

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

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*In re* T. S. BALDWIN, Minor.

UNPUBLISHED  
December 26, 2019

No. 349146  
Wayne Circuit Court  
Family Division  
LC No. 16-523903-NA

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Before: BECKERING, P.J., and BORRELLO and M. J. KELLY, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court’s order terminating his parental rights to his minor child, TB, under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide care and custody), and (j) (reasonable likelihood that the child will be harmed if returned to parent).<sup>1</sup> Finding no error, we affirm.

**I. FACTUAL BACKGROUND**

Respondent is the father of TB and her two minor siblings, TRB and TAB.<sup>2</sup> At the time the case began, TB was 7 years old, TRB was 14 years old, and TAB was 16 years old. Child protective proceedings began with respect to the three children in December 2016, following a Department of Health and Human Services (DHHS) petition for temporary custody alleging that respondent had left two of the children with his adult son and had not returned, and that respondent had only a one-bedroom apartment. The petition also alleged that respondent had not provided financial or material support for any of the children since October 2016. At the January 12, 2017 adjudicatory hearing, respondent made admissions regarding the allegations in the petition. Respondent stated that he was unable to provide financial support for the children, did not have adequate housing for the children, and could not provide basic necessities for the children. Based on respondent’s admissions, the trial court entered an order of adjudication and

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<sup>1</sup> The trial court also terminated the parental rights of the child’s mother, but the mother is not a party to this appeal.

<sup>2</sup> Respondent and mother are also the parents of three adult children.

placed the children in separate foster homes. TB's maternal cousin agreed to act as a foster parent, and TB was placed in her care. At several times throughout the trial court proceedings, TRB and TAB could not be located. In an effort to maintain supervision over TRB and TAB, the trial court returned TRB and TAB to respondent's custody despite acknowledging that respondent's home was not optimal for children to live in. The court ultimately terminated its jurisdiction over TRB and TAB.

The trial court entered a dispositional order in April 2017. The court ordered respondent to obtain and maintain a legal source of income, obtain suitable housing, regularly attend court hearings, consistently visit with the children, participate in therapy and parenting classes, and submit to random drug screenings. TB remained in foster care for approximately two years. During that time, respondent made little to no progress toward reunification.

At the July 20, 2018 permanency planning hearing, the referee expressed concern that respondent had visited TB only four times since the beginning of the year, had been terminated from counseling services because of nonparticipation, and had not found suitable housing. She gave respondent 31 days to show that he could participate in family counseling, go to scheduled visits with TB, and obtain suitable housing.<sup>3</sup> If respondent could not show his willingness and ability to do these things, the court would order DHHS to file a supplemental petition seeking termination of his parental rights to TB.

At an August 27, 2018 hearing, Danielle Reynolds, who was TB's foster care worker from January 2018 through October 2018, testified that respondent had attended one visitation since the previous hearing in July, and that was on August 21, 2018. She conceded that the agency cancelled two visitations, but noted that respondent did not seek to reschedule them despite petitioner's offer to do so. Reynolds said she had made referrals for counseling, but was awaiting a return call from the counseling agency. Respondent had begun the process of obtaining a five-bedroom home. The court ordered DHHS to file a supplemental petition, but to hold open all referrals to give respondent a chance to make further efforts at reunification. DHHS filed a supplemental petition to terminate respondent's parental rights in September 2018. DHHS requested that respondent's parental rights be terminated pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).

At the November 19, 2018 hearing on the supplemental petition, Reynolds testified that a home assessment revealed that respondent's home suffered from an infestation of some sort and was very dirty. Reynolds testified that she had helped respondent fill out paperwork necessary for a suitable home in January 2018, and that it took some time for it to be approved. At the end of October, respondent picked up the paperwork and took it to DHHS, as required. Asked if he had followed up since then, respondent testified at the termination hearing that he was "just waiting to hear back from them." Apart from the \$413 cash assistance he received from the State of Michigan, respondent reported no source of income. Reynolds testified that respondent had not attended any visits with TB since August 21, 2018, and had attended only about 10% of his

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<sup>3</sup> Respondent testified at the hearing that he had a voucher for a three-bedroom home.

weekly visits from January 2018 until the end of October 2018.<sup>4</sup> As to family therapy, respondent scheduled a counseling session in September 2018, but it was canceled because the therapist could not get in touch with him. Similarly, respondent was re-referred to substance abuse counseling in August 2018, but the counselor could not get in touch with him. Drug screens were reinstated in July 2018. Respondent missed approximately 15 screens, and two of the three he completed were positive for cocaine.

At the conclusion of the hearing, the trial court found that clear and convincing evidence established grounds to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).<sup>5</sup> The trial court found that the parents had not complied with their service plan, and that TB had been in care for a significant period of time but was no closer to being returned home than when the case first began. The court ordered an evaluation by the clinic for child study for evaluation and set a date for a best interests hearing. The evaluation was completed and submitted for the court's consideration. After a best interests hearing on February 25, 2019, the court found by a preponderance of the evidence based on consideration of the whole record that termination of respondent's parental rights was in the best interests of TB.

## II. ANALYSIS

Respondent first contends that the trial court erred by determining that clear and convincing evidence established statutory grounds to terminate his parental rights. We disagree.

### A. STANDARDS OF REVIEW

In order to terminate parental rights, a trial court must find that a statutory ground has been established by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). Furthermore, "[w]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *Id.* at 90. "We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest under MCL 712A.19b(5)." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (quotation marks and citation omitted). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App at 80 (quotation marks and citation omitted).

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<sup>4</sup> Respondent did not dispute the essence of Reynold's testimony with regard to visitation, but did testify that he had been seeing TB "on a regular basis" since September, when his eldest son was killed. He said that he would go to the maternal cousin's home and visit with TB, and that the maternal cousin had brought TB to the funeral.

<sup>5</sup> In an amended order continuing the bench trial for purposes of a best interests analysis, the court did not include MCL 712A.19b(3)(c)(ii) as a statutory ground for termination.

## B. STATUTORY GROUNDS

The trial court found that clear and convincing evidence established the grounds to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).<sup>6</sup> A trial court may terminate parental rights under MCL 712A.19b(3)(c)(i) if 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds that "[t]he 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." MCL 712A.19b(3)(c)(i).

The trial court did not clearly err when it found clear and convincing evidence to terminate respondent's parental rights to TB under MCL 712A.19b(3)(c)(i). The trial court entered the order of disposition on April 3, 2017. Accordingly, more than 182 days had passed when, on February 28, 2019, the trial court found by clear and convincing evidence that the conditions that led to adjudication continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering TB's age.

The conditions that led to adjudication included respondent's inadequate housing, respondent's inability to provide monetary support for TB, and respondent's inability to provide basic necessities for TB. The record shows that, for the more than 18 months that this case lingered on, respondent simply failed to commit actively to the process that could bring about his reunification with TB. At the time respondent's parental rights were terminated, he still had not found adequate housing. Respondent resided with TRB and TAB in the same one bedroom apartment that he lived in when the case began. Moreover, respondent's apartment had an infestation of some sort and was in very poor condition. Although respondent made some efforts to obtain suitable housing, those efforts were sporadic and unsuccessful. Respondent also was unable to provide monetary support for TB at the time his parental rights were terminated. Respondent's only source of income derived from monthly payments from the state of Michigan in the amount of \$413, and evidence was presented that \$413 per month was inadequate to support both respondent and TB. Although respondent would be eligible for additional monetary assistance if TB were returned to his care, the record did not indicate whether respondent would take advantage of this assistance or whether this assistance would be adequate to support both respondent and TB.<sup>7</sup> Because respondent lacked adequate income, it is unlikely that respondent

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<sup>6</sup> At the November 19, 2018 evidentiary hearing, the trial court stated that statutory grounds for termination had also been met under MCL 712A.19b(3)(c)(ii). However, the trial court did not state that statutory grounds for termination had been met under MCL 712A.19b(3)(c)(ii) in its written order terminating respondent's parental rights, and did not make any factual findings to that effect. Because "a court speaks through its written orders and judgments, not through its oral pronouncements," the trial court did not terminate respondent's parental rights under MCL 712A.19b(3)(c)(ii). *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009).

<sup>7</sup> In light of this testimony, and considering that the trial court made no findings with regard to whether respondent was financially able to provide proper care and custody for TB now, or

would be able to afford basic necessities for TB if she were returned to his care. Respondent testified at the best interests hearing that he needed a bigger house and had a substance abuse problem. He said he would do anything to retain his parental rights to TB, and asked for six more months to complete his service plan. However, despite having had nearly two years to work on his service plan, respondent waited for his circumstances to change instead of taking advantage of the help available to him that could have brought about his reunification with TB. Nothing in the record suggests that another six months would have made any difference.

At the time that respondent's parental rights were terminated, respondent had failed to rectify any of the conditions that led to adjudication, and there was no reasonable likelihood that the conditions would be rectified within a reasonable amount of time considering TB's age. Therefore, the trial court did not err in terminating respondent's parental rights under MCL 712A.19b(3)(c)(i).

Only one statutory ground needs to be established to support termination of parental rights under MCL 712A.19b(3). *In re Martin*, 316 Mich App 73, 90; 896 NW2d 452 (2016). Therefore, we need not consider whether termination of respondent's parental rights was appropriate under any of the other subsections upon which the trial court relied.

### C. BEST INTERESTS DETERMINATION

Respondent next contends that the trial court erred by finding that termination of his parental rights was in TB's best interests. Again, we disagree.

"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 parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "In deciding whether termination is in the child's best interests, 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 Minors*, 297 Mich App at 41-42 (citations omitted). The trial court may also consider "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 did not clearly err when it found that termination of respondent's parental rights was in TB's best interests. We acknowledge that the evidence indicates that respondent loves TB, and TB has bonded with her siblings. We also acknowledge that TB is currently placed in foster care with her maternal cousin, and a child's foster care placement with a relative weighs against termination. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Nonetheless, the trial court properly addressed TB's placement with a relative in its order following the hearing to terminate respondent's parental rights, which it was required to do. *In*

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within a reasonable period of time, we agree with respondent that the trial court clearly erred by finding that MCL 712A.19b(3)(g) provided statutory grounds for termination.

*re Olive/Metts Minors*, 297 Mich App at 43-44. TB had been in foster care for approximately two years at the time of the termination hearing. During that time, respondent failed to make progress in addressing the main reasons the court took jurisdiction over TB. Respondent's income was insufficient to support TB, respondent did not have adequate housing, and respondent had substance abuse problems. Respondent failed to comply with the parent-agency agreement and only attended approximately 10% of the scheduled visits with TB.

Furthermore, TB was doing well in her foster care placement, and the foster care specialist reported that TB's needs were being met. The foster care specialist reported that TB's foster parent loved her, provided TB with a stable home, and made efforts to organize visits between TB and her siblings. Moreover, TB's foster parent was willing to adopt her, thereby providing a stable and permanent home for TB. Accordingly, the evidence indicates TB's foster home has several advantages over respondent's home. Thus, the evidence supports the trial court's determination that termination of respondent's parental rights was in TB's best interests.

Affirmed.

/s/ Jane M. Beckering  
/s/ Stephen L. Borrello  
/s/ Michael J. Kelly