

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

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*In re* JONES, Minors.

UNPUBLISHED  
November 24, 2020

No. 352160  
Wayne Circuit Court  
Family Division  
LC No. 19-000812-NA

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Before: BOONSTRA, PJ., and MARKEY and FORT HOOD, JJ.

PER CURIAM.

Respondent father appeals as of right the order terminating his parental rights to his children AJ, MJ, and SJ, under MCL 712A.19b(3)(b)(i) (sexual abuse of child or sibling and reasonable likelihood of abuse or injury in the foreseeable future if returned home), (j) (reasonable likelihood child will be harmed if returned to parent), (k), and (m).<sup>1</sup> We affirm.

Petitioner, the Department of Health and Human Services (DHHS), filed a permanent custody petition regarding the minor children, alleging that respondent father had sexually abused AJ. At the combined adjudication and termination hearing, AJ testified that respondent father rubbed her vaginal area over her clothing. Petitioner also introduced evidence that respondent father had been convicted of second-degree criminal sexual conduct (CSC) for the sexual abuse of a 14-year-old. On the basis of AJ's testimony and respondent father's criminal history, the court terminated his parental rights. Respondent father now appeals.

I. STATUTORY GROUNDS FOR TERMINATION

Respondent father argues that the trial court erred when it found statutory grounds to terminate his parental rights despite evidence that AJ may have been subjected to unintentional

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<sup>1</sup> The court did not specify which subparagraph of either (k) or (m) was applicable. The petition indicates that termination was sought pursuant to (k)(ix) (sexual abuse of the child or sibling of the child and reasonable likelihood of future harm), and (m)(i) (conviction by respondent of a number of enumerated offenses).

coaching, when the court cited to “MCL 712A.2(b)” rather than “MCL 712A.19b,” in its order termination parental rights, and when the court held a combined adjudication and dispositional hearing. We disagree.

“To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established,” and “must find by clear and convincing evidence that termination is in the best interests of the children.” *In re Moss*, 301 Mich App 76, 80, 82; 836 NW2d 182 (2013).<sup>2</sup> This Court reviews the lower court’s findings as to both issues for clear error. MCR 3.977(K); *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). A finding is clearly erroneous if, “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.” *Id.* (quotation marks and citation omitted). Clear error review requires a lower court’s decision to strike this Court “as more than just maybe or probably wrong.” *Id.*

The unpreserved issues of whether the court erred when it cited the wrong statute and whether the court erred when it held a combined adjudication and disposition hearing are reviewed for plain error affecting substantial rights. “To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights.” *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). “The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings.” *Id.* “Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings’ independent of the defendant’s innocence.” *Id.* at 763-764 (quotation marks and citation omitted).

The trial court determined that petitioner established the statutory grounds under MCL 712A.19b(3)(b)(i), (j), (k) and (m). Respondent father does not challenge any particular element or condition of the statutory grounds upon which the court relied, and instead, he argues that statutory grounds were not established because petitioner failed to prove that he sexually abused AJ. This, he asserts, is because maternal family members poisoned AJ against respondent father and made her fear that he would sexually abuse her.

Respondent’s interpretation of the evidence is plausible because it can be inferred from AJ’s testimony that the family members told AJ about respondent father’s prior CSC conviction, but the court’s interpretation is equally plausible. The court found that AJ’s testimony regarding respondent father touching her vaginal area was credible. The court determined that AJ had no reason to lie. The court thus was making a credibility determination when it chose to believe AJ’s testimony. “We give deference to the trial court’s special opportunity to judge the credibility of

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<sup>2</sup> “In order to comply with the guarantees of substantive due process, the state must prove parental unfitness by ‘at least clear and convincing evidence’ before terminating a respondent’s parental rights.” *In re B & J*, 279 Mich App 12, 23; 756 NW2d 234 (2008). “[T]he liberty interest of the parent no longer includes the right to custody and control of the children” after the court determines that at least one statutory ground for termination was established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000), superseded in part by statute on other grounds as stated in *In re Moss*, 301 Mich App 76, 88 (2013).

the witnesses.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). In light of the above, we cannot conclude that the court clearly erred when it relied on AJ’s testimony that respondent father touched her vaginal area to find that respondent father sexually abused AJ.

Respondent also notes that the court incorrectly cited “MCL 712A.2(b)” rather than “MCL 712A.19b” in its order terminating his parental rights. The trial court erroneously referred to MCL 712A.2(b)(3) in its order terminating respondent’s parental rights. Interestingly, and as it directly pertains to the discussion below, in keeping with the trial court’s failure to bifurcate its analysis of the adjudication trial and the dispositional hearing, it would seem that the trial court in this instance also jumbled the statutes pertaining to both: MCL 712A.2(b) pertaining to jurisdiction, and MCL 712A.19b(3) pertaining to grounds for termination. In any event, respondent father does not explain how this error affects his rights. The error appears to have been typographical in nature, and we note that the petition correctly cited the statutes under which both jurisdiction and termination were sought. That is, respondent was on notice of the statutes that were at issue. With that in mind, we conclude that the trial court’s typographical error was harmless, that the statutes the trial court intended to cite were clear, and that it in no way impacted the outcome of the lower court proceedings.

Finally, respondent father argues that the court erred when it did not hold a separate adjudication and dispositional hearing. Here, the original petition was a petition for permanent custody, and the court elected to combine the adjudicative and dispositional hearings into one proceeding. As our statutes, court rules, and caselaw provide, this is not an impermissible practice. Our court rules make clear that the adjudicative and dispositional hearings may be combined in one hearing, see MCR 3.973(B) and (C), as well as the fact that a trial court may enter an order terminating parental rights at the initial dispositional hearing pursuant to a request in an original or amended petition, MCR 3.977(E)(1) and MCL 712A.19b(4). Moreover, in a recent case, we clarified the same while also outlining the circumstances in which termination of parental rights may occur at a combined adjudicative and dispositional hearing:

First, an adjudication trial is to be conducted with the court allowing the introduction of legally admissible evidence that is relevant to the exercise of jurisdiction under MCL 712A.2(b). At the conclusion of the adjudication trial, the court, in a bench trial, is to determine whether the DHHS established by a preponderance of the evidence a basis for jurisdiction under MCL 712A.2(b). If jurisdiction is not established, the proceeding is, of course, concluded. If the trial court finds that it has jurisdiction, the dispositional hearing in which termination is sought may immediately be commenced. At the termination hearing, the trial court, in rendering its termination decision under MCL 712A.19b, may take into consideration any evidence that had been properly introduced and admitted at the adjudication trial, MCR 3.977(E), along with any additional relevant and material evidence that is received by the court at the termination hearing, MCR 3.977(H)(2). [*In re Mota Minors*, \_\_\_ Mich \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2020) (Docket No. 351830); slip op at 8.]

As happened in *Mota Minors*, however, the trial court in this case committed procedural errors by failing to bifurcate the adjudication trial and dispositional hearing whatsoever: it issued rulings in

regard to jurisdiction and termination after all of the proofs were submitted without delineating whether certain evidence pertained to adjudication over termination, or vice versa.<sup>3</sup>

As was also the case in *Mota Minors*, however, respondent failed to raise this issue below, and review is thus limited to plain error affecting respondent's substantial rights. *Id.* at \_\_\_; slip op at 5. Respondent in this case does not point to any evidence relied upon by the trial court that may have been admissible at one phase that would not have been admissible at the other, instead arguing that the evidence was generally insufficient with respect to both adjudication and termination, and that the trial court erred by treating the proceedings as though they were the same. While we agree the trial court made procedural errors, as is indicated throughout this opinion, the trial court relied on admissible evidence to determine that respondent sexually abused one of his children and that there was a reasonable likelihood of injury or abuse to all of the children if they were left in his care, and this conclusion was not clearly erroneous. These factual findings were used to support both the trial court's exercise of jurisdiction and termination of respondent's parental rights, and without more than simply the procedural error, we cannot conclude that the trial court's errors affected respondent's substantial rights, nor the fairness, integrity, or public reputation of the judicial proceedings.

## II. BEST INTERESTS

Respondent father also argues that termination of his parental rights was not in the best interests of the minor children. Again, we disagree.

If a trial court finds that grounds for termination of parental rights exist, it must then determine whether termination of parental rights is in a child's best interests using the preponderance of the evidence standard. *In re Moss*, 301 Mich App at 90. As noted, this Court reviews the lower court's findings for clear error. MCR 3.977(K). "The clear error standard controls our review of both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Williams*, 286 Mich App at 271 (quotation marks and citation omitted). A finding is clearly erroneous if, "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." *Id.* (quotation marks and citation omitted).

"The trial court should weigh all the evidence available to determine the [child's] best interest[]." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The focus must be on the child, rather than the parent. *In re Moss*, 301 Mich App at 87. In making the best-interest determination, "the court may consider the child's bond to the parent, the parent's parenting ability,

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<sup>3</sup> This delineation is important because, at least to some extent, evidentiary standards that apply to an adjudication trial may not always apply to an initial dispositional hearing, and the burdens of proof required at each stage are not the same. See *Mota Minors*, \_\_\_ Mich App at \_\_\_; slip op at 6-7, 7-8 n 3. Of course, a trial court may order termination of parental rights on the basis of evidence collected at the adjudication trial, but it should, at the very least, bifurcate the proceedings and allow parties to present evidence related solely to the dispositional review following adjudication if they so desire. See *id.* at \_\_\_; slip op at 6.

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 35, 41-42; 823 NW2d 144 (2012) (citations 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." *In re White*, 303 Mich App at 714.

Respondent father was previously convicted of sexually assaulting a 14-year-old girl. Similarly, AJ testified that respondent father sexually abused her when she was 13 years old. Respondent father's actions demonstrate that his three daughters would not be safe around him. The children deserve a safe home free from the fear of sexual abuse, which respondent was unable to provide. AJ and SJ also expressed that they did not want a relationship with respondent father, which demonstrates they were not strongly bonded to him as respondent father suggests. In light of all of the above, we cannot discern clear error on the part of the trial court with respect to the best-interest determination.

Affirmed.

/s/ Mark T. Boonstra  
/s/ Jane E. Markey  
/s/ Karen M. Fort Hood