

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

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*In re* SLM, Minor.

UNPUBLISHED  
November 26, 2019

No. 348995  
Ingham Circuit Court  
Family Division  
LC No. 16-001113-NA

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

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to her minor daughter, SLM, now age ten. On appeal, respondent challenges the trial court's jurisdiction and finding regarding SLM's best interests. We affirm.

I. FACTS

SLM was taken into protective custody at age six after respondent asked her mother, SLM's grandmother, whom respondent had not seen in 28 years and from whose care respondent had been removed from at the age of three, to pick up SLM from her home in Nebraska. When respondent's mother arrived, she was accompanied by a young boy that she was caring for, and who was around the same age as SLM. The night before respondent's mother was set to depart with SLM, the young boy and SLM were discovered engaged in sexual play with each other. The children were physically punished by respondent and her mother.

Once the party reached Michigan, respondent's mother received temporary guardianship of SLM and, at the court's request, an investigation was opened by Child Protective Services ("CPS") before the court would consider full guardianship. Ultimately, respondent's mother withdrew her petition, but instead of releasing SLM back to respondent, CPS sought a protective order because there were concerns about respondent's judgment to allow SLM to travel to Michigan with respondent's mother since SLM had never met her grandmother and respondent had not seen her mother in almost three decades. Further, respondent knew that she had been removed from her mother's custody when she was a child.

CPS contacted Nebraska Children's Protective Services (NCPS) and asked them to do a check and verify the condition of SLM's home. But, NCPS indicated that it could not comply

because SLM was not in respondent's care at the time. NCPS did provide records from previous investigations which indicate that respondent physically neglected SLM as respondent lacked the means to provide food and necessities. Respondent also had admitted that she was not consistently taking her psychiatric medication and she reported seeing apparitions in her home, which were the same mental health concerns that SLM was displaying. The records show the most recent NCPS investigation involved allegations of physical abuse, which were found to be unsubstantiated. But NCPS indicated that it did have concerns about SLM's mental health.

NCPS could not provide appropriate care for SLM, so she remained in Michigan at a residential treatment facility and respondent relocated to Michigan with the assistance of the Department of Health and Human Services (DHHS). Once in Michigan, respondent failed to fully participate in family therapy sessions, and did not avail herself of all the available parenting time. She attempted to bring her "significant other" to the visits with SLM. Reports indicated that respondent's visits had a negative effect on SLM who became anxious and violent around the time of visits.

Eventually, DHHS filed a petition to terminate respondent's parental rights as she was unable to rectify the barriers to reunification. Respondent had stopped attending individual therapy, and lacked an understanding of SLM's needs. She also requested that SLM be taken off an antipsychotic medication, which resulted in SLM being taken by ambulance to the hospital. Respondent did not see the correlation between the medication and SLM's increased behaviors, and she blamed the residential treatment facility for SLM's behavior issues. Respondent had moved in with her significant other within three months of relocating to Michigan, but at the time of the dispositional review and permanency planning hearing, she was no longer living with him and had planned to relocate back to her mother's home or to a motel. In addition, respondent had a full psychological evaluation which concluded that she was not in a position to have SLM placed in her care.

SLM's therapist testified that SLM continued to struggle with her behavior, including self-injurious behavior, physical aggression, head butting the wall, scratching her face, and attacking staff. There also was an increase in these types of behaviors around the time respondent relocated to Michigan, and an increase over the months which correlated to parenting-time sessions.

An expert in clinical psychology diagnosed respondent with provisional PTSD and mixed personality disorder with borderline histrionic traits. The expert testified that it was difficult to get a comprehensive clinical picture of respondent because she provided so much contradictory information. The expert opined that respondent had unresolved mental health issues which needed to be addressed before SLM could be returned to her care. The expert also concluded that respondent needed consistent participation in individual therapy, but he was unable to offer an opinion on a timeline for therapy because a client's commitment is important to the therapeutic process. Given respondent's self-reported participation in therapy for nine years and her continued extensive struggles, the expert said that therapy "might be time consuming and quite lengthy." The expert also recommended that respondent participate in family therapy.

The trial court concluded that statutory grounds for termination were established by clear and convincing evidence under MCL 712A.19b(3)(c)(i) (more than 182 days have passed since

original disposition, the conditions that led to the adjudication continue to exist, and parent unable to rectify conditions), (g) (parent, although financially able to do so, failed to provide proper care and custody and no reasonable expectation parent will be able to provide proper care and custody within a reasonable time), and (j) (reasonable likelihood child will be harmed if returned to parent), and that it was in SLM's best interests to terminate respondent's parental rights. This appeal followed.

## II. JURISDICTION

Respondent first argues that the trial court committed error requiring reversal by exercising jurisdiction over SLM when SLM's home state of Nebraska already had jurisdiction in another custody case. We disagree.

### A. PRESERVATION AND STANDARD OF REVIEW

Respondent challenges the trial court's jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) for the first time on appeal. Nonetheless, whether a court has subject-matter jurisdiction is a question of law, and "may be raised at any time, even if raised for the first time on appeal." *Smith v Smith*, 218 Mich App 727, 729-730; 555 NW2d 271 (1996).

A determination whether a trial court has subject-matter jurisdiction is a question of law reviewed by this Court de novo. *Atchison v Atchison*, 256 Mich App 531, 534; 664 NW2d 249 (2003). If no factual dispute exists, this Court reviews de novo whether the trial court had jurisdiction under the UCCJEA. *Cheeseman v Williams*, 311 Mich App 147, 150; 874 NW2d 385 (2015). However, the trial court's determination whether to exercise jurisdiction under the UCCJEA is reviewed for an abuse of discretion. *Nash v Salter*, 280 Mich App 104, 108; 760 NW2d 612 (2008). This Court reviews de novo questions involving the interpretation of the UCCJEA. *Atchison*, 256 Mich App at 534-535. This Court must examine the plain language of the statute and give effect to the Legislature's intent. *Id.* at 535. If the statutory language is unambiguous, courts must presume that the Legislature intended the meaning plainly expressed and judicial construction is neither necessary nor permitted. *Id.*

### B. ANALYSIS

Respondent does not appear to dispute that the trial court had temporary emergency jurisdiction under MCL 722.1204(1). Because the record discloses that Michigan did not constitute the child's home state under the UCCJEA and respondent did not reside in or have significant connections with Michigan, the trial court initially did not have authority to exercise jurisdiction other than temporary emergency jurisdiction over this matter.

Respondent appears to argue that the trial court lacked jurisdiction to continue with the proceedings beyond a temporary basis. Respondent asserts that the trial court was aware that there was an existing child support case in Nebraska, that SLM's home state was Nebraska, and that there was another proceeding with respect to custody in Nebraska, and she argues that the trial court therefore had a duty under the UCCJEA to immediately communicate with the Nebraska court under MCL 722.1204(4). She argues that because the trial court did not communicate with the Nebraska court, the trial court did not have subject-matter jurisdiction.

MCL 712A.19(b) governs jurisdiction over child-protection proceedings, but when other states are involved, the UCCJEA takes precedence. The relevant portion under the UCCJEA concerning temporary emergency jurisdiction, MCL 722.1204 states:

*(4) If a court of this state that has been asked to make a child-custody determination under this section is informed that a child-custody proceeding<sup>[1]</sup> has been commenced in, or that a child-custody determination<sup>[2]</sup> has been made by, a court of a state having jurisdiction under sections 201 to 203, the court of this state shall immediately communicate with the other court. If a court of this state that is exercising jurisdiction under sections 201 to 203 is informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state . . . the court of this state shall immediately communicate with the court of the other state. The purpose of a communication under this subsection is to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order. [Emphasis added.]*

There is no evidence in the record that respondent advised the trial court of a child-custody determination or child-custody proceeding while the present matter was pending. There is no evidence that respondent produced an order from a Nebraska court regarding a child-custody determination. Respondent told the court that there was a child support case in Nebraska, and that SLM's father was not ordered to pay child support in Nebraska because "they dismissed that because he's not around; we don't know where he is." Nonetheless, a child-custody determination does not include an order relating to child support or other monetary obligation of an individual. MCL 722.1102(c). While the NCPS investigated complaints of abuse and neglect, there is no evidence that an abuse and neglect proceeding was commenced in

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<sup>1</sup> The UCCJEA defines the term "child-custody proceeding" as

a proceeding in which legal custody, physical custody, or parenting time with respect to a child is an issue. Child-custody proceeding includes a proceeding for divorce, separate maintenance, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. Child-custody proceeding does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under article 3. [MCL 722.1102(d).]

<sup>2</sup> The UCCJEA defines the term "child-custody determination" as

a judgment, decree, or other court order providing for legal custody, physical custody, or parenting time with respect to a child. Child-custody determination includes a permanent, temporary, initial, and modification order. Child-custody determination does not include an order relating to child support or other monetary obligation of an individual. [MCL 722.1102(c).]

Nebraska. Because there were no proofs to create a factual dispute with respect to whether there was a previous child-custody determination or with respect to whether the child was subject to child-custody proceedings, MCL 722.1204(2) applies. That provision states:

If there is no previous child-custody determination that is entitled to be enforced under this act and if a child-custody proceeding has not been commenced in a court of a state having jurisdiction under sections 201 to 203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 201 to 203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 201 to 203, a child-custody determination made under this section becomes a final child-custody determination, if that is what the determination provides and this state becomes the home state of the child.

The trial court's determination under the UCCJEA is enforceable unless and until an order is obtained from a court of another state having jurisdiction under the UCCJEA, and the trial court properly exercised jurisdiction in these proceedings. Thus, there was no duty to contact the Nebraska courts under MCL 722.1204(4).

### III. BEST INTERESTS

Respondent next argues that the trial court committed error requiring reversal when it determined that termination of her parental rights was in SLM's best interests. We disagree.

#### A. PRESERVATION AND STANDARD OF REVIEW

A party need take no steps to preserve a challenge to the findings made by a trial court sitting as the finder of fact. MCR 2.517(A)(7). In order to terminate a parent's parental rights, the court must find by a preponderance of the evidence that termination of the parent's parental rights is in the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2012). This Court reviews for clear error a court's finding that termination is in the child's best interests. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). "A trial court's decision is clearly erroneous '[i]f 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 Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012), quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

#### B. ANALYSIS

Respondent asserts that the trial court erred by terminating her parental rights because (1) the trial court did not adequately consider SLM's bond to respondent, (2) the trial court found that respondent lacked the insight or capacity to meet SLM's needs, but did not give respondent sufficient time to demonstrate her parenting ability once she moved to Michigan, and (3) the trial court failed to recognize that SLM's need for finality and stability would not be served by terminating respondent's parental rights because SLM was not at a point where she could be discharged from residential treatment into a foster home. The trial court did not clearly err by determining by a preponderance of the evidence that it was in SLM's best interests to terminate respondent's parental rights.

“Once a statutory basis for termination has been shown by clear and convincing evidence, the court must determine whether termination is in the child’s best interests.” *In re LaFrance Minors*, 306 Mich App 713, 732-733; 858 NW2d 143 (2014), citing MCL 712A.19b(5). “The focus at the best-interest stage has always been on the child, not the parent.” *In re Payne/Pumphrey/Fortson*, 311 Mich App 49, 63; 874 NW2d 205 (2015), quoting *Moss*, 301 Mich App at 87 (internal quotation marks and brackets omitted). “Best interests are determined on the basis of the preponderance of the evidence.” *LaFrance*, 306 Mich App at 733. In considering the issue of whether termination is in the best interests of the minor child, the trial court is permitted to consider “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, . . . the advantages of a foster home over the parent’s home[,] . . . the length of time the child was in care, the likelihood that the child could be returned to her parents’ home within the foreseeable future, if at all, and compliance with the case service plan.” *In re Payne/Pumphrey/Fortson*, 311 Mich App at 63-64, (quotation marks and citations omitted). “In assessing whether termination of parental rights is in a child’s best interests, the trial court should weigh all evidence available to it.” *Id.* at 63.

The trial court’s finding that the bond was not a healthy one was not clearly erroneous. SLM wanted to die so that respondent could live longer. SLM expressed considerable anxiety related to respondent’s visits and would demonstrate increased behavior issues on and around the dates of the visits. SLM’s behaviors increased when respondent began participating in family therapy and decreased significantly in the three months that respondent did not visit her. SLM’s therapist believed that SLM’s progress was because of respondent not visiting or having communication with her.

Respondent also argues that the trial court clearly erred in finding that she lacked the insight or capacity to meet SLM’s needs because respondent was not in Michigan for a sufficient amount of time to enable the court to clearly analyze her parenting ability and capacity. However, after moving to Michigan, respondent did not agree to overnight stays near SLM. She failed to see the importance of medication in controlling SLM’s behaviors, and would not give permission for SLM to receive necessary medication. Respondent moved from the motel where she was staying and moved in with someone she had known for only three months. Shortly thereafter, she relocated either back to the motel or to her mother’s house. Respondent’s psychological evaluation indicated that she had unresolved mental health issues that needed to be addressed before she could parent SLM. She failed to recognize how her own mental health affected her ability to parent SLM, and did not attend individual therapy. Her influence during parenting times after she moved to Michigan was negative because she was not focused on SLM’s needs and placed her own needs first. She was not supportive of the care team at the residential care facility or of their decisions with respect to SLM. Despite the demonstrated need for SLM to have specialized institutional care, respondent insisted that SLM did not need to be placed at the residential care facility and that she could be placed in her home “with services.” Thus, the trial court’s finding that respondent lacked the insight or capacity to meet SLM’s needs was not clearly erroneous.

Last, respondent argues that the trial court clearly erred in finding that termination of respondent’s parental rights would provide SLM with finality because evidence showed that SLM was not in a position in her treatment to be transferred to a foster or adoptive home.

Respondent contends that terminating her parental rights did nothing to provide finality or permanency because SLM still needed to be in a residential treatment facility.

SLM's therapist testified that SLM benefited most from therapy in the three months after respondent stopped visiting or having communication with SLM. SLM's prognosis with respondent in her life was poor. The therapist said that she was able to focus more on SLM's trauma, rather than the behavior SLM was exhibiting as a result of respondent's inconsistent visits. SLM was at a "really good place," but she was not yet ready to be discharged from the residential care facility. The therapist said that a healthy environment for SLM after being discharged would be one that was free from domestic violence and that would put SLM's needs first, as well as provide one-on-one time, structure, stability, and undivided attention, none of which the evidence showed could be offered by placement with respondent. The therapist believed that after a period of one-on-one staffing, SLM would be ready for adoption. Further, SLM had been in placement for over two years and needed stability and permanency. In addition, the trial court also considered other relevant factors, including SLM's bond to respondent, respondent's history of domestic violence, respondent's parenting ability, respondent's visitation history, and SLM's need for permanency. Thus, the trial court did not clearly err in finding that termination of respondent's parental rights would provide SLM with permanence and finality.

The trial court did not clearly err in finding that a preponderance of the evidence supported a finding that termination of respondent's parental rights was in SLM's best interests.

#### IV. CONCLUSION

Respondent's claim that the trial court lacked subject matter jurisdiction is without merit. Additionally, the trial court did not commit error requiring reversal when it determined that termination of respondent's parental rights were in SLM's best interests. Affirmed.

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