

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
December 12, 2019

*In re* D. M. L. JONES, Minor.

No. 349258  
Wayne Circuit Court  
Family Division  
LC No. 17-002093-NA

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

PER CURIAM.

Respondent appeals as of right the trial court’s order terminating his parental rights to his daughter, DJ, under MCL 712A.19b(3)(g), (i), and (j). We affirm for the reasons stated in this opinion.

I. BASIC FACTS

In March 2018, respondent’s parental rights were terminated to five of DJ’s siblings. Respondent appealed that termination decision in this Court, challenging both the effectiveness of his lawyer and the validity of his no-contest plea to jurisdiction, statutory grounds, and best interests. This Court held that his plea was knowing, voluntary, and understanding and that his lawyer had not provided constitutionally deficient representation in connection with the plea. *In re Jackson/Jenkins/Jones, Minors*, unpublished per curiam opinion of the Court of Appeals, issued December 20, 2018 (Docket Nos. 343224 and 344259), pp 1-3. Moreover, notwithstanding respondent’s waiver of the issue, this Court concluded that the trial court did not clearly err by finding that termination of respondent’s parental rights was in the children’s best interests based on respondent’s physical and sexual abuse of at least two of the children. *Id.* at 5-6.

Approximately six months after the trial court terminated respondent’s parental rights to the older children, DJ was born. DHHS immediately sought termination of respondent’s parental rights based on his history of physical and sexual abuse. Following an October 2018 hearing, the trial court found by a preponderance of the evidence that jurisdiction was proper under MCL 712A.2(b)(1) and (2). The court then found that there was clear and convincing evidence that termination was proper under MCL 712A.19b(3)(g), (i), and (j). Following a separate best-

interests hearing, the court found by a preponderance of the evidence that termination of respondent's parental rights was in DJ's best interests.

This appeal follows.<sup>1</sup>

## II. STATUTORY GROUNDS

### A. STANDARD OF REVIEW

Respondent argues that the trial court clearly erred by finding statutory grounds to terminate his parental rights. We review "for clear error the trial court's factual findings and ultimate determination on the statutory grounds for termination." *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

### B. ANALYSIS

Respondent's parental rights were terminated under MCL 712A.19b(3)(g), (i), and (j), which provide that the court may terminate a parent's parental rights if:

(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.

\* \* \*

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and the parent has failed to rectify the conditions that led to the prior termination of parental rights.

(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.

Here, there was substantial evidence that respondent's parental rights to five of DJ's siblings were terminated because of physical and sexual abuse. Specifically, in addition to testimony that respondent's parental rights to DJ's siblings were terminated due to physical and sexual abuse of her siblings, the court took judicial notice of its file in the prior case. See MRE 201(b); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009) (stating that a court "may take judicial notice of its own files and records . . ."). Included within that file are the exhibits

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<sup>1</sup> Although the trial court also terminated the parental rights to DJ's mother, she has not appealed that decision.

that were admitted into evidence to provide a factual basis for respondent's no contest plea in the prior case.<sup>2</sup> One of the exhibits contains respondent's signed statement<sup>3</sup> admitting that "about one inch" of his penis was inside SJ's mouth.<sup>4</sup> Another exhibit consists of the Kid's Talk forensic interview of respondent's daughter, SJ. At the time of the interview, SJ was five years old. She stated that "my daddy pulled his pants down and he put his private area in my mouth and private." She explained that she screamed in response, and she added that she "had blood on [her] legs" from her "private area." When asked if it hurt, she said that respondent was "squeezing my private area," and then she clarified that "my dad's private area was squeezing my private area." She said that it happened twice, and added that respondent kissed her "on the mouth."<sup>5</sup> SJ also disclosed domestic violence between respondent and SJ's mother.

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<sup>2</sup> Respondent was advised in the earlier proceedings that the consequences of his no-contest plea included "that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent." MCR 3.971(B)(4). Here, as the factual basis for the plea was admitted without objection, the trial court was free to consider it in this case because it is a proceeding to terminate respondent's parental rights.

<sup>3</sup> Included with respondent's signed statement is an advice of rights and waiver form that was completed just before respondent made the statement that his penis was in SJ's mouth. The form lists respondent's constitutional rights, and beside each right, respondent signed his initials. The form then states:

I have read this statement of my rights or it has been read to me, and I understand these rights. At this time I am willing to answer questions without a lawyer present. No promises or threats have been made to me, and no pressure or force of any kind has been used against me.

Beneath that statement is respondent's signature and the signature of a witness. The form further indicates that respondent finished the 11<sup>th</sup> grade and can read and write.

<sup>4</sup> We find without merit respondent's argument that his statement in the interrogation report is inadmissible hearsay. Under MRE 801(d)(2)(A), respondent's statements to the police are admissible as party-opponent admissions.

<sup>5</sup> To the extent that respondent argues that the Kid's Talk interview is inadmissible hearsay, we disagree. Attached to the report is a signed certification of record providing:

1. I am the custodian of these record, or I am an employee familiar with the manner and process in which these records are created and maintained by virtue of my duties and responsibilities;

2. The records were made at or near the time of the occurrences of the matters set forth by, or from information transmitted by, people with knowledge of those matters;

A Kid's Talk forensic interview was also conducted with DJ's brother, CJ, who reported that respondent "sucked and twisted his penis more than once." CJ also disclosed that respondent had displayed a gun and threatened to shoot CJ and his siblings, and CJ recounted being struck with a belt until his waist was bleeding.

Accordingly, although none of the witnesses at the combined adjudication trial and termination hearing directly testified regarding the details of respondent's sexual abuse and physical abuse, there was admissible evidence in the record to support the court's finding that respondent sexually abused SJ and CJ, and that he physically abused CJ. Further, the caseworker testified that respondent was provided with services in the prior case, but did not benefit from them. Therefore, based on the evidence before this Court, we are not left with a definite and firm conviction that the trial court erred by finding statutory grounds for termination under MCL 712A.19b(3)(g), (i), and (j).<sup>6</sup>

### III. BEST INTERESTS

#### A. STANDARD OF REVIEW

Respondent argues that the trial court erred by finding termination of his parental rights was in DJ's best interests. The trial court's ruling regarding best interests is reviewed for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016).

#### B. ANALYSIS

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "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

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3. The records were kept in the course of regularly conducted business activities; and

4. It was the regular practice of the business activity to make the record.

The Kid's Talk report, therefore, although hearsay, is admissible under MRE 803(6) as a record of a regularly conducted activity.

<sup>6</sup> At the time of the termination hearing, respondent was charged with multiple counts of first-degree criminal sexual conduct. At the time of the best-interests determination, his first trial had ended in a mistrial and he was awaiting retrial. According to Michigan's Offender Tracking and Information System (OTIS), respondent was eventually convicted of two counts of first-degree criminal sexual conduct, MCL 750.520b(2)(B) (victim under 13, defendant 17 or older). His earliest release date is listed as February 22, 2068.

advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). "The trial court may also consider the possibility of adoption." *In re White*, 303 Mich App at 714. When the trial court makes its best-interests determination it may rely on evidence on the entire record, including the evidence establishing statutory grounds. *In re Trejo*, 462 Mich 341 353; 612 NW2d 407 (2000), abrogated in part by statute on other grounds as stated in *In re Moss*, 301 Mich App 76 (2013).

The trial court did not err by finding termination of respondent's parental rights was in DJ's best interests. The record reflects that approximately six months before DJ was born, respondent's parental rights to five of her siblings were terminated because of physical and sexual abuse. At one point, respondent admitted to his penis being in SJ's mouth. And SJ disclosed that the abuse inflicted on her included penile-oral penetration and penile-vaginal penetration that resulted in physical injury. She recalled the abuse happening on multiple occasions. She was five years old at the time. CJ testified to respondent sucking and twisting his penis. He also disclosed instances of physical abuse resulting in bloodshed, and stated that respondent threatened him with a gun. Respondent received services in connection with the prior case, but failed to benefit from them. The court recognized the need to protect DJ from similar abuse. The court also considered DJ's need for permanency and stability, noting that if her parents' parental rights were terminated there was a 100% chance that she would be adopted. In light of that evidence, the trial court did not clearly err by finding by a preponderance of the evidence that termination of respondent's parental rights was in DJ's best interests.

Affirmed.

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