STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
September 2, 2021

In re MILLER, Minors.

Nos. 355791; 355792
Ionia Circuit Court
Family Division
LC No. 2018-000386-NA

In re FOUST, Minor.

No. 355873
Ionia Circuit Court
Family Division
LC No. 2019-000203-NA

Before: RONAYNE KRAUSE, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

In Docket No. 355791 of these consolidated appeals[1] respondent-father appeals by right the trial court's order terminating his parental rights to the minor children, RM and EM. In Docket No. 355792, respondent-mother appeals by right the trial court's order terminating her parental rights to RM and EM. In Docket No. 355873, respondent-mother appeals by right the trial court's order terminating her parental rights to SF.[2] We affirm in each docket.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

In August 2018, petitioner, the Department of Health and Human Services (DHHS or petitioner), petitioned the trial court to remove RM and EM from respondent-mother's care,

[1] See *In re Miller Minors*, unpublished order of the Court of Appeals, entered December 29, 2020 (Docket Nos. 355791, 355792, 355873).

[2] Respondent-mother is the mother of all three children at issue. Respondent-father is the father of RM and EM. Although SF's father, CF, was a respondent below and his rights to SF were also terminated, he is not a party to these appeals.

alleging that respondent-mother had recently been hospitalized after deliberately overdosing on an over-the-counter herbal supplement.[3] The overdose had occurred while RM and EM were under her care and while she was pregnant with SF. The petition also alleged that respondent-mother had tested positive for methamphetamine and had both smoked and injected methamphetamine while caring for her children, and that a Children's Protective Services (CPS) worker had discovered that EM was left home alone on the date of the petition. Regarding respondent-father, the petition alleged that he was incarcerated at the time and that respondent-mother was the sole caregiver for RM and EM.[4] The trial court entered an ex parte order removing RM and EM from respondent-mother's care and placing them with their paternal grandmother. Respondent-mother was subsequently arrested, charged, and convicted of fourth-degree child abuse related to her abandonment of EM, and was placed on probation.

Respondent-father entered a plea of admission to the allegations in the petition that he was incarcerated and was not currently able to provide for his children. Although respondent-mother initially requested an adjudication trial, she also entered a plea of admission to the allegations in the petition that she was RM and EM's mother and that she resided at the address listed in the petition. She entered a plea of no-contest to the allegations that she had left EM unattended in her home, and that the child was discovered by a service provider who arrived for a scheduled meeting. The trial court authorized the petition and exercised its jurisdiction over RM and EM. Both respondents were given case service plans and ordered to participate in various services. At the time of the preliminary hearing, RM and EM were placed with their paternal grandmother, which the LGAL recommended continuing, but the DHHS Children's Service Specialist promised that respondent-mother's parents would be considered for placement. The specialist explained to the court that the only major concern for respondent-mother was her substance abuse, whereas the concerns for respondent-father were substance abuse and a history of committing domestic violence.

Over the next several months, respondent-mother made good progress with her service plan. In March 2019, RM and EM were returned to her care. Respondent-father had been given a supervised release from jail in October 2018, but had tested positive for methamphetamine in November 2018; he was reincarcerated and subsequently transferred to a residential substance-abuse rehabilitation program. He refused to participate in the first residential program and was

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[3] The herbal supplement was black cohosh, a plant native to North America and commonly used to treat menopausal symptoms, but also used for sleep disturbances, nervousness, and irritibility. It can cause gastrointestinal distress and rashes, and it may be associated with liver damage. Its use during pregnancy is not recommended. See < https://ods.od.nih.gov/factsheets/BlackCohosh-HealthProfessional/ >. Respondent was approximately 20 years old at the time and indicated that she had initially taken the supplement "to try to help her sleep because she hadn't slept in a couple of days."

[4] At the preliminary hearing, respondent-father reported that he was incarcerated for "home invasion third degree, and domestic violence second offense," rather than for drug charges, although he admitted to having "messed with drugs."

transferred to another, where he again tested positive for methamphetamine, causing his transfer to a third residential program in February 2019.

Respondent-mother gave birth to SF in early 2019. On May 1, 2019, DHHS filed a supplemental petition for removal of RM and EM from respondent-mother's care, and an initial petition for the removal of SF. The petition stated that respondent-mother had tested positive for methamphetamine on April 25, 2019, and had failed to answer the door for a caseworker on April 30, 2019. The caseworker called the police because she could hear children inside; the responding police officer observed SF on the couch unattended, although respondent-mother ultimately answered the door. The trial court authorized the removal of all three children, who were placed in non-relative foster care. At a review hearing for RM and EM in May 2019, caseworker Jordan Lillie reported that respondent-mother had had negative drug screens since the positive screen in April, but had been having problems with parenting time, including leaving early, arriving late, and missing sessions entirely. Lillie reported that respondent-father hoped to be released from incarceration in September 2019.

In June 2019, respondent-mother entered a plea of no-contest to the allegations in SF's petition that respondent-mother had used methamphetamine and had tested positive for it, and that her methamphetamine use had prevented her from caring for SF. The trial court exercised jurisdiction over SF.[5]

In June 2019, respondent-mother was arrested for a probation violation due to testing positive for methamphetamine in April and missing court-ordered drug screens. She was sentenced to 127 days in jail. At a review hearing in August 2019, the trial court was informed that respondent-father had been returned to prison because he had a positive drug screen while at the residential substance-abuse center. Lillie opined at this hearing that respondent-father had made no progress on his case service plan and that respondent-mother had made limited progress.

Respondent-mother was released from jail in November 2019. In March 2020, Lillie reported to the trial court that respondent-mother had missed drug screens for three weeks due to being depressed and suicidal. Respondent-mother was employed but did not have proper housing for the children. Lillie testified that respondent-father had been released from prison in January 2020 and had participated in some services, including a psychological evaluation and parenting time; however, Lillie opined that he had not benefitted from them.

On June 10, 2020, respondent-father tested positive for methamphetamine and marijuana, and missed a parenting-time visit and two supportive visitation visits. Respondent-father reported to Lillie that he was working and had moved in with his mother and stepfather. Respondent-mother had missed yet another drug screen, which she attributed to having fallen asleep. Lillie

[5] SF's father, CF, also entered a plea of no contest to the allegations in the petition concerning him; the trial court accepted the plea.

reported that respondent-mother had not been successfully screened in three months.[6] Respondent-mother also missed two parenting-visits.[7] She had resumed a relationship with SF's father, CF, but had left him after numerous incidents of domestic violence, at least one of which was mutual. The trial court ordered petitioner to expand parenting time for both respondents to include unsupervised parenting time by July 1, 2020. However, the following day, on June 11, 2020, respondent-mother tested positive for methamphetamine. Respondent-father tested positive for methamphetamine on June 12, 2020. The trial court modified its previous order to limit respondents' parenting time to supervised parenting time.

At a hearing on September 9, 2020, Lillie testified that petitioner would seek to terminate respondents' parental rights, noting that respondent-mother had not submitted to a drug screen since she had tested positive on June 11, had missed several therapy sessions, and had engaged in self-harm at a parenting time session in August, necessitating police involvement. Lillie also testified that respondent-mother was still in contact with CF and had had an altercation with him in a casino parking lot. Respondent-mother interrupted Lillie to deny that she had harmed herself in August and used several expletives to describe Lillie and the Ionia Department of Public Safety. Lillie testified that respondent-father had been dropped from the supportive visitation program for non-attendance, and had tested positive for methamphetamine seven times since June 2020. He had canceled five parenting-time visits since the end of July. Respondent-father had not provided any financial support for his children despite stating that he was working seven days a week. Respondent-father told the court that he did not have "to pay child support," and believed he had no obligation to support his children while they were not in his care. The trial court authorized petitioner to file a petition for termination of respondents' parental rights.

Petitioner filed a termination petition in October 2020, alleging that termination was appropriate under MCL 712A.19b(3)(c)(*i*), (3)(c)(*ii*), and (3)(j). The trial court held a termination hearing on November 30, 2020 and December 1, 2020. At the end of the hearing, the trial court held that statutory grounds for termination of respondents' parental rights under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), and (j) had been proven by clear and convincing evidence. The trial court also held that termination of respondents' parental rights was in the children's best interests.

The trial court subsequently entered orders terminating respondents' parental rights. These appeals followed.

II. DOCKET NO. 355791

Respondent-father argues that petitioner failed to make reasonable efforts to provide him with services or to place his children with relatives rather than seeking termination of his rights. He further argues that the trial court erred by holding that statutory grounds for termination had

[6] Some of this gap in screening appears to have been due to the COVID-19 pandemic, rather than any conduct on the part of respondent-mother.

[7] These visits were conducted via video conferencing software due to the COVID-19 pandemic.

been proven by clear and convincing evidence, and by holding that termination of his parental rights was in RM's and EM's best interests. We disagree in all respects.

A. REASONABLE EFFORTS

Respondent-father argues that petitioner failed to make reasonable efforts to reunite him with his children. We disagree. However, to preserve a claim that DHHS failed to make reasonable efforts to reunify the family, a respondent generally must challenge the case service plan in a timely manner to allow the issue to be corrected by the trial court. See *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Respondent-father did not object to the case service plan adopted for him at any point in the proceedings, nor did he make a motion in the trial court or otherwise petition the court to authorize placement with a fit and appropriate relative. Accordingly, his claims are unpreserved. See *Frey*, 297 Mich App at 247. This Court reviews for plain error unpreserved claims of error in a termination proceeding. See *In re Beers*, 325 Mich App 653, 677; 926 NW2d 832 (2018). This Court reviews de novo whether the trial court properly interpreted and applied the relevant statutes and court rules. See *In re Ferranti*, 504 Mich 1, 14; 934 NW2d 610 (2019).

Before seeking termination of parental rights, petitioner is obligated, absent certain aggravating circumstances, to make reasonable efforts to unite the family. MCL 712A.19a(2). Reasonable efforts include the effort to identify and place the children with a "fit and appropriate relative." See *In re Rood*, 483 Mich 73, 107-109; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.); see also MCL 722.954a(2).

In this case, respondent-father suggests that petitioner could have placed the children with his mother and stepfather. The record shows that petitioner initially placed RM and EM with respondent-father's mother and stepfather, with the LGAL's initial approval, only to remove them after a home study revealed that that their home was not suitable for placement. Lillie testified that respondent-father's parents' home was rejected as a result of their "background history" and financial situation, and that, even if the financial situation could have been rectified, there was no way to change the background history. And again, respondent-father never requested that the trial court review petitioner's conclusions or authorize RM's and EM's placement with their paternal grandmother. Respondent-father has not demonstrated plain error. See *In re Beers*, 325 Mich App at 677.

Respondent-father also argues that petitioner should have made more of an effort to provide him with services, but does not identify the specific services that petitioner should have provided beyond claiming that petitioner should have referred him to a counselor who could have treated his specific personality disorders. The record shows that petitioner did refer respondent-father to counseling after his release from prison. Respondent-father's counselor, Leo Preston, testified that respondent-father was inconsistent in his appointment attendance and did not participate in a treatment program to which Preston referred him. Although Preston did testify that he did not specifically treat respondent-father for his personality disorders and was not qualified to do so, he stated that he attempted to address respondent-father's substance abuse and depression, but was hampered by respondent-father's poor attendance. Respondent-father was also referred to intensive outpatient therapy with both group and individual sessions, but only attended one session. Respondent-father presents no evidence that he would have attended sessions more regularly with

another counselor, and the record demonstrates that referrals for additional mental health services were made and rejected. Respondent-father has not shown plain error. See *id.*

B. GROUNDS FOR TERMINATION AND BEST INTERESTS

Respondent-father also argues that the trial court clearly erred when it found that statutory grounds for termination had been proven, and that termination of his parental rights was in RM and EM's best interests. We disagree. A trial court may terminate a parent's parental rights if it finds that petitioner has established one or more grounds for termination by clear and convincing evidence. See MCL 712A.19b(3); *In re Gonzales/Martinez*, 310 Mich App 426, 431; 871 NW2d 868 (2015). Only one statutory ground for termination need be proven by clear and convincing evidence. *Id.* We review for clear error a trial court's holding that statutory grounds have been established and that termination is in the children's best interests. See *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

In this case, the trial court found that statutory grounds to terminate respondent-father's parental rights had been proven under MCL 712A.19b(3)(c) and (j).

A trial court may terminate a parent's parental rights under MCL 712A.19b(3)(c), when 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.
>
> (*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

A trial court may terminate a parent's parental rights under MCL 712A.19b(3)(j) if "[t]here 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.")

Respondent-father argues that the trial court clearly erred when it determined that the conditions that led to his adjudication continued to exist because the only condition involved his incarceration, and he was released from prison in January 2020. We disagree. The conditions that led to respondent-father's adjudication were not merely the fact of his incarceration. See *Mason*, 486 Mich at 161. Rather, the condition that led to respondent-father's adjudication was his failure to provide support or arrange for the proper care and custody of RM and EM, notwithstanding that he was imprisoned.

The trial court stated that the primary condition that led to respondent-father's adjudication was respondent-father's failure to provide an appropriate home for RM and EM, and that this

condition remained. The record supports the trial court's conclusion. Respondent-father claimed throughout the proceedings that he worked extensive hours and purportedly made a good income. He was also told that his parents' home was not an acceptable home for the children. Nonetheless, respondent-father chose to continue living with his parents, and told Lillie that he was uninterested in moving. Moreover, he testified to his unwillingness to provide financial support for his children if they were not under his direct care. Consequently, the trial court did not clearly err when it found that the conditions that led to adjudication continued to exist and there was no reasonable probability that that condition would be rectified within a reasonable time. See MCL 712A.19b(3)(c)(*i*).

The trial court also did not clearly err by holding that statutory ground for termination had been proven under MCL 712A.19b(3)(c)(*ii*). The trial court had the authority to terminate respondent-father's parental rights under MCL 712A.19b(3)(c)(*ii*) on the basis of new or different circumstances from those that led the court to take jurisdiction, if it found by clear and convincing legally admissible evidence that petitioner had established that ground. See MCR 3.977(F)(1);[8] see also *In re Pederson*, 331 Mich App 445, 475; 951 NW2d 704 (2020). Petitioner identified respondent-father's substance abuse and perpetration of domestic violence as serious concerns. Respondent-father admitted to his psychological evaluator that he had a serious methamphetamine habit and was, at one point, using methamphetamine every day. The record also showed that respondent-father's inability to address his drug problem had increased his term of imprisonment. Respondent-father was discharged from several treatment facilities for continuing to test positive for methamphetamine and failing to benefit from the treatment provided. The record further shows that RM was traumatized by his visits to prison to see respondent-father. Respondent-father's failure to address his substance abuse, resulting his further incarceration, demonstrably harmed his children and prevented him from providing proper care and custody.

After respondent-father's release from prison, petitioner provided him with services designed to help him control his substance abuse problem, but respondent-father repeatedly failed to benefit from those services. Respondent-father repeatedly tested positive for methamphetamine in the months before the termination hearing. Respondent-father refused to provide his children with financial support at a time when he was clearly purchasing and using methamphetamine. That evidence demonstrated that respondent-father would put his desire to use methamphetamine over the needs of his children. Consequently, the trial court did not clearly err when it found that respondent-father continued to have a serious drug problem that resulted in the neglect of his children and did not err when it determined that it was not reasonably likely that respondent-father would rectify that problem within a reasonable time. See *In re Mason*, 486 Mich at 152.; see MCL 712A.19b(3)(c)(*ii*). Having concluded that the trial court did not err by finding that statutory grounds for termination had been proven under MCL 712A.19b(3)(c)(*i*) and(*ii*), we need not address its holding under MCL 712A.19b(3)(j), but we note that the same evidence regarding respondent-father's persistent methamphetamine use demonstrated that there was "a reasonable

[8] Respondent-father has not argued that the trial court relied on evidence that was not legally admissible.

likelihood" that, on the basis of respondent-father's "conduct or capacity," the children would be harmed if returned to respondent-father's home. See MCL 712A.19b(3)(j).

Nonetheless, respondent-father argues that the trial court should have taken into consideration that respondent-father did not have adequate time to address his needs because he only had the opportunity to fully participate after his release from prison in January 2020, and because the COVID-19 pandemic interfered with his ability to participate in services. We disagree. Petitioner did not petition to terminate respondent-father's parental rights until October 2020, and the termination hearing did not occur until December 2020. Accordingly, respondent-father had approximately nine months (after his release) to demonstrate some improvement by the time of the petition and about 11 months by the time of the termination hearing. That time was more than adequate to demonstrate progress. See, e.g., MCL 712A.19b(3)(c) (providing that a trial court may terminate a parent's parental rights if the conditions that led to adjudication or other conditions have not been rectified in at least 182 days). The record also showed that respondent-father's lack of progress was largely a matter of his refusal to put his children's needs before his own. Although the pandemic may have presented additional challenges with regard to parenting time visits, scheduling drug screens, or attending services, it does not justify respondent-father's failure to put meaningful effort into benefiting from services and demonstrate his commitment to reuniting with his children. And although respondent-father argues that the temporary interruption in mandatory drug screening caused him to relapse, the evidence shows that respondent-father tested positive for methamphetamines on several occasions after testing resumed.

The record fully supported the trial court's determination that petitioner had established grounds to terminate respondent-father's parental rights under MCL 712A.19b(3)(c)(*i*) and (3)(c)(*ii*). *Gonzales/Martinez*, 310 Mich App and 431.

Respondent-father also argues briefly that the trial court erred by determining that termination of his parental rights was in RM's and EM's best interests. We disagree. Once the trial court determined that grounds for termination were established, the court had to determine by a preponderance of the evidence whether termination of respondent-father's parental rights was in the children's best interests. See MCL 712A.19b(5); see *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). When considering the children's best interests, a trial court should weigh all the evidence and consider a variety of factors:

> 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).]

In this case, RM and EM had been in foster care for about two years by the time of the termination hearing. The record shows that although the children had done well in foster care, there was evidence that the disruptions in care, the changes to the children's home environment,

and respondent-father's inconsistent participation in visitation had caused strain on the children. The record showed in particular that RM needed permanence and stability in order to enable him to heal from the trauma caused by the neglect of his emotional and physical needs and chaos of his home life. Respondent-father's failure to make meaningful progress in the 11 months after his release from prison, his continued drug abuse, and his other personal choices showed that he would continue to be a disruptive element in RM's and EM's lives, while their foster placement offered them a chance at stability and permanence. Under these circumstances, the trial court did not clearly err when it found by a preponderance of the evidence that terminating respondent-father's parental rights was in the best interests of both children. See *Mason*, 486 Mich at 152; *Moss*, 301 Mich App at 90.

II. DOCKET NOS. 355792 & 355873

In Docket No. 355792, respondent-mother argues that the trial court erred by taking jurisdiction over RM, because she made no admissions involving neglect of RM and the court's findings applied only to EM. She also argues that the trial court erred by holding that petitioner made reasonable efforts at reunification, that statutory grounds to terminate her rights to RM and EM were proven by clear and convincing evidence, and that termination of her parental rights was in RM's and EM's best interests. In Docket No. 355873, she argues that she received the ineffective assistance of counsel during SF's adjudication. She also argues that the trial court erred by holding that petitioner made reasonable efforts at reunification, that statutory grounds to terminate her rights to SF were proven by clear and convincing evidence, and that termination of her parental rights was in SF's best interests. We disagree in all respects.

A. RM'S ADJUDICATION

Respondent-mother argues that the trial court erred by taking jurisdiction over RM during the adjudication phase of the proceedings. We disagree. A respondent is permitted to challenge the trial court's order of adjudication after termination. See *Ferranti*, 504 Mich at 35-36. Nevertheless, because respondent-mother did not raise this claim of error in the trial court, it is unpreserved and reviewed for plain error affecting substantial rights. See *Pederson*, 331 Mich App at 462-463. This Court reviews de novo issues of statutory interpretation. See *Ferranti*, 504 Mich at 14. We review for clear error a trial court's factual findings. *Mason*, 486 Mich at 152.

"The question at adjudication is whether the trial court can exercise jurisdiction over the child (and the respondents-parents) under MCL 712A.2(b) so that it can enter dispositional orders, including an order terminating parental rights." *Ferranti*, 504 Mich at 15. Respondent-mother entered a plea of admission to certain allegations in the petition under MCR 3.971(A), and the court determined that her plea was knowingly, understandingly, and voluntarily made, see MCR 3.971(D)(1). Respondent-mother has not challenged whether her plea was knowingly, understandingly, and voluntarily made; rather, she argues that, because her plea only involved her abandonment of EM, the trial court did not establish support for the finding that one or more grounds alleged in the petition for asserting jurisdiction were satisfied with respect to RM. See MCR 3.971(D)(2). We disagree.

Respondent-mother specifically admitted at the hearing that she was the mother of both RM and EM, and that both children resided with her in her apartment at the time petitioner filed

its petition. Respondent-mother also pleaded no contest to the allegation that EM was left alone in her apartment at a time when respondent-mother was supposed to be home for a scheduled appointment. The trial court also took testimony about the incident, which verified the allegations. The testimony established that respondent-mother was not able to be located for hours after EM was discovered unattended. The trial court found that the "children" were at substantial risk if left in respondent-mother's care.

The trial court's findings were sufficiently detailed to support its exercise of jurisdiction. The trial court did not have to state its findings in elaborate detail or with particularization of facts; it was enough to provide brief, definite, and pertinent findings. See MCR 2.517(A)(2). A trial court's findings satisfy MCR 2.517(A)(2) when it is manifest to this Court that the trial court was aware of the factual issues and resolved them, and this Court does not need further explication to facilitate appellate review. See *In re Hensley*, 220 Mich App 331, 334; 560 NW2d 642 (1996). Although respondent-mother argues that the trial court only made findings regarding EM, it is evident from the record that the trial court's findings encompassed both children. How a parent treats one child is probative evidence of how that parent will treat another child, and may by itself be sufficient to permit a court to acquire jurisdiction over the other child. See *In re Kellogg*, 331 Mich App 249, 258-259; 952 NW2d 544 (2020). The evidence showed that RM was older, but that he was not so much older that he could be left alone unattended for hours on end. There were also no other differences that might diminish the probative value of the inference that respondent-mother would similarly endanger RM. See *id*.

The trial court adequately stated its findings and conclusions of law, and its findings and conclusions were supported in the record. Consequently, respondent-mother has not identified any plain error in the trial court's assertion of jurisdiction over RM.

B. INEFFECTIVE ASSISTANCE OF COUNSEL AT SF'S ADJUDICATION

Respondent-mother also argues that she received the ineffective assistance of counsel during SF's adjudication. Specifically, respondent-mother argues that counsel should have stopped her from admitting that she had used methamphetamine and that her drug use prevented her from caring for SF. She also argues that counsel should have asked for an adjournment so that she could discuss the implications of the admissions before proceeding. We disagree that her counsel was ineffective.

"The principles applicable to claims of ineffective assistance of counsel in the arena of criminal law also apply by analogy in child protective proceedings." *In re Martin*, 316 Mich App 73, 85; 896 NW2d 452 (2016). Generally, a party claiming ineffective assistance of counsel must preserve a claim of ineffective assistance of counsel by moving the trial court for a new trial or an evidentiary hearing. See *People v Sabin*, 242 Mich App 656, 658; 620 NW2d 19 (2000). If no evidentiary hearing was held, our review is limited to errors apparent on the record. *Id*. at 658-659. Whether counsel was ineffective involves a mixed question of fact and law. See *People v Gioglio (On Remand)*, 296 Mich App 12, 19; 815 NW2d 589 (2012), remanded for resentencing 493 Mich 864. This Court reviews de novo whether a particular act or omission fell below an objective standard of reasonableness under prevailing professional norms and resulted in prejudice to the respondent. See *Id*. at 19-20.

Respondent-mother had a right to appointed counsel at hearings that involved the termination of her parental rights. See *In re Williams*, 286 Mich App 253, 275-276; 779 NW2d 286 (2009); MCL 712A.17c(4); MCR 3.915(B)(1)(b). The right to counsel guarantees effective assistance of counsel. See *In re HRC*, 286 Mich App 444, 458; 781 NW2d 105 (2009). To establish her claim of ineffective assistance, respondent-mother must demonstrate that her counsel's representation fell below an objective standard of reasonableness under prevailing professional norms and that, but for her counsel's unprofessional errors, a reasonable probability exists that the result of the adjudication would have been different. See *Gioglio*, 296 Mich App at 22-23. Respondent-mother also has the burden to establish the factual predicate for her claim. See *People v Douglas*, 496 Mich 557, 592; 852 NW2d 587 (2014).

At the hearing held on June 17, 2019, the trial court stated that it had scheduled the hearing to conduct CF's disposition and respondent-mother's adjudication trial. The court stated its understanding that respondent-mother wished to admit to a part of the petition and asked whether respondent-mother wanted to proceed to disposition at the same hearing. Respondent-mother's counsel indicated that respondent-mother wanted to "hold off" on the disposition, but would make limited admissions to the allegations in the petition. Specifically, respondent-mother would admit that she had tested positive for methamphetamine, but only if the admission reflected that the children were not in her care at the time that she used methamphetamine. The trial court then inquired: "Is she acknowledging, then, that because of that meth use, she was unable to properly care for this child? Because that's really the issue." Respondent-mother answered, "Yes." The trial court then clarified the wording of the admissions and asked if either respondent-mother or petitioner had any objections. Respondent-mother's counsel agreed with the wording, as did petitioner. Respondent-mother then agreed under oath that she had had an opportunity to discuss the case with counsel, admitted that she used methamphetamine on April 20, 2019, while the children were not in her care, and admitted that she was unable to provide proper care and custody for SF because of her use of methamphetamine.

Respondent-mother admitted on the record that she had had the opportunity to discuss the case with counsel and wanted to enter a plea. There was no indication that respondent-mother did not have adequate time to prepare before appearing at the hearing. To the contrary, her counsel's recitation of the allegations suggests that counsel had carefully selected the limited admissions that respondent-mother would make and reviewed them with respondent-mother before she made them. Examining the record as a whole, respondent-mother has not shown that her counsel's assistance fell below an objective standard of reasonableness. See *Gioglio*, 296 Mich App at 22.

Further, a reasonable attorney could have concluded that respondent-mother's plea of admission would not have been accepted had she only admitted that she had used methamphetamine while the children were not in her care. See MCL 712A.2(b)(1). The trial court could have rejected her admission and held the adjudication trial. See MCR 3.971(D)(2) ("The court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the statutory grounds alleged in the petition are true."). At trial, petitioner may have been able to present more damaging evidence, and the trial court may have made additional findings that would have carried over to the dispositional phase. See *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009) (stating that courts may take judicial notice of its own record). A reasonable lawyer in her counsel's position might conclude that it was better to allow respondent-mother to make the required admission than to proceed to trial and risk more damaging

testimony. Because this Court can conceive a legitimate strategic reason for proceeding as counsel did, this Court cannot conclude that defense counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. See *Gioglio*, 296 Mich app at 22-23. For the same reason, respondent-mother cannot establish prejudice; there is no indication on this record that petitioner could not have established grounds for the trial court to take jurisdiction over SF. See *id*. at 23.

Respondent-mother has not shown that her counsel's assistance at SF's adjudication was ineffective.

C. REASONABLE EFFORTS AND FAMILY PLACEMENT

In both dockets, respondent-mother argues that petitioner failed to place the children with an appropriate relative as required by its own policies. Respondent-mother also argues that petitioner failed to make reasonable efforts to provide services, and failed to follow the recommendation from RM's trauma assessment that RM be reunited with his family as soon as possible. We disagree.

To preserve a claim premised on petitioner's failure to make reasonable efforts to reunify the child and family, respondent-mother had to challenge petitioner's case service plan within a reasonable time. See *Frey*, 297 Mich App at 247. Again, petitioner's obligation to identify and place the children with a "fit and appropriate relative" is part of petitioner's obligation to provide reasonable efforts to reunify the family. See *Rood*, 483 Mich at 107-109 (opinion by CORRIGAN, J.). Respondent-mother did not object to her case service plans on the basis that petitioner had failed to make reasonable efforts to place her children with relatives. She also did not file a motion or petition the court to authorize placement with a fit and appropriate relative for any of the children. Accordingly, these claims of error are unpreserved. See *Frey*, 297 Mich App at 247.

This Court reviews de novo whether the trial court properly interpreted and applied the relevant statutes and court rules. See *Ferranti*, 504 Mich at 14. We review unpreserved claims of error in a termination proceeding for plain error affecting substantial rights. See *Beers*, 325 Mich App at 677.

Respondent-mother argues that petitioner plainly erred by not placing her children with a relative, such as her mother. We disagree. We note that respondent-mother could have—but did not—arrange for her children to have proper care and custody through placement with relatives before petitioner petitioned the court for their removal. See *In re Baham*, 331 Mich App 737, 749; 954 NW2d 529 (2020) (opinion by M.J. KELLY, J.). Nevertheless, the availability of relative placement is an important consideration that may affect a trial court's decision whether to terminate a parent's parental rights. See *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012).

Respondent-mother made an informal request at the preliminary hearing that RM and EM be placed with their maternal grandmother and her significant other. Petitioner's representative informed the trial court that petitioner had concerns that respondent-mother's relatives all had histories with CPS and things "like that," which led petitioner, with the LGAL's approval, to conclude that placement with respondent-father's parents was the better option. Respondent-

mother concedes on appeal that her mother had a history of CPS involvement, but notes that there were no recent incidents. Respondent-mother also alleges that DHHS had placed three other grandchildren with her mother, and her mother was ultimately granted full guardianship over those children. Respondent-mother argues that these facts demonstrate that her mother could provide proper care and custody to yet three more grandchildren. However, respondent-mother herself had told her psychological evaluator that her mother had a substance abuse problem that had interfered with her parenting capabilities in the past. And the maternal grandmother opined at the termination hearing that respondent-mother was an "awesome mom," notwithstanding the evidence that respondent-mother was still abusing methamphetamine, continued to associate with persons who abused drugs or posed safety concerns that she failed to comprehend, and engaged in behaviors that suggested she was emotionally unstable. Indeed, the trial court found the maternal grandmother's opinion to be so contradictory to the evidence that it questioned her credibility. On this record, there was significant evidence that tended to weigh against placing the children with their maternal grandmother, and respondent-mother has not demonstrated plain error. *Beers*, 325 Mich App at 677.

Respondent-mother also briefly states that petitioner should have considered other relatives who could have cared for RM and EM, such as a cousin. She similarly asserts that SF's paternal grandmother would have been a better placement for SF. She does not, however, present any evidence that these relatives were fit and appropriate candidates for placement. Rather, she merely speculates that these persons would have been suitable and preferable for placement. In the absence of any evidence tending to show that there was suitable relative who could provide proper care and custody for the children, it cannot be said that petitioner plainly or obviously erred by failing to find and secure relative placement for RM, EM, or SF as part of its reasonable efforts to reunify respondent-mother with her children. See *Beers*, 325 Mich App at 677.

Even if petitioner had plainly erred regarding relative placement, respondent-mother has failed to show a reasonable probability that the outcome of the proceedings would have been different. *Id*. The record shows that respondent-mother continued to abuse methamphetamine throughout most of the proceedings below. Respondent-mother relapsed and used methamphetamine after RM and EM were returned to her care in March 2019, and there was evidence that she evaded or refused drug screening until she had another positive test in June 2020. Thereafter, she outright refused to participate in drug testing even though it was part of her case service plans. Additionally, respondent-mother was inconsistent with her attendance at counseling, failed to communicate with petitioner, and engaged in behaviors that suggested that she had not benefited from the services intended to help her reunify with the children. Given the weight of the evidence that respondent-mother had not benefited from the services provided to her for nearly two years for the older children, it is highly unlikely that relative placement would have so altered the analysis that the trial court would have declined to terminate respondent-mother's parental rights to any of the children. Therefore, even if respondent-mother had identified a plain or obvious error arising from petitioner's placement decisions, that error would not warrant relief. See *id*.

Respondent-mother also argues that petitioner failed to make reasonable efforts at reunification when it failed to follow the recommendations made by Dr. James Henry, the Director of Western Michigan University's Children's Trauma Assessment Center, who performed RM's trauma assessment. We disagree. Notably, Dr. Henry did not begin RM's assessment until

December 2019, long after his removal and placement with an unrelated foster family. Further, although Dr. Henry did not identify any history that RM had been directly mistreated, it does not follow that Dr. Henry determined that respondent-mother was not responsible for RM's trauma. To the contrary, Dr. Henry testified that RM suffered from "complex trauma," chronic neglect, and other types of maltreatment that affected his ability to form attachments, trust others, and manage and control his behaviors and emotions. And although Dr. Henry agreed that the children's removal had contributed to RM's trauma, he did not opine that RM's removal was the sole or even primary cause of his trauma. The evidence showed that the children had done well in foster care overall and that all of their needs had been met while in the care of the foster family. When that evidence is considered together with Dr. Henry's report and testimony, it is clear that RM suffered significant trauma from the lack of stability and the neglect of his emotional and physical needs *before* his placement in foster care, which permits an inference that he suffered the trauma while in respondent-mother's care. Accordingly, contrary to respondent-mother's argument on appeal, Dr. Henry's report permitted an inference that respondent-mother's poor parenting and behaviors were the primary source of RM's trauma.

Additionally, although Dr. Henry did recommend reunification for RM as soon as possible, he stated that reunification should occur *if* respondent-mother could remain drug free. He also noted that the concerns that led to RM's trauma included exposure to drug abuse, constant intervention by police officers, and neglect. The evidence permitted an inference that respondent-mother continued to abuse drugs and associate with persons who abused drugs; that respondent-mother was involved in domestic violence that resulted in police intervention;[9] and that respondent-mother refused to do the things that she had to do in order to reunify with her children. Indeed, Dr. Henry testified that, if respondent-mother continued to have unstable housing, use methamphetamine, and not participate in therapy, reunification with her would put RM at psychological risk and would exacerbate the trauma already caused by a lack of permanency in his life. Petitioner's decision to remove the children after respondent-mother relapsed and to supervise her visits was consistent with Dr. Henry's report. Consequently, respondent-mother has not shown that petitioner plainly erred by failing to follow the recommendations stated in Dr. Henry's report. See *Beers*, 325 Mich App at 677. For the same reasons, especially her inability to cease using methamphetamine, respondent-mother cannot show that any error in failing to return the children to her care based on Dr. Henry's recommendations would have altered the outcome of the proceedings against her. *Id.*

[9] Although a parent's parental rights may not be terminated on the basis of being a victim of domestic violence, there was evidence that respondent-mother was both a victim and a perpetrator. See *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119 (2011). Additionally, the major concern was less respondent-mother's victimization than the fact that she failed to comprehend how dangerous those individuals were. The trial court noted that both fathers had been diagnosed with antisocial personality disorder, had significant drug histories, and had been incarcerated, which the court regarded as indicative of respondent-mother making poor interpersonal choices and suggesting a failure to address her own emotional needs sufficiently to provide for the children. Finally, Dr. Henry opined that RM had been traumatized in part by his exposure to police in the home.

D. GROUNDS FOR TERMINATION

Respondent-mother also argues in both dockets that the trial court erred when it found that petitioner had established, by clear and convincing evidence, grounds for terminating her parental rights to all three children. Relatedly, respondent-mother also argues that the trial court admitted inadmissible hearsay evidence during the termination hearing. We disagree.

This Court reviews de novo whether the trial court properly interpreted and applied the relevant statutes and court rules. See *Ferranti*, 504 Mich at 14. We review for clear error the trial court's factual findings at a termination hearing. See *Mason*, 486 Mich at 152. We review unpreserved claims of error in a termination proceeding for plain error affecting substantial rights. See *Beers*, 325 Mich App at 677. And we review for an abuse of discretion a trial court's decision to admit evidence. See *In re Brown/Kindle/Muhammad*, 305 Mich App 623, 629; 853 NW2d 459 (2014). However, we review de novo whether the trial court properly interpreted and applied the rules of evidence. *Id*. at 629-630.

1. HEARSAY

Respondent-mother argues that the trial court should not have admitted Lillie's testimony concerning respondent-mother's failure to take drug tests and her drug abuse. Lillie testified that the drug screener had told her that he called respondent-mother on June 9, 2020, for a drug screen, and that respondent-mother did not get back to him until the afternoon and said that she was in Grand Rapids. He then drove to Grand Rapids to meet her, but respondent-mother did not respond to his calls. The drug screener stated that he left Grand Rapids only to have respondent-mother call him at 11:00 p.m. The drug screener said that he finally was able to test respondent-mother the next day, and that the test result was positive. Lillie also testified that CF told her in April 2020 that respondent-mother was a " 'nightmare dope freak' " and that he ran into respondent-mother and saw that she was " 'tweaked out on drugs.' " Respondent-mother's counsel objected to this testimony on hearsay grounds, and the trial court overruled the objection.

Lillie's testimony involved hearsay that would generally be inadmissible under the rules of evidence. See MRE 801(c); MRE 802. However, the rules of evidence generally do not apply at a termination hearing, see MCR 3.977(H)(2); see also *In re Hinson*, 135 Mich App 472, 474; 354 NW2d 794 (1984) (stating that the rules of relevance and materiality only apply at a dispositional hearing). This is true unless petitioner sought termination in a supplemental petition based on circumstances that were new or different from the offense that led the trial court to assert jurisdiction, see MCR 3.977(F). A ground is new or different when the grounds for termination are "unrelated to the basis on which the probate court initially established its jurisdiction over the children." See *In the Matter of Snyder*, 223 Mich App 85, 90; 566 NW2d 18 (1997). In this case, petitioner did seek termination in supplemental petitions for termination, but it did not seek termination on unrelated grounds; the petitions alleged that the original conditions of adjudication continued to exist, as well as alleging that other grounds for termination existed related to respondent-mother's use of methamphetamine and neglect of her children. Accordingly, the hearsay statements involving respondent-mother's drug use and drug testing did not involve solely new or different grounds from the offense of adjudication, see MCR 3.977(F); *In the Matter of Snyder*, 223 Mich App at 90, and the hearsay rule did not bar the admission of Lillie's testimony regarding the statements of others. The purpose of Lillie's testimony was to aid the court in

evaluating whether respondent-mother had made any progress in overcoming her substance abuse, which was a condition that had led to her children's adjudication. See *In the Matter of Snyder*, 223 Mich App at 90; see also MCR 3.977(H)(2). Therefore, the trial court did not abuse its discretion by allowing Lillie to testify as to those statements.[10] See *Brown/Kindle/Muhammad*, 305 Mich App at 629.

2. STATUTORY GROUNDS

Respondent-mother argues that the trial court erred by finding that statutory grounds for termination of her parental rights existed. We disagree. The trial court did not clearly err by holding that the conditions that led to the adjudication of each child continued to exist and that there was no reasonable likelihood that respondent-mother would rectify the conditions within a reasonable time considering the children's ages. See MCL 712A.19b(3)(c)(*i*).

Regarding RM and EM, the adjudication involved evidence that respondent-mother had failed to provide her children with proper care and supervision, had left EM unattended, and was located hours later by emergency personnel, who noted that she appeared "high." The record shows that petitioner provided respondent-mother with services intended to help respondent-mother rectify the underlying issues that caused her to make poor parenting decisions. Petitioner provided her with counseling, supervised parenting time, drug testing, and referred her to the foster-care supportive visitation program. There was evidence that respondent-mother initially committed to participating in the services and benefited from them. However, there was also evidence that respondent-mother ceased to benefit from these services after relapsing and resuming her use of methamphetamine, which supported a finding that she would again place RM and EM in danger by failing to provide them with proper supervision if they were returned to her care. See *In re Trejo*, 462 Mich 341, 346 n 3; 612 NW2d 407 (2000).

Similarly, SF's adjudication involved evidence that respondent-mother had left SF, a newborn, unattended on a couch for a significant period of time, and had tested positive for methamphetamine. The trial court could reasonably infer from that incident that respondent-mother continued to demonstrate a lack of insight into the need to provide proper supervision for her children, even after being provided with services intended to improve her parenting skills. As the trial court correctly noted, the evidence that respondent-mother did not benefit from those services permitted an inference that she would continue to put her own desires before her children's need for proper care and supervision, and that that would endanger their welfare. See *Trejo*, 462 Mich at 346 n 3. Consequently, there was adequate evidence to support the trial court's finding that the conditions that led to the adjudication of all of respondent-mother's children continued to exist and that there was no likelihood of them being rectified in a reasonable time. The trial court did not, therefore, clearly err when it found that petitioner established grounds for terminating respondent-mother's parental rights to her children under MCL 712A.19b(3)(c)(*i*). See *Mason*, 486 Mich at 152.

[10] Furthermore, Lillie acknowledged that she was "not sure" whether CF's negative commentary about respondent-mother was reliable under the circumstances, and the trial court observed that CF could have been referring to marijuana, which is legal.

Because the trial court did not clearly err when it found that termination was warranted under MCL 712A.19b(3)(c)(*i*) for each child, it is unnecessary to address the whether there was legally admissible evidence to establish grounds for termination under MCL 712A.19b(3)(c)(*ii*) and (3)(j). See *Gonzales/Martinez*, 310 Mich App at 431. But we note that the trial court also did not clearly err when it found that petitioner had established that other conditions existed that caused the children to come within the court's jurisdiction, respondent-mother received recommendations to rectify those conditions, respondent-mother did not rectify the conditions after receiving a reasonable opportunity to rectify them, and there was no reasonable likelihood that the conditions will be rectified within a reasonable time considering the children's ages. See MCL 712A.19b(3)(c)(*ii*); *Mason*, 486 Mich at 152. Nor did it clearly err by find that that 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." MCL 712A.19b(3)(j).

The primary barrier to reunification for respondent-mother was her continued use of methamphetamine. Respondent-mother argues that the trial court erred when it rejected her testimony that she had been sober since the second removal and found that her issue with substance abuse was ongoing. We disagree. The trial court was in the best position to judge respondent-mother's credibility. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). It was for the trial court to determine the weight and credibility of respondent-mother's testimony, and this Court will not second-guess the trial court's determination that respondent-mother's claim was not worthy of belief. See *id*. We conclude that the trial court did not clearly err when it found that respondent-mother had a sufficiently severe drug problem to prevent her from effectively parenting the children, had been provided with services to rectify the problem, and failed to rectify the problem, and that it was unlikely that she would rectify it within a reasonable time. See *Mason*, 486 Mich at 152. Moreover, evidence that respondent-mother continued to have problems with drug abuse, and continued to make poor decisions regarding the parenting and supervision of the children, supported the trial court's finding that it was reasonably likely that the children would be harmed on the basis of respondent-mother's conduct or capacity if returned to her care; consequently, the trial court also did not clearly err when it found that termination was warranted under MCL 712A.19b(3)(j). See *Mason*, 486 Mich at 152.

E. BEST-INTEREST DETERMINATION

Respondent-mother also argues in both dockets that the trial court clearly erred when it found that termination was in the best interests of all three children. We disagree. Again, this Court reviews for clear error the trial court's holding that termination is in the children's best interests. See *Mason*, 486 Mich at 152.

Respondent-mother argues that the trial court's best-interest analysis was deficient because the trial court ignored the evidence that the children only suffered trauma as a result of their removal from respondent-mother's care and petitioner's failure to place the children with relatives. We disagree. As discussed, respondent-mother has not established that petitioner failed to make reasonable efforts to reunify the family by placing her children with relatives. Similarly, the evidence at the termination hearing strongly supported an inference that respondent-mother's substance abuse, poor parenting decisions, and neglect of her children's emotional and physical needs, combined with the chaotic instability of their home life, was a significant source of stress

and trauma for the children. As noted, Dr. Henry opined that one of the several stressors for RM had been the police presence in the home.

Respondent-mother also argues that the trial court erred by failing to make separate best-interest findings for each child. Although the trial court had to determine the best interests of RM, EM, and SF individually, see *Olive/Metts*, 297 Mich App at 42, it was not required to make redundant factual findings, *White*, 303 Mich App at 716. Rather, it was only required to separately address significant differences between the children's best interests, if there were any. See *id.* at 715-716. In addressing whether it was in the children's best interests to terminate respondent-mother's parental rights, the trial court stated that the analysis was "basically the same for each of them." That is, the trial court explicitly stated that the best interests of each of the children were the same or similar; it follows that the trial court did not consider there to be significant differences between the children that warranted separate consideration.

The record supports the trial court's conclusion that the children's best interests were similar or the same. All three children were close in age. Moreover, there was evidence that permitted an inference that RM suffered significant trauma while under respondent-mother's care. The evidence that RM had suffered trauma under respondent-mother's care permitted an inference that his siblings would suffer similar trauma if returned to her care. *Kellogg*, 331 Mich App at 258-259. Accordingly, the record supported the trial court's determination that the children's best interests did not differ in a significant way.

The trial court agreed that the evidence showed that respondent-mother did fairly well with parenting time and found that there was no evidence that her parenting techniques were inappropriate. The court also found that respondent-mother had a bond with all three children. But it also found that—even after 27 months (RM and EM) and 18 months (SF) of services—respondent-mother was no more capable of appropriate parenting than she was before. Indeed, the trial court found that she was in "worse shape now than she was a year ago." The trial court found that the children needed permanence, which respondent-mother had not shown she could provide within a reasonable time:

> Again, mom's not been compliant with the treatment plan. She's engaging in these questionable relationships. And it just goes on and on. You know, and—and I hope—I hope she's sincere with this newfound commitment that started a week and a half ago or so, or two weeks ago to do online counseling, and find this new housing, and—and everything else. That will make her life a whole lot better going forward, but it's just not fair to keep these children in limbo after the lengthy time that they've already been in foster care.

The trial court's best-interest findings were supported by the record. The evidence showed that respondent-mother had not rectified the most serious conditions that led to the adjudications: her drug abuse and poor parenting decisions. For that reason, the children could not be safely returned to her care. Moreover, the length of time that had elapsed showed that respondent-mother would be very unlikely to correct her problems in the near future. The record showed that a lack of permanence in their lives had been disruptive and harmful to the children. The children's need for permanence and stability were paramount, and respondent-mother had not shown that she would be able to provide such permanence and stability within a reasonable time. Considering all

the evidence, the trial court did not clearly err when it found that termination was in the best interests of all three children. See *Mason*, 486 Mich at 152.

III. CONCLUSION

Respondent-father has not identified any errors that warrant relief in Docket No. 355791. Likewise, respondent-mother has not identified any errors that warrant relief in Docket Nos. 355792 and 355873. Accordingly, we affirm in all three docket numbers.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Jane M. Beckering
/s/ Mark T. Boonstra