STATE OF MICHIGAN

COURT OF APPEALS

In re A. CONROY, Minor.

UNPUBLISHED
February 25, 2020

Nos. 349767; 349768
Ingham Circuit Court
Family Division
LC No. 18-000543-NA

Before: BORRELLO, P.J., and METER and RIORDAN, JJ.

PER CURIAM.

In Docket No. 349767, respondent-mother appeals by right the trial court's order terminating her parental rights to the child, AC, under MCL 712A.19b(3)(b)(*ii*) (parent failed to prevent physical injury to a sibling of the child), (c)(*i*) (conditions of adjudication continue to exist), (j) (reasonable likelihood of harm if child is returned to parent), and (*l*)(*iii*) (parental rights to another child were voluntarily terminated in proceeding involving battering, torture, or other severe physical abuse). In Docket No. 349768, respondent-father appeals by right the same order, which terminated his parental rights to AC under MCL 712A.19b(3)(b)(*i*) (parent caused physical injury to a sibling of the child), (c)(*i*), (j), and (*l*)(*iii*). For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

Respondents' son, BC, was removed from respondents' care when he was approximately three months old after he was brought to the hospital where he was diagnosed with injuries that were determined to be the result of physical abuse. These injuries consisted of a chip fracture of his left tibia and multiple facial bruises. Respondent-mother and respondent-father were both convicted of fourth-degree child abuse regarding BC, and both respondents eventually released their parental rights to BC.

Petitioner thereafter separately filed petitions in this case against each respondent with respect to their younger daughter, AC.[1] This appeal only involves respondents' parental rights to AC.

Both respondents entered pleas with respect to jurisdiction. Respondent-mother, in addition to admitting to the above incident involving BC, admitted during her plea that she and respondent-father had a history of domestic violence, that she was aware that respondent-father was abusive but still left BC in respondent-father's care, that she had reported receiving threats from respondent-father about not keeping AC from him, that she had obtained a personal protection order (PPO) against respondent-father, that she tested positive for marijuana during her pregnancy with AC, and that she had been found in respondent-father's home with AC. Respondent-mother further admitted that four days before the petition was filed against her regarding AC, she had given a power of attorney to Heather Hyatt[2] to care for AC so that respondent-mother would have "time to work and save money to move back to South Carolina." Respondent-mother sought a power of attorney because she thought something was going to happen to AC after she had released her parental rights to BC. Mother pleaded no contest to the petition allegations that she had stated that she wanted to release her parental rights to BC so she could "move on with her life" and that she had completely stopped participating in reunification services around that same time, which was shortly before she actually released her parental rights to BC. She also pleaded no contest to the petition allegation that she was permitting respondent-father to have daily contact with AC and to care for AC unsupervised.

Respondent-father pleaded no contest to the petition allegation that BC was removed based on the hospital visit where his injuries were determined to be the result of physical abuse. He also pleaded no contest to the petition allegation that respondent-mother was allowing him to have daily contact with AC and leaving AC unsupervised in respondent-father's care. Respondent-father admitted during his plea that he released his parental rights to BC and that he had not completed services to rectify the barriers that had brought BC into care.

Respondent-mother agreed to a service plan at the dispositional hearing following her plea hearing. The recommendations, which the trial court adopted, included that she must continue her individual counseling, be drug screened twice a week, and continue to attend Ending Violent Encounters (EVE). Respondent-mother was also scheduled to have another psychological evaluation completed. The caseworker testified that respondent-mother was not currently participating in parenting classes because she "successfully completed parenting classes with another foster care case." Respondent-mother had a PPO against respondent-father, and the caseworker opined that it would be inconsistent with the case service plan for respondent-mother to have any contact with respondent-father. The caseworker further stated that respondent-mother's parenting time sessions were going well. The trial court ordered respondent-mother to

[1] Respondent-father was established as AC's legal father by way of an affidavit of parentage.

[2] There was testimony at the preliminary hearing that Hyatt was the girlfriend of respondent-father's father.

comply with and benefit from the service plan, and it ordered that respondent-mother would have supervised parenting time.

The trial court also ordered respondent-father to comply with and benefit from the service plan put in place with respect to him. The recommendations, which the trial court adopted, included that respondent-father take a substance abuse assessment, complete substance abuse screens, receive individual therapy, take parenting classes and anger management classes, and maintain housing. Respondent-father was participating in parenting time visits, and he was scheduled to complete a psychological evaluation.

A permanency planning hearing was held regarding both respondents on November 8, 2018, almost seven months after the instant proceedings regarding AC were initiated. The caseworker from Saint Vincent Catholic Charities, Robin Andress, testified that it appeared that respondent-mother and respondent-father were still involved in a romantic relationship.

Andress also testified that neither respondent-mother nor respondent-father had complied with or benefited from the services provided. Specifically, respondent-mother had not provided a release regarding EVE, so her attendance in this program could not be verified. Andress had information suggesting that respondent-mother had only attended twice during the reporting period. Respondent-mother was seeing her therapist, attending parenting time, and completing most of her drug screens, which had primarily been negative for the presence of substances. Respondent-mother's psychological evaluation, which was completed by Dr. Shannon Lowder, stated that respondent-mother appeared unable to place the needs of her children above her own needs, noting that she had permitted respondent-father to be around AC despite believing that respondent-father had caused BC's tibia fracture. The psychological evaluation further indicated that respondent-mother was not recommended to be a custodial parent due to her "substance abuse, psychopathology, physical abuse, poor choice in . . . partners and questionable drug choice" that presented risk to her young child.

With respect to respondent-father, Andress testified that he had been referred for a domestic violence or anger management program called Prevention and Training Services (PATS), drug screening, a substance abuse assessment, and individual counseling. Respondent-father also had a parent mentor and was attending parenting time visits, but he struggled with reading the child's cues and changing the child's diaper. He also had contact with respondent-mother at several visits. According to Andress, respondent-father was not participating in counseling, had not submitted any random drug screens, had refused drug screens when they were requested by foster care workers, and had admitted to using marijuana. He had attended two sessions of the PATS program. Respondent-father's psychological evaluation, also completed by Lowder, indicated that he needed to shift his focus away from his "toxic" relationship with respondent-mother and needed to work on his substance abuse issues. Respondent-father had denied having a substance abuse problem, but admitted to daily marijuana use.

Andress requested that the trial court change the goal from reunification to permanent wardship, but the trial court denied this request because it determined that it was in AC's best interests to give respondents additional time to work with services.

Approximately one month later, on December 11, 2018, respondent-father pleaded guilty at a show-cause hearing to violating the court's order not to possess or use alcohol, intoxicants, illegal substances, or non-prescribed prescription medication, as well as the court's order to submit to drug screening. Respondent-father admitted to not appearing for 19 drug screens scheduled between September and November of that year. Under questioning by petitioner, respondent-father admitted that he did not appear because he felt that he was going to test positive on most occasions. He also admitted that he smoked marijuana regularly.

On January 15, 2019, respondent-mother similarly pleaded guilty at a show-cause hearing to violating the trial court's orders prohibiting the use of intoxicating substances and requiring drug screening. Respondent-mother admitted to missing at least 17 random drug tests and to testing positive for marijuana on December 4, 2018. Respondent-mother explained that she tested positive for marijuana because she worked at an assisted living facility and she came into contact with marijuana oil while administering medical marijuana to a patient. She testified that she quit her job there so that she would not have any further issues.

At the February 5, 2019 permanency planning hearing, Andress testified that respondent-mother had therapy available to her, domestic violence programming at EVE available to her, parenting time available to her, and drug screens available to her. Andress further testified that respondent-mother continued to test positive for marijuana, including twice after the show-cause hearing, and had missed one screen during the reporting period. According to Andress, respondent-mother denied that she had a substance issue, and the agency was "struggling" to find substance abuse assessment programs with sufficient funding to which referrals could be made. Andress indicated that respondent-mother's home was not appropriate for the child because it smelled like marijuana and had not been "baby proofed." Respondent-mother was also minimizing the risk of danger respondent-father presented to her children. Andress had been unable to obtain reports from respondent-mother's therapist regarding respondent-mother's progress in therapy because respondent-mother had only signed a release for three days, covering January 23 to 26, 2019. Andress believed that respondent-mother was impeding her ability to get information about her progress from her counselor.

There were also concerns about respondent-mother's parenting time relating to feeding AC appropriately and lack of engagement with AC. Andress testified that she had attempted to obtain a parenting mentor for respondent-mother, but it was determined by the parenting mentor that respondent-mother was not appropriate for a parenting mentor because she would not take any suggestions or coaching from workers when it was provided during respondent-mother's parenting time.

Regarding respondent-father, Andress testified that he had domestic violence programming through PATS available to him, parenting time available to him, and drug screens available to him. According to Andress, respondent-father was missing drug screens and had also tested positive for marijuana and cocaine. Respondent-father had also stopped participating in PATS. Andress testified that the agency was recommending termination of respondents' parental rights. At the conclusion of this hearing, the goal was changed from reunification to adoption. A supplemental petition to terminate respondents' parental rights was subsequently filed.

The case proceeded to a termination hearing that was conducted over the course of three days, spanning a period of approximately two months.

Anna Miller, a counseling intern at EVE, testified that respondent-mother attended EVE support group meetings regularly and actively participated. Miller indicated that respondent-mother had reported that she was no longer involved in a relationship with respondent-father. Miller also explained that individual counseling was available through EVE, but respondent-mother already had an individual counselor and it was generally not recommended to have more than one individual counselor.

Tammy Render-Morris, respondent-mother's counselor through Saint Vincent Catholic Charities, testified that she had special training in the areas of substance abuse and trauma and that she had been seeing respondent-mother since August 2017. Respondent-mother had attended approximately two-thirds of her weekly appointments. According to Render-Morris, respondent-mother had reported that BC was removed from her care because respondent-father had accidentally harmed BC, and respondent-mother had further indicated that she was not present when the injury occurred. Render-Morris testified that respondent-mother believed that AC was removed because respondent-mother had released her rights to BC and because there was "some confusion" regarding whether respondent-father was allowed to see AC.

Render-Morris indicated that respondent-mother had made great progress in taking responsibility for her life. She addressed domestic violence issues with respondent-mother. Render-Morris also testified that she and respondent-mother discussed respondent-mother's substance use, although respondent-mother apparently did not "understand why" her tests were positive. Render-Morris did not view substance use as an issue for respondent-mother, but she was unaware of the total extent of respondent-mother's recent positive drug tests and was unaware that respondent-mother had tested positive for marijuana during her pregnancy with AC. Render-Morris further testified that she did not provide her therapy notes to the prosecutor in response to the prosecutor's subpoena because respondent-mother did not want Render-Morris to release those notes. Render-Morris stated that she had never been provided with any direction regarding what respondent-mother was supposed to work on in counseling.

Dr. Lowder, a clinical psychologist who had conducted respondent-father's psychological evaluation, testified that respondent-father told her that he started using marijuana at the age of 14 and continued to use it "on a daily basis." Respondent-father also told Lowder that he was still using marijuana even though he was not supposed to be using it. Lowder testified that respondent-father told her that BC was injured when respondent-father tripped while carrying BC and fell on BC. According to Lowder, respondent-father claimed that Children's Protective Services (CPS) workers did not believe him when he told the truth, so he decided to lie to the police and reported that he caused the injury by pulling on BC's leg. Respondent-father also described a physical altercation where he and respondent-mother struck or kicked each other. Lowder testified that respondent-father was frustrated at the time of the evaluation, in part, because he "really wanted to be with" respondent-mother but there was a PPO in place at the time. Respondent-father stated that he and respondent-mother would have continued their relationship if not for the PPO. Lowder testified that she recommended that respondent-father stop using marijuana, avoid any further relationship with respondent-mother, and engage in the PATS program. Lowder explained that at the time of the evaluation, she believed that if respondent-father continued to use substances,

continued his relationship with respondent-mother, and did not complete his PATS program then the prognoses for him as a parent "would indeed be a lot worse as far as his capacity to parent."

Lowder also conducted a psychological evaluation of respondent-mother. Lowder testified that respondent-mother reported that respondent-father was responsible for BC's hairline ankle fracture, but respondent-mother did not provide any further details. Respondent-mother also told Lowder that AC was removed because respondent-mother permitted AC to have contact with respondent-father, which respondent-mother was not supposed to do. Lowder testified that respondent-mother told her that she used marijuana from the ages of 18 to 20, and Lowder diagnosed respondent-mother with moderate cannabis substance abuse disorder, post-traumatic stress disorder, and mixed personality disorder with borderline and dependent features. Lowder testified that based on the information gathered and testing administered during the evaluation, Lowder did not think that respondent-mother appeared ready to participate in the services requested of respondent-mother. Specifically, respondent-mother's "personality inventory results clearly indicated that she did not believe in the possibility of therapeutic intervention, that she wasn't interested, [and] that she liked herself the way she was." Lowder further explained as follows when she was asked whether she made any recommendations for respondent-mother:

> I felt that based on her trauma and her personality disorder she really needed intensive therapy. However, it's not going to be effective if she's not willing to go. But I specifically recommended dialectical behavior therapy, which is DBT. However, I was not able to recommend that there were any services in place that I felt would be able to get her to a point where she can safely parent.

On cross-examination, Lowder testified that respondent-mother did not mention during the evaluation that she was already seeing a therapist. Lowder further indicated that there was often "quite a wait list" for the two DBT centers in Lansing and that "any sort of intensive therapy" would be beneficial to respondent-mother. Lowder stated, "if [respondent-mother] was already engaged with a therapist and they had a good therapeutic relationship there probably could be a good argument for not removing her from that therapy and placing her in something else, if she was making progress at the time." Lowder also clarified that she "still wasn't maintaining that [DBT] would be able to contribute to her ability to parent down the road."

Latavia Kangethe, a foster care case aide at Saint Vincent Catholic Charities, testified that she had been supervising parenting time for both respondents since August 8, 2018. Kangethe explained that her job included modeling appropriate parent behaviors. She testified that respondent-mother did not follow through with respect to Kangethe's interventions or suggestions and that respondent-mother was not "receptive to modeled behavior at the parenting time." Another case aid who had also been observing respondent-mother's parenting time visits since approximately July 2018, Stephanie Riley, similarly testified that respondent-mother became more difficult to work with over time and "did not respond to guidance or advice or any redirection." Riley testified that she and the foster parent would model behavior to respondent-mother related to helping AC achieve developmental milestones such as walking, but respondent-mother "would not do any of it." Riley stated that "[t]here are often times when [respondent-mother] is sitting on the couch and not engaging with [AC] and what [AC] wants to play with." This, according to Riley, could last for "[m]aybe two-thirds of the visit."

Kangethe testified that respondent-father's parenting time visits had improved over the course of the case, but there were "a couple times where he smelled of marijuana." Riley testified that respondent-father had a parenting mentor and that respondent-father was "very receptive" to the parenting mentor. Riley testified that respondent-father was also receptive to what the foster parents told him about AC and any suggestions the case aides made.

Pamela Allen, respondent-father's parent mentor, testified that she assisted respondent-father by staying in the room during his parenting time and working directly with respondent-father and AC. Allen further testified that a referral was started for her to work with respondent-mother as well, but it was determined after discussion with the caseworker that respondent-mother likely would not engage in the service because she had a demonstrated history of not following through on instructions given during parenting time.

Heather Akers testified that she supervised caseworkers who worked with respondent-mother from the beginning of BC's case until Akers left Saint Vincent Catholic Charities in August 2018. According to Akers, respondent-mother had acknowledged that her role in BC's removal was her failure to protect him.

Kaitlyn Henderson, a former foster care worker at Saint Vincent's Catholic Charities who had worked on AC's case, testified that respondent-father's parenting time "started off rough, but from mentoring and helping him he did better." Henderson testified that respondent-father was ordered to do random drug screenings but did not attend them, and she further testified that he refused to screen when she requested him to do so at the agency. Respondent-father admitted to Henderson that he used marijuana, and Henderson did not think that he completed the substance abuse assessment for which he was referred. Henderson referred respondent-father for parenting classes and individual counseling, but Henderson also did not think that he completed these services. Henderson indicated that while she was on the case, which was from July to October 2018, there was never any discussion about referring respondent-mother to a parenting mentor because respondent-mother's parenting time visits went well and she did not appear to need a parenting mentor.

Henderson also testified that she saw respondent-father's mother and sisters[3] in the hallway outside of the courtroom just before Henderson testified. Henderson believed one of those women to be respondent-father's mother because that woman referred to her "son" and used respondent-father's name. According to Henderson, she overheard a conversation involving respondent-father's mother and heard someone say that respondent-mother had taken a pregnancy test and was pregnant. Henderson also overheard that "they were living together."

Respondent-mother testified and admitted that she allowed respondent-father to have contact with AC. At the time when she released her rights to BC, respondent-mother believed that the only current issue was that she and respondent-father were still living together. Respondent-mother testified that respondent-father injured BC. She further testified that she gave power of attorney to respondent-father's stepmother, Hyatt, for AC. Respondent-mother indicated that there

[3] Henderson later clarified that she was "assuming" they were respondent-father's sisters.

was a safety plan in place that prohibited respondent-father from having contact with AC and that Hyatt was abiding by this plan and keeping respondent-father away from AC.

Respondent-mother testified that she had signed the release forms for her therapist, Render-Morris, to share her information. When respondent-mother was asked why she told Render-Morris not to share her counseling notes in response to the prosecutor's subpoena, respondent-mother replied, "I can't answer that." Respondent-mother testified "[t]hat is false" in response to petitioner's question about how Dr. Lowder testified that respondent did not want to be in therapy or make any changes to her life. Respondent-mother believed that she was benefitting from her treatment and services. Respondent-mother additionally testified that she had a "strong relationship" with her therapist but did not know "a single thing" about DBT therapy. In between the first and second termination hearings, respondent-mother set up DBT treatment for herself on her own. She stated that her caseworker did not do anything to help her regarding DBT treatment.

With respect to marijuana use, respondent-mother denied smoking marijuana while she was pregnant with AC but could not explain why she had tested positive for marijuana during that pregnancy. She also denied that she was currently smoking marijuana and claimed not to have used marijuana for approximately two or three years. However, respondent-mother also could not explain why she had tested positive in numerous drug screens during the course of the past year. She testified that because she no longer handed out marijuana as part of her job, there was no reason why she should be testing positive. Despite drug tests showing that respondent-mother tested positive for marijuana 17 times between December 4, 2018 and May 9, 2018, which was during the course of the three-day termination hearing, respondent-mother maintained that she had not consumed any marijuana since December 1, 2018. Bridget Lemberg, the lab director and toxicologist at Forensic Fluids Laboratory, testified that a person would not get a positive test result unless they had consumed marijuana. She stated further, "Skin absorption is very, very difficult. I don't normally see that in the medical field." Lemberg testified that health care professionals do not test positive for any of the substances they administer. Furthermore, Lemberg explained, "usually if you refer to oil to me I would say it's CDB oil, which is not what we're measuring in these tests."[4]

Respondent-mother testified that she believed that she completed all of the services provided to her, that she was learning how to become a better parent after being in an abusive relationship through her participation in EVE, and that she was not continuing a relationship with respondent-father.

[4] Lemberg testified as an expert in toxicology. She testified, "We measure delta-9-tetrahydrocannibinol, which is parent THC that is what has the—that is what has the impairment effect on the brain." Lemberg further explained that she did not believe that delta-9-tetrahydrocannibinol could be purchased in an oil, even by prescription, and that rubbing CBD oil on a patient without wearing gloves "would not show up as a positive delta-9-tetrahydrocannibinol."

Leslie Simpson, a group facilitator for PATS, testified that respondent-father was participating well, but there had been attendance issues that she wrote about in January. Simpson testified that respondent-father had been more consistent in his attendance since that time.

Sandra McNett, child welfare supervisor at Saint Vincent Catholic Charities, testified that she received a phone call on April 12, 2019, during which the caller reported being told by respondent-mother that respondent-mother and respondent-father "were together throughout the entire case and living together." According to McNett, the caller[5] said that when the caseworker would come to visit, respondent-mother and respondent-father would hide his clothes and personal items. McNett informed Andress.

Martha Holben, Andress's supervisor at Saint Vincent Catholic Charities, testified that she and Andress attempted an unannounced home visit on April 18, 2019. Holben testified that respondent-mother would not let them into the house and that respondent-mother said she was leaving for work. When respondent-mother's attorney asked Holben why respondent-mother did not receive DBT as recommended in the psychological evaluation, Holben responded that "[i]t was our understanding that she was receiving all the therapy she needed through her counselor." Holben also explained that the agency did not know whether respondent-mother was actually receiving DBT through her counseling because the agency was not given any information from Render-Morris despite several requests. Holben noted that respondent-mother had only signed a release covering a three-day period, which had the effect of limiting the amount of information that could be shared with the agency.

When respondent-father testified, the prosecutor asked him, "were you referred to get individual mental health counseling or therapy?" Respondent-father responded, "There was talk of a referral. I found out I did sign something, but nothing was ever directed on where I needed to go." Respondent-father acknowledged that a document instructing him to call Community Mental Health (CMH) and providing a telephone number contained his signature. This document was admitted into evidence as an exhibit at the termination hearing. It clearly instructs respondent-father to CMH to schedule an intake or, in the alternative, to schedule a time with his caseworker to contact CMH together. Nonetheless, respondent-father testified at the termination hearing, "I never got a copy of this paper, and I'm not very good with phone numbers, so obviously I'm not going to remember that." He also testified that he attempted to call CMH five times and that "[t]hey've gave [sic] me five different numbers to call." He emailed Andress on April 22, 2019—after the first termination hearing date—to tell her that he had not been able to get in contact with CMH and that "nobody [at CMH] had any idea of who [he] was[, and] They never had any referral." Notably, the signed referral sheet was signed by respondent-father on September 6, 2018. Respondent-father did not obtain any mental health treatment through any other service provider during the case.

Respondent-father also testified that he did not attend all of his required random drug screens and that he continued to smoke marijuana throughout the case. He also maintained that he did not know that he was court-ordered not to use marijuana. Respondent-father testified that

[5] McNett testified that the caller left their name but that she would not disclose the caller's name because the caller asked to remain anonymous for their safety.

PATS helped him learn to "take things slower, you know, and not expect so much from someone" and to treat people with respect.

Andress testified at the termination hearing that she began working on the case in August 2018, and she became the case manager in October 2018. Andress stated that she provided respondent-father with the resources for him to set up individual therapy services. She explained that respondent-father was responsible for scheduling his intake appointment at CMH. According to Andress, respondent-father declined her offer to help him further with making contact with CMH after she provided him another copy of the document containing the telephone number; respondent-father claimed to have lost the original document. Andress did not believe that respondent-father had substantially participated in and benefitted from the PATS program. He had also refused to drug screen when requested by Andress approximately five to seven times.

Andress indicated that Render-Morris had access to respondent-mother's psychological evaluation, and Andress thus believed that the therapy respondent-mother was receiving was adequate and in accordance with Lowder's recommendations because Andress "had trusted her therapist would get her the things that she needed." Andress further explained that because she "didn't have the reports to back that up [she] had no idea that [respondent-mother] was wasn't [sic] receiving adequate services." Andress attempted to schedule DBT for respondent-mother after the first day of the termination hearing, but respondent-mother indicated that she had already set up her own appointment. Andress testified that she also had attempted to obtain a parenting mentor for respondent-mother but that the parent mentor program was "not appropriate" for respondent-mother because she would not accept advice or direction from Andress, the foster parent, or the case aids.

Andress did not believe that respondents had ended their relationship. She testified that she attempted to conduct a home visit at respondent-mother's apartment in February 2019. When she knocked on the door, a "deep voice" answered, "Who's that?" Andress testified that the "blinds moved and I had knocked again and there was no answer." During a previous home visit on December 13, 2018, respondent-mother's apartment smelled like marijuana. Respondent-father had not provided Andress with his address despite multiple requests by her.

Andress testified that respondents had not rectified the barriers that led to their adjudications.

Respondent-mother called two witnesses—her friend and her sister—who testified that they each spent significant amounts of time with respondent-mother at her apartment and had not seen any signs that respondent-father was living there or that respondents were continuing their relationship.

At the conclusion of the termination hearing, the trial court determined that reasonable efforts to reunify the family had been made, that petitioner had proven the statutory grounds to terminate parental rights, and that termination was in AC's best interests.

On appeal, respondent-mother argues that the trial court erred by determining that petitioner made reasonable efforts to reunify her with AC, by determining that the statutory grounds for termination were met, and by determining that termination was in AC's best interests.

Respondent-father argues only that petitioner did not make reasonable efforts to provide him services to reunify him with AC.

II. STANDARD OF REVIEW

This Court reviews the trial court's decision that reasonable efforts were made to reunify the family for clear error. See *In re Fried*, 266 Mich App 535, 542-543; 720 NW2d 192 (2005). We review for clear error a trial court's decision that a statutory ground for termination was established. *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012). "In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "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; 823 NW2d 144 (2012); see also MCL 712A.19b(5). "[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). The trial court's best-interests determination is also reviewed for clear error. *In re Olive/Metts Minors*, 297 Mich App at 40. "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).

However, both respondents failed to preserve this issue for appeal. Generally, "[t]he time for asserting the need for accommodation in services is when the court adopts a service plan . . . ." *In re Frey*, 297 Mich App at 247 (ellipsis in original). Our Supreme Court has indicated, although without formally deciding the issue, that there may be circumstances where a later objection may be permissible. See *In re Hicks/Brown*, 500 Mich 79, 89; 893 NW2d 637 (2017) (expressing its skepticism of a categorical rule that objections to a service plan are inherently untimely if not raised when the "service plan is adopted or soon afterward"); *id*. at 89 n 9 ("Certainly, a service plan deficient on its face should produce an immediate objection. But it will not always be apparent at the time a service plan is adopted, or even soon afterward, that the service plan is insufficient, either in design or execution, to reasonably accommodate a parent's disability. This is perhaps especially true with respect to intellectual disabilities, which may present in subtle ways and require fine-tuned, albeit reasonable, accommodations.").

No such circumstances are present in the instant case, and respondents did not raise the reasonableness of reunification efforts as an issue until the termination hearing was underway. There is no reason apparent from the record that respondents could not have raised their particular concerns about their services sooner in the proceedings. Under these circumstances, respondents' objections were untimely and this issue is unpreserved for appeal with respect to both respondents. See *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000) ("In the present case, respondent did not raise a challenge to the nature of the services or accommodations offered until her closing argument at the hearing regarding the petition to terminate her parental rights. This was too late in the proceedings to raise the issue. The time for asserting the need for accommodation in services is when the court adopts a service plan, not at the time of a dispositional hearing to terminate parental rights.").

This Court generally reviews unpreserved claims of error in termination-of-parental-rights proceedings for plain error. *In re Beers*, 325 Mich App 653, 677; 926 NW2d 832 (2018). "To avoid forfeiture under the plain-error rule, the proponent must establish that a clear or obvious error occurred and that the error affected substantial rights." *Id.* "[A]n error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *Id.* (quotation marks and citation omitted; alteration in original).

III. ANALYSIS AND APPLICATION

A. REASONABLE EFFORTS

Both respondents argue on appeal that the trial court erred by concluding that reasonable efforts had been made to reunify the family.

"In general, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App at 542, citing MCL 712A.18f(1), (2), and (4). Under MCL 712A.19a(2), "[r]easonable efforts to reunify the child and family must be made in all cases," with limited exceptions not at issue in this appeal. See also *In re Frey*, 297 Mich App at 247. Petitioner has "an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks/Brown*, 500 Mich at 85, citing MCL 712A.18f(3)(b) and (c). "As part of these reasonable efforts, the Department must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *Id.* at 85-86, citing MCL 712A.18f(3)(d). However, there also "exists a commensurate responsibility on the part of respondents to participate in the services that are offered," which includes the requirement that respondents "sufficiently benefited from the services provided." *In re Frey*, 297 Mich App at 248.

Our resolution of respondents' appellate arguments in this case is guided by this Court's decision in *In re Fried*. In that case, this Court determined that the trial court did not clearly err by finding reasonable efforts were made where the respondent was not referred to counseling because his psychological evaluation indicated that counseling would not be productive until he had addressed his drug addiction, which he had not done at that point. *In re Fried*, 266 Mich App at 542-543. We also noted that the respondent's decision to seek services without the assistance of the foster care workers did not compel the conclusion that the reunification efforts of the petitioner were not reasonable. *Id.* at 543.

We now turn to the individual arguments of each respondent.

1. RESPONDENT-MOTHER

Respondent-mother argues that reasonable efforts to reunify AC with her were not made in this case because respondent-mother was not referred to a parenting class, was not referred for a substance abuse assessment, was not referred for DBT, and did not receive a parent mentor or coach. Respondent-mother maintains that no justification was submitted for the decisions not to provide these services.

However, the record reflects that respondent-mother was not recommended for parenting classes because she had already "successfully completed parenting classes with another foster care case." Notably, respondent-mother's case involving BC had ended not long before the instant case involving AC was initiated, and AC was removed approximately one week after respondent-mother released her parental rights to BC. As for the parenting mentor, there was testimony that there was no apparent need for a parenting mentor early in the case because respondent-mother's parenting time was going well. There was further testimony that when concerns about respondent-mother's parenting time arose and implementing a parenting mentor for her was considered, it was determined that a mentor would not be appropriate because respondent-mother would not accept any suggestions or coaching from workers or the foster parent when it was provided during respondent-mother's parenting time. Reunification efforts may be reasonable even where certain services are not offered on the ground that those particular services would not be productive for a respondent at that point in time. See *In re Fried*, 266 Mich App at 542-543.

Regarding the lack of a substance abuse assessment, respondent-mother continually denied throughout the course of these proceedings that she had an issue with substance abuse. Moreover, her therapist, with whom respondent-mother had an established and "strong" relationship that had begun before the instant proceedings were initiated, was specially trained in treating substance abuse. Respondent-mother's services included required drug screens throughout the course of the proceedings. Hence, respondent-mother already had appropriate services in place to address any issue related to substance abuse, or her apparent personal state of denial regarding issues of substance abuse, such that we cannot conclude that petitioner's efforts regarding respondent-mother's substance abuse issues were unreasonable. *In re Fried*, 266 Mich App at 542-543. Furthermore, respondent-mother has not demonstrated any prejudice under the plain-error standard that resulted from the lack of a specific substance abuse assessment. *In re Beers*, 325 Mich App at 677.

With respect to DBT therapy, the caseworker testified that she thought that the counselor, Render-Morris, was giving respondent-mother the type of treatment that she needed, and because the caseworker was not getting reports, she did not have sufficient information about the nature of the therapy respondent-mother received in counseling and whether respondent-mother was benefitting. Respondent-mother told Render-Morris not to release her therapy notes or documents to the caseworker or prosecutor. To the extent respondent-mother permitted such a release of information, it was only for a period covering three days. Render-Morris testified that respondent-mother was progressing through her individual counseling in taking responsibility for her life. Render-Morris was addressing respondent-mother's domestic violence issues, which were a significant barrier for respondent-mother in this case. There was also evidence that respondent-mother was not interested in therapy or making personal changes, although respondent-mother denied that this was the case. Furthermore, Lowder, who had made the recommendation for DBT, testified that maintaining an established positive relationship with a therapist would support a decision not to remove respondent-mother from that treatment program to move her to something else. Lowder also testified that any intensive therapy would be beneficial to respondent-mother and that Lowder "still wasn't maintaining that [DBT] would be able to contribute to [respondent-mother's] ability to parent down the road." Accordingly, any confusion surrounding the provision of DBT to respondent-mother was the product of respondent-mother's own interference in the process of participating in the service plan, contrary to her own responsibilities in the process. *In re Frey*, 297 Mich App at 248. Moreover, respondent-mother has also failed to demonstrate that

any prejudice occurred. *In re Beers*, 325 Mich App at 677. The fact that respondent-mother eventually obtained DBT on her own during the course of the termination hearing does not render petitioner's reunification efforts unreasonable. *In re Fried*, 266 Mich App at 543.

Hence, we conclude from our review of the record that although respondent-mother complained during the course of the termination hearing—which began approximately one year into these child protective proceedings—about the nature of the services actually provided to her, petitioner nonetheless made reasonable reunification efforts and any deficiencies in the nature of the services provided were the result of respondent-mother's own failures to communicate and her failure to comply with and show benefit from the service plan. Respondent-mother has not demonstrated plain error affecting her substantial rights with respect to the reunification efforts made in this case.

2. RESPONDENT-FATHER

Respondent-father's appellate argument is confusing and disjointed. The only coherent argument that we can glean from his brief is that he believes the trial court erred by terminating his parental rights because petitioner failed to make reasonable efforts to reunify him with AC by neglecting to provide his sufficient guidance in obtaining individual counseling. Respondent-father's argument is without merit.

There was testimonial and documentary evidence indicating that respondent-father was referred for individual counseling at CMH in September 2018. Respondent-father acknowledged his signature on this document. The referral document clearly instructed respondent-father to call CMH at the provided telephone number to schedule his intake. He apparently never followed through on completing this task until after the termination hearing had begun. Andress testified that respondent-father refused further assistance from her with ensuring that the intake was actually scheduled, beyond obtaining another copy of the referral from her after he had lost the original copy. She also explained that she provided respondent-father with the necessary resources for obtaining individual therapy services but that it was his responsibility to set up his initial intake appointment. Thus, respondent-father did not uphold his own responsibilities to participate in and benefit from the services offered.[6] *In re Frey*, 297 Mich App at 248. Respondent-father has not demonstrated plain error requiring reversal. *In re Beers*, 325 Mich App at 677.

[6] To the extent that respondent-father claimed during his testimony that he was unable to contact CMH or unable to schedule an appointment because CMH did not have his referral, contradicting the other testimony that the referral was made, this Court when reviewing a trial court's factual findings "accords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App at 541. In this case, the trial court specifically found that respondent-father did not ensure that he was receiving individual therapy as recommended despite having had "over a year to make sure that he was getting some kind of therapy." We conclude that this finding by the trial court, which necessarily indicates that respondent-father was to blame for not obtaining individual counseling rather than that he was prevented from obtaining it by some other circumstance, further supports the determination that respondent-father did not

B. STATUTORY GROUNDS

Next, respondent-mother argues that the trial court erred by finding that statutory grounds for termination of her parental rights had been proven. Only one statutory ground needs to be proven by clear and convincing evidence to support terminating a parent's parental rights. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Respondent-mother's parental rights were terminated under MCL 712A.19b(3)(b)(*ii*), (c)(*i*), (j), and (*l*)(*iii*), which provide in pertinent part:

> (3) 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:
>
> * * *
>
> (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
>
> * * *
>
> (*ii*) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.
>
> * * *
>
> (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.
>
> * * *
>
> (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.
>
> * * *
>
> (*l*) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar

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follow through on his responsibility to participate in and benefit from the services offered. *In re Frey*, 297 Mich App at 248.

> law of another state and the proceeding involved abuse that included 1 or more of the following, and the parent has failed to rectify the conditions that led to the prior termination of parental rights:
>
> * * *
>
> (*iii*) Battering, torture, or other severe physical abuse.

With respect to MCL 712A.19b(3)(b)(*ii*), "subparagraph [(b)](*ii*) is intended to address the parent who, while not the abuser, failed to protect the child from the other parent or nonparent adult who is an abuser." *In re LaFrance Minors*, 306 Mich App 713, 725; 858 NW2d 143 (2014). However, subparagraph (b)(*ii*) does not "apply merely to a negligent failure to respond to an accidental injury or naturally occurring medical condition not caused by an 'act' of a parent or other adult." *Id.* MCL 712A.19b(3)(b)(*ii*) states that it applies to abuse of either the child at issue or a sibling. MCL 712A.19b(3)(b)(*ii*) does not require evidence that the child will be at risk of harm from the same abuser. *In re Gonzales/Martinez*, 310 Mich App 426, 432; 871 NW2d 686 (2015).

In this case, there was record evidence that BC, who was AC's sibling and the older child of respondents, had suffered injuries that had been determined to have been caused by physical abuse and that consisted of a chip fracture to his left tibia and multiple facial bruises. There was evidence that respondent-father was responsible for causing the fracture and that there was domestic violence between respondents. Both respondents were convicted of fourth-degree child abuse in connection with the injuries to BC. Additionally, there was also evidence that respondent-mother was nonetheless continuing a relationship with respondent-father, was living with him, and was pregnant with his child at the time of the termination hearing. Therefore, the trial court did not clearly err by finding that termination of respondent-mother's parental rights was proper under MCL 712A.19b(3)(b)(*ii*) because she could have prevented the physical injury or abuse to BC but did not, and there was a reasonable likelihood that AC could suffer abuse or injury in the future based on the continued relationship between respondents, which included a history of domestic violence. Although respondent-mother argues that application of this statutory ground was erroneous because AC was not harmed, she is incorrect because MCL 712A.19b(3)(b)(*ii*) specifically applies when "a sibling of the child has suffered physical injury or physical or sexual abuse."

Next, with respect to MCL 712A.19b(3)(c)(*i*), the conditions that led to respondent-mother's adjudication in this case were her substance abuse, her involvement in the incident involving BC, her continued relationship with respondent-father that included domestic violence, and her willingness to leave her children in the care of respondent-father despite being aware of respondent-father's abusive tendencies. The record evidence is overwhelming that these conditions continued to exist by the time of the termination hearing and that respondent-mother had not made any significant progress in rectifying them. She was testing positive for marijuana, and the trial court specifically found that she gave "no plausible explanation for the use." Based on the record before us, this finding was not clearly erroneous.

But more importantly, there was evidence supporting the conclusion that she was continuing to live with respondent-father and was pregnant with his child. The trial court

specifically found this evidence credible and found that respondents were indeed maintaining their relationship. We defer to the trial court's credibility determinations, *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009), and our review of the record leads us to conclude that the trial court's factual finding that respondents' relationship was ongoing was not clearly erroneous, *In re Moss*, 301 Mich App at 80. The record reflects that respondent-mother tended to minimize the risk of danger to AC presented by respondent-father and that she maintained her relationship with him despite that such contact was contrary to the service plan. Because it was evident that respondent-mother never grew to appreciate the importance of keeping AC away from respondent-father and there was no reasonable likelihood that she would have taken appropriate steps to rectify the condition—the willingness to leave a child in respondent-father's care despite his abusive tendencies—within a reasonable time considering AC's young age. Thus, the trial court did not clearly err by finding termination of respondent-mother's parental rights was supported by MCL 712A.19b(3)(c)(*i*).[7]

Similarly, the considerations discussed above regarding MCL 712A.19b(3)(b)(*ii*) and (c)(*i*) also support the conclusion that there was a reasonable likelihood, based on respondent-mother's conduct or capacity, that AC would have been harmed if she had been returned to respondent-mother's care. MCL 712A.19b(3)(j). Hence, the trial court did not clearly err by finding that this statutory ground had been proven by clear and convincing evidence.

Finally, the trial court also did not clearly err by terminating respondent-mother's parental rights under MCL 712A.19b(3)(*l*)(*iii*). The record reflects that respondent-mother voluntarily released her parental rights to BC after he was removed from respondents' care based on serious injuries, including a chip fracture to BC's tibia, that were determined to be the result of physical abuse. Around the same time that she voluntarily released her parental rights to BC, respondent-mother stopped participating in reunification services related to that case. As described above, respondent-mother failed in the current case involving AC to address the conditions that were involved in the prior case involving BC, namely her inability to appreciate the danger posed by respondent-father's abusive tendencies and her failure to protect her children from that risk of harm.

Respondent-mother's argument that she herself did not injure BC is unavailing. MCL 712A.19b(3)(*l*)(*iii*) states that the earlier proceeding must have "involved" certain types of abuse, including "Battering, torture, or other severe physical abuse." There is no language indicating that this statutory ground is only applicable to a parent who personally commits the abuse. And it is not necessary to conclusively identify which parent perpetrated the abuse and which parent failed to protect the child under these circumstances. Cf. *In re Ellis*, 294 Mich App at 33-36 (concluding that it was "irrelevant" to determine, under multiple statutory grounds, which of the two respondent-parents actually committed the abuse that was inflicted on the child where the evidence shows that "the respondent or respondents must have either caused or failed to prevent the child's injuries" because "[w]hen there is severe injury to an infant, it does not matter whether respondents

[7] We additionally note that the termination hearing began well more than 182 days after the initial disposition order was entered.

committed the abuse at all, because under these circumstances there was clear and convincing evidence that they did not provide proper care.").

We affirm the trial court's rulings regarding the statutory grounds supporting termination of respondent-mother's parental rights.[8]

C. BEST INTERESTS

Finally, respondent-mother argues that termination was not in AC's best interests. The trial court is permitted to terminate parental rights, after finding that the statutory grounds for termination are met, only if termination is in the child's best interests. See *In re Whit*e, 303 Mich App701, 713; 846 NW2d 61 (2014). The trial court may consider factors such as "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." *Id*. (quotation marks and citation omitted). "The trial court may also consider a parent's history of domestic violence, 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." *Id*. at 714.

The trial court acknowledged that respondent-mother had a bond with AC. However, the strength of the parent-child bond is only one factor among many to be considered. See *Id*. As for her parenting ability, respondent-mother notes there was testimony that respondent-mother did well with her parenting time. However, there was also testimony about concerns during respondent-mother's parenting time regarding her lack of engagement with AC and that respondent-mother did not listen to guidance or direction on parenting given by workers or the foster parent. The trial court found in its best-interests determination that respondent-mother's parenting ability was a significant barrier to reunification and, in particular that respondents' ongoing relationship "remains a legitimate concern regarding the ability to properly parent her." We accord special deference to the trial court's ability to judge the credibility of witnesses when we review its findings of fact. *In re Fried*, 266 Mich App at 541. Additionally, the failure to comply with the service plan and past issues of domestic violence, as well as the child's need for permanency, can support a determination that termination is in the child's best interests. *In re White*, 303 Mich App at 713-714. As discussed, the trial court did not clearly err by determining that respondent-mother and respondent-father were still in a relationship and that respondent-mother was not compliant with their respective service plans. Considering that AC, who was approximately a year and a half old at the time of termination, had spent more than two-thirds of her life in foster care, she was in need of permanency, stability, and finality. There was evidence that she was well cared for in the foster home and had a good bond with the foster family. Therefore, the trial court did not clearly err by determining that termination was AC's best interests.

[8] Respondent-father does not challenge on appeal the statutory grounds for termination. Nevertheless, we have thoroughly reviewed the record and we conclude that termination of his parental rights was appropriate under MCL 712A.19b(3)(b)(*i*), (c)(*i*), (j), and (*l*)(*iii*).

Affirmed.

/s/ Stephen L. Borrello
/s/ Patrick M. Meter
/s/ Michael J. Riordan