STATE OF MICHIGAN

COURT OF APPEALS

In re C. M. AVERSA, Minor.

UNPUBLISHED
November 23, 2021

Nos. 354843; 355742; 356280
Macomb Circuit Court
Family Division
LC No. 2019-000308-NA

Before: SAWYER, P.J., and BOONSTRA and RICK, JJ.

PER CURIAM.

These consolidated appeals[1] arise from a child protective proceeding initiated by petitioner, the maternal grandmother and legal guardian of the minor child, CMA. In Docket No. 354843, respondent, the mother of CMA, appeals by right the trial court's order holding that statutory grounds for terminating respondent's parental rights to CMA existed under MCL 712A.19b(3)(f) and (g). In Docket No. 355742, petitioner appeals by right the trial court's dispositional order holding that termination of respondent's parental rights was not in CMA's best interests and making CMA a ward of the court under the care and supervision of the Department of Health and Human Services (DHHS). In Docket No. 356280, petitioner appeals by right the trial court's dispositional order holding that petitioner lacked standing to participate in future child protective proceedings involving CMA. We affirm in Docket No. 354843, affirm in part and reverse in part in Docket No. 355742, and reverse in Docket No. 356280, and remand for further proceedings consistent with this opinion.

I. BACKGROUND

CMA was born to respondent in 2012. She was seven weeks premature and was diagnosed with several medical conditions, including pulmonary hypoplasia, respiratory distress syndrome,

[1] See *In re Aversa*, unpublished orders of the Court of Appeals, entered January 5, 2021 (Docket Nos. 354843 and 355742), *In re Aversa*, unpublished order of the Court of Appeals, entered February 23, 2021 (Docket Nos. 354843, 355742, and 356280).

and possible neonatal abstinence syndrome[2] (drug withdrawal), which required that she remain hospitalized for approximately six weeks after her birth. CMA was discharged in "well condition" to respondent. Respondent and CMA lived with petitioner after CMA's birth. CMA required supplemental oxygen for at least the first year or two of her life. In July 2013, respondent moved out of petitioner's home, leaving CMA in respondent's care. In November 2013, petitioner filed a petition for guardianship over CMA, which was granted in April 2014. Respondent attended the initial guardianship proceeding, but did not have counsel. She was not entitled to have counsel, as there is no right to counsel, by statute or court rule, in guardianship proceedings in Michigan. *In re Guardianship of Orta*, ___ Mich ___;962 NW2d 844, 847 (2021) (Docket No. 161118-9) (CAVANAGH, J., concurring). At the hearing on the guardianship petition, the trial court advised respondent that she could file a petition to terminate the guardianship at any time to begin the process of reunification with CMA. Respondent never filed such a petition.

This case exemplifies the very real and significant harm that can occur when parties have no court direction or child protective oversight following a voluntary guardianship. It also underscores the injustice that happens when parents, who have no means to retain counsel, attempt to represent themselves in contesting a guardianship. After the appointment of the full guardianship, there was no order governing parenting time. There was no formal court-structured guardianship plan. The Michigan Department of Health and Human Services (MDHHS) were not involved, and thus no services were offered nor provided to the parties. Visitation was at the mutual discretion of both respondent and petitioner. Respondent visited CMA approximately six times in 2014, and between six and eight times in 2015, with each visit lasting a few hours. In 2016, following a serious car accident, respondent moved to the Upper Peninsula with her boyfriend, Chris Semear (Semear), and their child.[3] Respondent and Semear had a second child sometime thereafter. Respondent did not see CMA in person after May 8, 2016. Respondent never provided financial or other material support for CMA. Despite petitioner having resources that respondent clearly lacked, petitioner made no effort to bring the child to the Upper Peninsula, nor does the record reveal that petitioner offered parenting time that respondent rejected. By her own admission, petitioner withheld respondent's identify from CMA, and petitioner did nothing to allow CMA to interact with or learn about her deceased father's family.

In April 2019, after a full guardianship review hearing held by the probate court, petitioner was granted authority to seek to adopt CMA. Respondent asserted that she had been waiting for an opportunity to go to court to tell the judge how everything was going. Respondent explained that she had gone to the previous probate court hearings and every time requested the return of her daughter. However, then the hearings stopped and she was not aware that she had to submit something to have her concerns heard. When she attended the hearing in April 2019, she learned that she needed to file paperwork to terminate the guardianship, which is what she immediately did. Respondent also testified that over the years she looked for an attorney to represent her in the guardianship proceedings, but she could not afford one.

[2] Medical records indicate that respondent was given morphine during delivery of CMA, which could account, at least in part, for this potential diagnosis.

[3] Semear is not CMA's father. The record indicates that CMA's father died in 2019.

After the April 2019 hearing, petitioner filed a petition seeking termination of respondent's parental rights to CMA, alleging that respondent had failed to support or maintain a relationship with CMA. Respondent subsequently withdrew her petition to terminate the guardianship and elected to challenge the petition seeking termination of her parental rights because she had the right to a court-appointed attorney in a termination proceeding; whereas a guardianship proceeding afforded no such right, as mentioned above. Following a hearing, the trial court held that petitioner had established statutory grounds for termination under MCL 712A.19b(3)(f) and (g). After a separate best-interest hearing, however, the trial court found that termination of respondent's parental rights was not in CMA's best interests. The trial court ordered that the guardianship was to remain in place, but also ordered that CMA was to be placed under the care and supervision of DHHS. Later, the trial court determined that because CMA had been made a ward of the court, petitioner was no longer her guardian and therefore lacked standing to further participate in the proceedings.

These appeals followed.

II. STATUTORY GROUNDS

In Docket No. 354843, respondent argues that the trial court erred by finding that at least one statutory ground for termination was established by clear and convincing evidence. We disagree.

A. STANDARD OF REVIEW

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). We review for clear error the trial court's determination regarding statutory grounds for termination. *Id.*; MCR 3.977(K). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been committed. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. ANALYSIS

The trial court found that there existed clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(f) and (g), which provide:

> (f) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, and both of the following have occurred:
>
> (*i*) The parent, having the ability to support or assist in supporting the minor, has failed or neglected, without good cause, to provide regular and substantial support for the minor for a period of 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for a period of 2 years or more before the filing of the petition.

(*ii*) The parent, having the ability to visit, contact, or communicate with the minor, has regularly and substantially failed or neglected, without good cause, to do so for a period of 2 years or more before the filing of the petition.

(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.

The trial court found that respondent, although having the ability to do so, failed to support or assist in the support of her child, and failed to visit, contact, or communicate with CMA during the two years preceding the filing of the petition to terminate parental rights. The trial court's findings are supported by the record.

It is undisputed that, in 2014, petitioner sought and was granted full guardianship of CMA under the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq*. The record shows that in the years that followed, respondent made little to no effort to visit or support CMA, and that she failed or neglected to communicate with CMA from, at least, May 2016 through April 2019. Petitioner testified that she had never denied, nor would she have denied, a request by respondent to visit CMA. Petitioner had lived in the same home and maintained the same telephone number for many years since before the guardianship began. Petitioner further testified that at the beginning of the guardianship she attempted to keep respondent involved and engaged, but respondent frequently moved and changed her phone number, which made it more challenging. By contrast, respondent testified that petitioner had denied her the opportunity to visit and support CMA, although she could provide no specific dates or evidence in support of this assertion. The trial court concluded that there existed no good cause for respondent's failure to visit CMA, ultimately finding petitioner's testimony to be credible, which it was permitted to do as the finder of fact. *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

Further, respondent admitted that, despite working full-time, she never sent any money, money orders, or gift cards for CMA's benefit, nor did she send any birthday or holiday gifts or cards. Respondent did testify to an occasion early in the guardianship in which she attempted to give CMA gifts from her father's family, but stated that petitioner did not allow it because she thought it would confuse CMA. And, according to respondent, she offered—once in 2013 and once in 2016—to provide infant formula and PediaSure, but petitioner accepted only the PediaSure and did not accept the formula. Respondent asserted that, after these attempts, she never did anything else because she had become discouraged after petitioner rejected her efforts. Again, the court found that respondent's claims that petitioner thwarted her efforts to financially support the child did not constitute "good cause" for failing to support her child.

The evidence clearly and convincingly demonstrated that respondent made little to no effort to see her daughter during the five years preceding the filing of the petition to terminate parental rights in 2019. Indeed, the last time she saw CMA was in May 2016. Further, even accepting respondent's testimony as true, her efforts do not qualify as "regular and substantial support" of CMA. MCL 712A.19b(3)(f). It is tragic, but not surprising that respondent never attempted to have the probate court address any of these concerns, given that she had no right to counsel in the guardianship proceedings, and did not have means to hire an attorney to advance

her concerns and protect her fundamental interest as CMA's parent. Notably, the probate court advised respondent in 2014 that she was entitled to visit her child and that she could file a petition at any time to modify or terminate the guardianship. Without means to retain counsel or knowledge of the complexities of the legal process, respondent did not file any such request with the probate court. Further, respondent acknowledged that between 2014 and 2019, she received all of the annual reports in which petitioner represented that respondent was not visiting or supporting CMA.

Accordingly, the trial court did not err by finding clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(f). Having determined that one statutory ground for termination was proven by clear and convincing evidence, we need not address the statutory grounds found in MCL 712A.19b(3)(g). However, we note that respondent testified to working steadily after moving to the Upper Peninsula in 2016, and to supporting her two other children and Semear. Therefore, the record contains evidence that respondent may have had the financial means to provide for at least some of CMA's care and custody, yet failed to do so. MCL 712A.19b(3)(g).

III. BEST INTEREST DETERMINATION

In Docket No. 355742, petitioner argues that the trial court erred by finding that termination of respondent's parental rights was not in CMA's best interests. We disagree.

A. STANDARD OF REVIEW

Whether termination of parental rights is in a child's best interests must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review for clear error a trial court's best-interest determination. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). On appeal, we "must defer to the special ability of the trial court to judge the credibility of witnesses." *In re Medina*, 317 Mich App 219, 227; 894 NW2d 653 (2016) (cleaned up); see also MCR 2.613(C). As our Supreme Court has recognized: "The deference required by MCR 2.613(C) can make a critical difference in difficult cases . . . . In contrast to the reviewing court, the trier of fact has the advantage of being able to consider the demeanor of the witnesses in determining how much weight and credibility to accord their testimony." *In re Miller*, 433 Mich at 337.

B. ANALYSIS

"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).

> The trial court should weigh all the evidence available to determine the children's best interests. To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include 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. 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 701, 713-714; 846 NW2d 61 (2014) (cleaned up).]

"The trial court may also consider how long the child was in foster care or placed with relatives, along with the likelihood that the child could be returned to the parents' home within the foreseeable future, if at all." *In re Mota*, ___ Mich App ___; ___ NW2d ___ (2020) (Docket No. 351830); slip op at 11 (cleaned up). Additionally, "the court may utilize the factors provided in MCL 722.23," *In re McCarthy*, 497 Mich 1035, 1035; 864 NW2d 139 (2015), which are as follows:

> (a) The love, affection, and other emotional ties existing between the parties involved and the child.
>
> (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
>
> (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
>
> (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
>
> (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
>
> (f) The moral fitness of the parties involved.
>
> (g) The mental and physical health of the parties involved.
>
> (h) The home, school, and community record of the child.
>
> (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
>
> (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.
>
> (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute. [MCL 722.23.]

"In making its best-interest determination, the trial court may consider 'the whole record,' including evidence introduced by any party." *In re Medina*, 317 Mich App at 237 (cleaned up).

The referee held a best interests hearing. It spanned over three days. The referee provided their findings on the record. Based on the hearing, the referee considered the following factors: (1) parent-child bond, (2) respondent's parenting ability, (3) the child's need for permanency stability and finality, (4) the parties' willingness to facilitate familial relationships, (5) respondent's visitation history with child, (6) child's well-being while in the care of petitioner, (7) the child's special needs, and (8) the possibility of adoption. The referee recommended that termination was not in the best interests of the minor child and found that a structured reunification plan with respondent would be in CMA's best interests. The trial court ultimately agreed with the referee's findings and recommendation following the best interests hearing and entered an order with its findings:

> For reasons stated on the record, including Natural Mother's demonstration of her commitment to reunification, financial stability, stable housing, completion of parenting classes, completion of domestic violence treatment, individual therapy, and demonstration that she provides proper care and custody of her other two children who are in her care, the court does not find that it is in the child's best interests to terminate Natural Mother's parental rights.

Petitioner requested a review of the recommendation by the trial court. In affirming the referee's recommendation, the trial court explicitly concluded that the referee's recommendation was "thoughtful and considered the record as a whole." The trial court also noted that petitioner merely challenged the assessment as to the credibility and weight of the evidence presented.

On appeal, petitioner argues that the trial court erred by concluding that termination was not in the best interests of the minor child because it focused on respondent's perspective instead of the best interests of CMA. Petitioner also argues that the trial court improperly considered and weighed several factors while ignoring other factors that favored termination. After a full review of the record, we are not left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich at 337.

1. PARENT-CHILD BOND

Petitioner argues that the trial court improperly considered and weighed the bond between respondent and CMA compared to the bond that she had with CMA, respondent's parenting abilities, and respondent's alleged emotional, domestic, and financial stability. We disagree.

The referee recognized that there was no bond between respondent and CMA and that CMA had a strong bond with petitioner. The referee found that petitioner provided a stable home and proper care for CMA and that respondent had failed to provide proper care and custody for the child. However, the referee also found that respondent was "in a different place" at the time of the hearing and that respondent was fully committed to reestablishing the bond with CMA. The referee determined that respondent's failure to visit CMA and navigate the court system in the

guardianship proceedings was a product of her lack of sophistication and that respondent was intimidated and afraid of petitioner.

The testimony supported the findings. According to petitioner, no bond existed between respondent and CMA and petitioner's home was the only home CMA knew. Respondent testified that she and CMA had previously had a strong bond. However, that the bond was completely destroyed as a result of the strained relationship between her and petitioner. If CMA were returned to respondent's care, respondent asserted that she would work with petitioner to execute a smooth transition and be willing to relocate downstate temporarily for the transition, faithfully follow a transition plan, and immediately set up counseling with a professional to assist in the transition.

The frustrated relationship between petitioner and respondent was central to the trial court's best-interests findings. Throughout the best-interest analysis, the referee referenced the strained and estranged relationship between petitioner and respondent. Specifically, the referee found that petitioner had alienated respondent from CMA "to a certain degree" and manipulated respondent to "try to keep her away from [CMA]." The referee also considered the willingness of respondent and petitioner to maintain the child's familial relationships. The trial court clearly weighed this "familial relationship" factor against termination of respondent's parental rights. The referee found that respondent would maintain the relationship between CMA and petitioner, while petitioner indicated that she would not facilitate or maintain a relationship between CMA and respondent. The referee further found that petitioner failed to facilitate relationships with CMA's paternal family. Respondent testified that if CMA were returned to her care, she would maintain a relationship with petitioner. Through petitioner's prehearing conduct and her court testimony, she demonstrated reluctance, if not outright refusal to facilitate a relationship with respondent, respondent's paternal family, or CMA's paternal family. Although petitioner testified that she believed that at some point, CMA should know respondent, she also testified that she would completely sever ties to respondent if respondent's parental rights were terminated. This, despite the fact that petitioner is respondent's own mother. The trial court properly found this was not in the best interest of CMA.

Related to the existence of the bond was respondent's history of visitation with and support of CMA. As the record fully demonstrated, respondent failed for years to visit or communicate with and support CMA.

Petitioner asserts that the trial court clearly erred when it considered the "familial-relations" factor because "reunification with the parent and the ongoing parent-child relation[ship] are not the goals nor the focus of a termination proceeding." While the referee appeared to recognize the strong bond between petitioner and CMA and the lack of a bond between respondent and CMA, the referee and trial court also had the discretion to consider maintaining or facilitating familial relationships as a factor in the best interests analysis, see *In re McCarthy*, 497 Mich at 1035, and could consider any evidence produced by either party, *In re Medina*, 317 Mich App at 237. Although respondent's failure to visit and support CMA was a factor that weighed heavily in favor of the termination of her parental rights, *In re White*, 303 Mich App at 713, there was conflicting testimony regarding the circumstances of the lack of visitation and support. The record also fully demonstrated that petitioner did nothing to encourage or facilitate the parent-child bond between respondent and CMA. This unfortunate outcome is fairly predictable, given there was no formal guardianship plan or involvement by DHHS. Obviously, had respondent been afforded

counsel in the context of the guardianship proceedings, these things would not have gone unchecked for the duration that they did. Further, the bond between respondent and the minor child was not the only factor the trial court was required to consider in its best-interests determination. See *id* at 713-714. The trial court could consider "a wide variety of factors." *Id*. at 713. Additionally, petitioner's reluctance to facilitate familial relationships support the court's finding that petitioner alienated respondent from CMA. In difficult cases, such as the case here, credibility determinations can make a critical difference, *In re Miller*, 433 Mich at 337, and we must give special deference to the trial court's findings when they are based on its assessment of the credibility of witnesses, *In re Medina*, 317 Mich App 219 at 227; see also MCR 2.613(C). Therefore, because the trial court's findings are based on its assessment of the credibility of witnesses, we are not left with a definite and firm conviction that a mistake was made regarding these factors.

2. PARENTING ABILITY, NEED FOR PERMANENCY, STABILITY, AND FINALITY, AND SPECIAL NEEDS OF CMA

Petitioner argues that the trial court improperly found that respondent could appropriately care for CMA, particularly given her special needs. The referee found that respondent possessed the ability to properly care and provide for CMA. The referee also found that respondent demonstrated stability in her own life and family and that she could provide stability for CMA. The referee noted that respondent had maintained the same home for three years. The referee found respondent's profession as a caregiver for disabled patients enabled her to properly care for CMA. Finally, the referee found that respondent's willingness to undergo therapy highly relevant and beneficial to CMA. Respondent testified that she was able and willing to financially support and care for CMA and that she completed a parenting skills class which she benefited from. The referee found that respondent had voluntarily participated in parenting classes and was able to care for her other two children. Respondent's employer testified that she had observed respondent parenting her two other minor children and that respondent was a loving and competent mother. The employer further testified that respondent could parent a child with special needs and that respondent could financially support another child.

It is undisputed that CMA has special medical and educational needs as a result of health issues. Petitioner testified that CMA received regular treatment from several medical specialists. CMA participated weekly in physical, occupational, and speech therapy. To address CMA's developmental delays, her school had developed an individual education plan, and petitioner had enrolled her in Sylvan Learning Center for further tutoring. Through petitioner's efforts, CMA also participated in extracurricular activities, including karate, swimming, and a reading program, to not only offer her socialization, but to improve her physical and cognitive skills in a child-friendly manner.

Petitioner argues that respondent failed to recognize CMA's special needs. However, respondent testified that she was able and willing to continue the care that CMA required. Although respondent testified, on the basis of her own childhood experiences with petitioner, that CMA might not have all of the medical issues petitioner said she had, respondent testified that she would obtain second medical opinions and follow through with appropriate care. Respondent also indicated that she attempted to obtain CMA's medical records to review. However, she was unable to do so as result of the guardianship, and petitioner did not provide this information to respondent.

Had there been a formal guardianship plan and had MDHHS been involved, respondent may have had an ability to meaningfully participate in CMA's medical care. Respondent further asserted that she could provide for CMA's educational needs. Respondent testified that a local school had special education services and that private tutoring was also available so that CMA could continue her education without "too much disruption."

As indicated, the trial court concluded that respondent could provide CMA stability. The referee recognized that petitioner provided proper care for CMA and that if respondent's parental rights were terminated CMA's life would not change much, providing "some stability." The referee also acknowledged that respondent failed to provide proper care and custody for CMA for many years. However, respondent continued to assert that she was able to care for and provide stability for CMA, despite her prior shortcomings.

The trial court recognized, as did the referee, that involvement of DHHS could be beneficial in this case. Based on the record, the involvement of DHHS in this case and the related guardianship case has been extremely limited. At the time petitioner requested guardianship of CMA, DHHS chose not to make a recommendation following the home study of petitioner and respondent in the guardianship proceedings. No hearings were held, and the guardianship was simply continued, year-after-year, by the probate court until April 2019.[4] While petitioner filed a petition to terminate the guardianship in 2019, she subsequently withdrew it because she could obtain court appointed counsel through the termination of parental rights proceedings, but not the guardianship proceedings.[5] Based on the record, there was no plan put into place to facilitate reunification or services offered by DHHS as it related to the guardianship proceedings. Most recently, a DHHS investigator conducted a home study of petitioner's home after respondent filed the petition to terminate the guardianship. Although the petition was withdrawn and the investigator was unable to complete the home study because the petition was dismissed, the investigator testified that she would have recommended that the guardianship continue because CMA had no bond with respondent and respondent had made no efforts for reunification.

The trial court clearly recognized the years that petitioner cared for and supported CMA, but it ultimately concluded that there existed a likelihood that CMA could be returned to respondent's care in the foreseeable future, which was an appropriate factor to consider, on the basis of the testimony during the hearing. See *In re Mota*, ___ Mich App at___; slip op at 11.

---

[4] We note our concern regarding the circumstances that led to the guardianship, especially with this Court's recent interpretation of MCL 700.5204(2) and holding that there is a presumption that the natural parent is a "fit parent" in guardianship proceedings. See *In re Guardianship of Versalle*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket Nos. 351757 and 351758); slip op at 4, 7, lv pending ___ Mich ___; 960 NW2d 537 (2021). Importantly, the trial court considered the guardianship proceedings when making its decision regarding termination of parental rights.

[5] Petitioner filed the petition to terminate respondent's parental rights after the probate court's April 29, 2019 order following the guardianship case review hearing. The probate court made findings regarding the guardianship and the trial court took judicial notice of the guardianship court file in the termination proceedings. However, the April 29, 2019 hearing is not part of the lower court file in this case. Accordingly, this Court was unable to review the hearing transcript.

Respondent's testimony and other evidence supported this finding despite petitioner's testimony to the contrary. As indicated, we defer to the trial court's findings when they are based on its assessment of the credibility of witnesses. *In re Medina*, 317 Mich App 219 at 227; see also MCR 2.613(C).

3. DOMESTIC VIOLENCE

A parent's history of domestic violence is also a factor that a trial court should consider. In this regard, the referee noted that "there were domestic calls where mother recanted" and that respondent and Semear had participated in domestic violence counseling. The evidence demonstrated that from 2015 to 2016, Semear was twice arrested on domestic-violence charges. However, both of the charges were dismissed because respondent reported that she had lied about the abuse and failed to comply with the court's subpoena. Semear also admitted having a prior conviction of domestic violence involving his sister. The domestic violence charges involving respondent precipitated two Children's Protective Services (CPS) investigations in 2016, which were substantiated. However, those investigations did not lead to the removal of respondent and Semear's children.

During the first 2016 investigation, respondent and Semear voluntarily participated in services, but the CPS investigator, who testified at the combined hearing, opined that respondent had not benefited from those services because, later that same year, she was again substantiated on another domestic violence complaint for failure to protect, improper supervision, and threatened harm. Respondent and Semear both testified that they participated in parenting skills, domestic-violence, and anger-management classes. Respondent believed that she and Semear benefited from the classes they took. Following the second investigation, the CPS investigator testified, respondent and Semear followed through with services and the case was closed. Although the trial court considered this factor, it ultimately determined that it was neutral or did not weigh in favor of termination. The testimony of respondent and Semear indicated that they benefited from domestic-violence and other classes and there was no other evidence indicating that there were threats of domestic violence in respondent's home at the time of the hearing. Therefore, we conclude that the trial court did not clearly err in weighing this factor. *In re Medina*, 317 Mich App 219 at 227; MCR 2.613(C).

In summary, it is clear from the record that petitioner had made significant efforts to provide CMA with the best care to meet her full potential. However, respondent testified that, despite her previous shortcomings, she was able and willing to provide stability and care for CMA as a parent. As the United States Supreme Court has recognized:

> The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. [*Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982).]

As indicated, it is not the role of this Court to judge the credibility of the witnesses and in difficult cases, such as the case here, credibility determinations can make a critical difference. *In re Miller*,

433 Mich at 337. The trial court, after a three day hearing on the best interests of the minor child and consideration of multiple factors, concluded that termination of respondent's parental rights was not in the best interests of the minor child. Given the complexity of this case and conflicting testimony and other evidence presented at the hearing, we conclude that the trial court did not clearly err when it found that termination was not in the best interests of CMA.

IV. GUARDIANSHIP AND STANDING

Next, petitioner argues that the trial court erred by placing CMA in the care and custody of DHHS and terminating petitioner's guardianship over CMA. Petitioner also argues that the trial court erred when it concluded that, because she was no longer CMA's guardian, she lacked standing to participate in the proceedings. We agree.

A. STANDARD OF REVIEW

This Court reviews de novo questions of law, including issues involving the application and interpretation of statutes. *In re RFF*, 242 Mich App 188, 195, 198; 617 NW2d 745 (2000). The issue of standing is a question of law that this Court also reviews de novo. *Barclae v Zarb*, 300 Mich App 455, 467; 834 NW2d 100 (2013).

B. ANALYSIS

After the best interest hearing, the trial court ordered that the child be placed in the care and custody of DHHS and that respondent be offered a treatment plan. However, the court also ordered that the guardianship remain in effect. Subsequently, the court held that the November 13, 2020 order was sufficient to terminate petitioner's guardianship over CMA.

A dispositional review hearing was held on December 17, 2020. During this hearing, the referee concluded that because CMA was made a court ward, petitioner was no longer her guardian or a party and, therefore, petitioner lacked standing to participate further in the proceedings. The order that accompanied this review hearing identified petitioner simply as holding the status of "relative placement."

The trial court did not cite below, and the parties have not cited on appeal, any provision within the Juvenile Code, MCL 712A.1 *et seq*., permitting a trial court to order a child to be placed under the supervision of DHHS when the child has a guardian, and that guardian is not the subject of a pending child protective proceeding or has not been determined to be unfit. Further, the trial court's November 13, 2020 order was internally inconsistent. By ordering that the child be placed under the care and supervision of DHHS, the court, by implication, divested petitioner of the sole discretion to act on CMA's behalf as her guardian. However, the order also provided that "the guardianship with the grandparent remains in effect." It appears that the court's ultimate goal by its November 13, 2020 order was to facilitate reunification with respondent, which would necessarily mean terminating the guardianship. However, under MCR 5.404(H)(1), "[n]o full, testamentary, or limited guardianship shall otherwise terminate without an order of the court," and the court never entered an order terminating the guardianship.

Petitioner was appointed as CMA's guardian under MCL 700.5204. Therefore, the trial court was bound by the procedures set forth in the EPIC if it wished to effectuate any change in the guardianship status. Specifically, the court should have complied with MCL 700.5207, which governs a court's review of an EPIC guardianship, or MCL 700.5209, which governs petitions to terminate a guardianship. While both of these statutory provisions contemplate invoking the assistance of DHHS in facilitating reunification, neither permit a court to place a child in the care and supervision of DHHS. Because the trial court's placement of CMA in the care and supervision of DHHS was not in compliance with the provisions of either MCL 700.5207 or MCL 700.5209, we conclude that the trial court erred.

We also conclude that the trial court erred by concluding that petitioner lacked standing to participate in the proceedings.

"The purpose of the standing doctrine is to assess whether a litigant's interest in the issue is sufficient to ensure sincere and vigorous advocacy." *Lansing Schools Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349, 355; 792 NW2d 686 (2010) (cleaned up). Child protective proceedings are initiated when a petition is filed in the trial court that contains facts constituting an offense against a child. MCL 712A.19b(1) permits a guardian to petition for the termination of parental rights. Consistent with the statutory provision, MCR 3.903(A)(19)(b) defines the parties to a child protective proceeding to include the "petitioner, child, respondent, and parent, guardian, or legal custodian." Moreover, "petitioner" means "the person or agency who requests the court to take action." MCR 3.903(A)(22). Petitioner, as the individual who filed the termination petition and as guardian of CMA, had standing to participate in the matter. Although the court denied petitioner's requested relief, the matter is still pending and petitioner still has an interest in the proceedings as the petitioner and the guardian of the minor child. Therefore, the trial court erred by concluding that petitioner lacked standing to participate in the proceedings. On remand, we instruct the trial court to allow petitioner to participate in the proceedings.

V. JURISDICTION

Lastly, petitioner argues that in order to effectuate compliance with MCL 700.5207 or MCL 700.5209, the trial court was required to transfer the guardianship matter back to the probate court after denying her petition. Petitioner essentially argues that the trial court lacked jurisdiction to continue with the child protective proceedings after it denied the petition to terminate respondent's parental rights and that the probate court was the only court with jurisdiction to conduct guardianship proceedings. We disagree.

A. STANDARD OF REVIEW

"We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact." *In re Long*, 326 Mich App 455, 460; 927 NW2d 724 (2018) (cleaned up). "[I]ssues of statutory interpretation, as well as family division procedure under the court rules, are reviewed de novo." *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006).

B. ANALYSIS

A brief review of the governing court rules and statutes is helpful here.

> In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase. Generally, a court determines whether it can take jurisdiction over the child in the first place during the adjudicative phase. Once the court has jurisdiction, it determines during the dispositional phase what course of action will ensure the child's safety and well-being. [*In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014) (cleaned up).]

The adjudicative phase "involves a determination whether the trial court may exercise jurisdiction over the child , i.e., whether the child comes within the statutory requirements of MCL 712A.2(b)." *In re AMAC*, 269 Mich App at 536. To properly exercise its jurisdiction, the trial court must find that a statutory basis for jurisdiction exists by a preponderance of the evidence. *In re Long*, 326 Mich App at 460. The trial court must dismiss the petition if it finds that a child is not within its jurisdiction. MCL 712A.18(1). If the trial court finds that a child is within its jurisdiction, the dispositional phase follows, which "involves a determination of what action, if any, will be taken on behalf of the child." *In re AMAC*, 269 Mich App at 536-537. MCR 3.973 applies to the dispositional phase and provides, in part:

> A dispositional hearing is conducted to determine what measures the court will take with respect to a child properly within its jurisdiction and, when applicable, against any adult, once the court has determined following trial, plea of admission, or plea of no contest that one or more of the statutory grounds alleged in the petition are true. [MCR 3.973(A).]

In this case, the trial court concluded that CMA came within its jurisdiction under MCL 712A.2(b)(6). After finding a statutory ground for exercising jurisdiction, the court also found that there existed clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(f) and (g). However, the court ultimately determined that termination of respondent's parental rights was not in the best interests of CMA and denied petitioner's requested relief. Petitioner does not dispute that the trial court had jurisdiction under MCL 712A.2(b)(6). Rather, petitioner asserts that the trial court erred by continuing with child protective proceedings.

MCL 600.1021(1)(e) provides that the family division of the circuit court has sole and exclusive jurisdiction over, among other things, cases involving juveniles as provided in MCL 712A.1 to 712A.32. Although the probate court has jurisdiction over guardianship proceedings, see MCL 600.841(1)(a) and MCL 700.1302(c), the family division of the circuit court has ancillary jurisdiction over "cases involving guardians and conservators as provided in article 5 of the [EPIC] . . . MCL 700.5101 to 700.5520." MCL 600.1021(2)(a).[6]

[6] Although not relevant to this appeal, we note that had the circuit court appointed a juvenile guardianship in the case, it would have jurisdiction over the guardian, not the probate court. MCL 712A.19a(13); MCL 712A.19c(10); MCR 3.979(C)(1)(a). A juvenile guardianship is distinct and separate from a guardianship authorized under EPIC. See MCL 712A.19a(13); MCL 712A.19c(10); MCR 3.979(C)(1)(a).

This Court has held that "[a] court may exercise ancillary jurisdiction (1) to permit disposition, by a single court, of claims that are, in varying respects and degrees, factually interdependent, or (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." *People v Young (On Remand)*, 220 Mich App 420, 434-435; 559 NW2d 670 (1996). Further, this Court has further instructed:

> Ancillary jurisdiction should attach where: (1) the ancillary matter arises from the same transaction that was the basis of the main proceeding, or arises during the course of the main matter, or is an integral part of the main matter; (2) the ancillary matter can be determined without a substantial new fact-finding proceeding; (3) determination of the ancillary matter through an ancillary order would not deprive a party of a substantial procedural or substantive right; and (4) the ancillary matter must be settled to protect the integrity of the main proceeding or to insure that the disposition in the main proceeding will not be frustrated. [*WPW Acquisition Co v Troy (On Remand)*, 254 Mich App 6, 9; 656 NW2d 881 (2002) (cleaned up).]

It is undisputed that petitioner was appointed as CMA's full guardian under the EPIC and subsequently sought termination of respondent's parental rights under MCL 712.19b(3)(f) and (g). Therefore, we consider the factors outlined in *WPW Acquisition Co* to determine if the circuit court properly invoked ancillary jurisdiction of the guardianship matter as a result of the child protective proceedings as authorized under MCL 600.1021(2)(a).

Regarding the first factor, the guardianship was integral to the child protective proceedings because the guardianship was directly related to the statutory grounds for termination that petitioner sought under MCL 712.19b(3)(f) and (g). Regarding the second factor, although fact finding is ongoing in child protective proceedings, the trial court held multiple hearings and took judicial notice of the guardianship case file during the proceedings. Additionally, the existing record related to the factors a probate court must consider when reviewing a guardianship, see MCL 700.5207(1), and to whether the guardianship was in the best interests of the child, see MCL 700.5209(2). Regarding the third factor, given our holding that petitioner has standing to participate in the continuing child protective proceedings and that the court is bound by the procedures set forth in the EPIC if it wished to effectuate any change in the guardianship status, petitioner would not be deprived of substantive rights on remand. Lastly, given that the disposition of the termination of parental rights case was that termination was not in best interests of the child and reunification efforts should be made, the guardianship matter must be settled to "insure that the disposition in the main proceeding will not be frustrated." *WPW Acquisition Co*, 254 Mich App at 9 (cleaned up). Therefore, we conclude that the trial court did not clearly err by determining that it had ancillary jurisdiction of the guardianship matter as a result of the child protective proceedings as authorized under MCL 600.1021(2)(a).

Affirmed in Docket No. 354843, affirmed in part and reversed in part in Docket No. 355742, and reversed in Docket No. 356280, and remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Michelle M. Rick