

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

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*In re* S. SCHNEIDER, Minor.

UNPUBLISHED  
November 18, 2021

No. 356635  
Berrien Circuit Court  
Family Division  
LC No. 2019-000105-NA

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Before: STEPHENS, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

Respondent-father appeals by right the trial court order terminating his parental rights to the minor child, SS, under MCL 712A.19b(3)(b)(i) (parent caused physical injury to the child or sibling), (j) (reasonable likelihood that child will be harmed if returned to parent), and (k)(ii) (parent engaged in criminal sexual abuse, involving attempted penetration or assault with intent to penetrate, of a sibling of the child).<sup>1</sup> We affirm.

SS was born to father and mother in November 2019. Father and mother had three additional children together: EC, PF, and IF. At the time of SS’s birth, father was incarcerated on charges of criminal sexual conduct (CSC) for sexually abusing two of his and mother’s other children, as well as his daughter, SF, who had a different mother than SS.<sup>2</sup> The Department of Health and Human Services (DHHS) filed a petition concerning SS within days of her birth, listing allegations that included father’s (who was listed as putative father, given that paternity had not been established) pending CSC charges.

In February 2020, a referee held a dispositional hearing and termination trial regarding father. Before the proceeding began, the prosecution moved to admit transcripts of SF’s testimony from the preliminary examination in father’s criminal case, which the referee granted after

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<sup>1</sup> The trial court also terminated the parental rights of the child’s mother, but she is not a party to this appeal.

<sup>2</sup> Father’s parental rights were terminated to SF, EC, PF, and IF in March 2020.

conducting an evidentiary hearing on the matter.<sup>3</sup> CK, father's former stepdaughter, testified at the dispositional hearing that she lived with father, her mother, and SF for approximately six years, during which time father sexually abused her on multiple occasions. According to CK, father told her if she disclosed the abuse, she would not be able to see her siblings anymore. Two other witnesses provided testimony as well. The referee found that there was a preponderance of the evidence to support taking jurisdiction of SS. The trial court adopted the referee's recommendation.<sup>4</sup> The DHHS thereafter filed an amended petition listing father as the legal father of SS. A termination trial was to be held in August 2020, but all parties agreed that they had presented all of their evidence concerning termination at the February 2020 proceeding. The referee thus found that they did not need to repeat father's adjudication or retry the termination case.

On January 19, 2021, the referee orally opined that clear and convincing evidence supported termination of father's parental rights to SS under MCL 712A.19b(3)(b)(i), (3)(j), and (3)(k)(ii). The referee also found that reasonable efforts were made to preserve and unify the family and that it was in SS's best interests to terminate father's parental rights. The trial court thereafter entered an order adopting the referee's recommendations and terminating father's parental rights to SS. This appeal followed.

Father argues on appeal that the trial court erred by terminating his rights to SS because no reasonable efforts had been made to reunite him with SS.<sup>5</sup> We disagree.

This Court generally reviews for clear error a trial court's factual findings in a termination hearing. *In re Gonzales/Martinez*, 310 Mich App 426, 430; 871 NW2d 868 (2015). We also review the trial court's determination that reasonable efforts were made for clear error. *In re Smith*, 324 Mich App 28, 43; 919 NW2d 427 (2018). However, because father did not raise the issue of reasonable efforts before the termination hearing, this issue is unreserved, and the trial court's findings regarding reasonable efforts are reviewed for plain error affecting substantial rights. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). To establish plain error, a party must show that an error occurred, the error was clear or obvious, and the error affected the party's substantial rights. *Id.*

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<sup>3</sup> Father previously appealed the trial court's decision to admit SF's testimony, and this Court upheld the decision in *In re Fohs*, unpublished per curiam opinion of the Court of Appeals, issued November 12, 2020 (Docket Nos. 353386 and 353387).

<sup>4</sup> Father's previous appeal also challenged this decision, which this Court affirmed. See *In re Fohs*, unpub op at 10.

<sup>5</sup> Father does not argue that the trial court erred by finding that statutory grounds existed or that termination was in SS's best interests. Therefore, this Court need not consider the matter. See *In re JS and SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998), rejected in part on other grounds *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). Nevertheless, after review of the record, we find there was no clear error regarding the statutory grounds for termination or the best-interest determinations.

Generally, the DHHS must make “reasonable efforts to reunify families and to rectify the conditions that led to the initial removal.” *In re Smith*, 324 Mich App at 43. The DHHS must make a service plan that outlines the steps that the DHHS and the parent will take to that end. *In re Hicks/Brown*, 500 Mich 79, 85-86; 893 NW2d 637 (2017), citing MCL 712A.18f(3)(d). Reunification services are not required, however, when the goal is termination. See *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009).

MCL 722.638 requires that the DHHS request termination of a parent’s rights when the parent is suspected of sexually abusing a child or the child’s sibling. Additionally, a judicial decision that a parent committed acts included in MCL 722.638(1) excepts the DHHS from the requirement that reasonable efforts be made to reunify a parent and child. MCL 712A.19a(2)(a). Further, MCR 3.977(E) states:

**Termination of Parental Rights at the Initial Disposition.** The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 3.973, and shall order that additional efforts for reunification of the child with the respondent shall not be made, if

- (1) the original, or amended, petition contains a request for termination;
- (2) at the trial or plea proceedings, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2(b) have been established;
- (3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:
  - (a) are true, and
  - (b) establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), or (m);
- (4) termination of parental rights is in the child’s best interests.

If the DHHS is not providing services, the DHHS must provide a report explaining its decision not to provide services and the likely harm to the child whether he or she is separated from or returned to the parent. MCL 712A.18f(1)(b).

Because the DHHS requested termination in the amended petition that listed father as SS’s legal father for the first time, and determined at the dispositional hearing that testimony that father committed acts included in MCL 722.638(1) was credible, the DHHS was not required to make reasonable efforts to reunify SS and father. See *In re HRC*, 286 Mich App at 463. Additionally, MCL 722.638(1)(a)(ii) and (2) required that the DHHS seek termination on the basis of father’s alleged sexual abuse of SS’s siblings. See *In re Rippy*, 330 Mich App 350, 358-359; 948 NW2d 131 (2019). Moreover, even though the DHHS was not required to engage in reunification services with father, the DHHS did include action steps for father in a parent agency treatment plan.

The DHHS reported that it sent a letter or had a meeting with father on a monthly basis, but services were limited while he was incarcerated. Emily Gruber, the foster-care worker for EC, PF, IF, and SS testified at the dispositional hearing that there were no services available that could address father's sexual abuse of the children and allow the children to safely be in his care. Gruber also testified that she had worked with father since August 2018, and he was minimally engaged in services before he was incarcerated and failed to benefit from those offered. Thus, father's assertion that he would engage in substance abuse counseling when he was released from jail is unavailing.

And although father refers to the pandemic in his argument that the DHHS did not offer services, SS was born in November 2019, before the onset of the pandemic. At that point, father had already been incarcerated since May 2019, and father had denied sexually abusing any of the children. It is thus unlikely that he would participate in services addressed to rectify such issues. Therefore, the trial court did not err by finding that reasonable efforts had been made and in terminating father's rights. See *In re HRC*, 286 Mich App at 464-465.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ David H. Sawyer

/s/ Deborah A. Servitto