findings at termination proceedings if those findings do not constitute clear error.” *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). “‘A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.’” *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016), quoting *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

II. STATUTORY GROUNDS FOR TERMINATION

Respondent first argues that trial court clearly erred in finding that there was clear and convincing evidence of statutory grounds to terminate respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We disagree.

In termination cases, petitioners bear the burden of proving by clear and convincing evidence at least one statutory ground for termination. MCR 3.977(A)(3); MCR 3.977(E)(3); MCR 3.977(F)(1)(b); MCR 3.977(H)(3)(a); *In re Richardson*, \_\_ Mich App \_\_, \_\_; \_\_ NW2d \_\_ (2019) (Docket Nos. 346903 and 346904); slip op at 12. Termination of parental rights is appropriate pursuant to MCL 712A.19b when:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

\* \* \*

(g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

\* \* \*

(j) There is a reasonable likelihood, based on the conduct and capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3)(c)(i), (g), and (j).]

A petitioner need only establish one statutory ground by clear and convincing evidence to terminate respondent's parental rights. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). In this case, all three of the above grounds for termination were present.

First, the initial dispositional order was entered on June 6, 2017, and thereafter, respondent failed to complete or demonstrate a commitment to complete his parent-agency treatment plan (PATP), which was put into place to address the circumstances that led to adjudication. Under the PATP, respondent was required to attend parenting classes, individual therapy, substance abuse counseling, and was required to submit to random drug screens, participate in a psychological evaluation, and maintain suitable housing and contact with DHHS. Respondent participated in a psychological evaluation, but otherwise failed to comply with any other aspect of the plan.

Well over a year after the initial adjudication, respondent had yet to rectify any of the conditions that led to adjudication. Respondent routinely failed to submit to random drug screens and attended only a portion of his required parenting classes. In fact, at respondent's termination hearing, respondent refused to submit to a drug screen, explaining that it was "none of [his foster care agent's] business." Multiple services offered to respondent were terminated for noncompliance, and respondent failed to maintain suitable housing. Respondent even admitted that he had failed to comply with his PATP, explaining that he could not comply because he was "going through [his] ups and downs." Respondent's consistent failure to comply

with his treatment plan over the 19-month period between adjudication and the termination hearing supported the trial court's findings that respondent failed to rectify the conditions which led to adjudication, and that respondent was unlikely to rectify the conditions in the future. Thus, termination was appropriate pursuant to MCL 712A.19b(3)(c)(i).

We also note, however, that termination was appropriate pursuant to MCL 712A.19b(3)(g) and (j). Termination is appropriate pursuant MCL 712A.19b(3)(g) if "[t]he 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." Termination is appropriate pursuant to MCL 712A.19b(3)(j) if "[t]here 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." As noted above, respondent was offered services in order to assist him in complying with his PATP for 19 months, and during that period of time, respondent was unable to rectify any of the conditions that led to adjudication, including his inability to care for and provide adequate housing for SL. Respondent clearly failed to provide proper care and custody, and there was no evidence that respondent would be in a position to provide proper care and custody in the future. Moreover, given respondent's admission that he did not have suitable housing for SL, his continued use of marijuana, his admission to his foster-care worker that he was not prepared to care for SL, as well as his own statements on the record, we cannot discern any clear error from the trial court's conclusion that SL could be harmed if placed in respondent's custody.

### III. BEST-INTEREST DETERMINATION

Respondent also argues that the termination of respondent's parental rights was not in the best interest of SL. We disagree.

This Court also reviews a trial court's decision regarding a child's best interests for clear error. MCR 3.977(K); *In re Schadler*, 315 Mich App at 408 (quotation marks and citation omitted). "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App at 459.

If the court determines that one or more statutory ground exists under MCL 712A.19b(3), the court must enter an order terminating respondent's parental rights unless it is determined that termination is not in the best interest of the child. *In re Ferranti*, 504 Mich 1, 16; 934 NW2d 610 (2019). The petitioner bears the burden to establish by a preponderance of the evidence that termination is in the best interest of the child. *In re Gonzales/Martinez*, 310 Mich App at 434, citing MCL 712A.19b(5) and *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "In deciding whether termination is in the child's best interest, the court may consider 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, 41-42; 823 NW2d 144 (2012) (citations omitted). The court may also consider the likelihood of the child being returned to the parent within the foreseeable future. *In re Kaczkowski*, 325 Mich App 69, 79; 924 NW2d 1 (2018).

In finding that termination of respondent's parental rights was in the best interest of SL, the trial court recognized that SL and respondent did have a bond, and that, at times, respondent demonstrated at least some effort to comply with his PATP. However, a significant factor in the best-interest analysis was that respondent could not provide stability for SL. Indeed, respondent repeatedly demonstrated his inability to provide stability. Respondent did not consistently attend parenting time despite knowing that his absence upset SL, and respondent was consistently terminated from services provided by DHHS due to lack of compliance. As noted above, respondent also failed to obtain and maintain suitable housing during his time under DHHS's supervision. Respondent admitted that in the years preceding the termination proceedings, respondent had not been responsible for SL's daily care, did not know her age, did not know where she went to school, and was generally unaware of other aspects of SL's life. Then, far closer to termination, respondent admitted to his foster-care worker that he was still not prepared to care for SL.

SL had been in foster care for 22 months before the termination of respondent's parental rights, and respondent had 19 months to complete, or demonstrate a commitment to, the PATP, and by extension, to SL. With that in mind, and with no evidence that respondent would come into compliance in the foreseeable future, we cannot conclude that the trial court made any error in determining that termination promoted SL's interest in permanency and stability. The court did not err in finding that termination was in SL's best interest.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Deborah A. Servitto  
/s/ Mark T. Boonstra