

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

---

UNPUBLISHED  
July 24, 2012

In the Matter of PAGE/RACICOT, Minors.

No. 307305  
Delta Circuit Court  
Family Division  
LC Nos. 09-000506-NA,  
09-000507-NA, 09-000508-NA

---

Before: SHAPIRO, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Respondent-mother, A. Page, and respondent-father, T. Page, appeal as of right from the trial court's order terminating their parental rights to their two minor daughters under MCL 712A.19b(3)(g) and (j). A. Page further appeals as of right the termination of her parental rights to her minor son (the father of whom is not a party to these proceedings). We affirm the circuit court's order with respect to the son and the older daughter. With respect to the Pages' younger daughter, we affirm the portion of the circuit court's order determining that at least one statutory ground supported termination, but vacate the court's best interest analysis and remand for further consideration of that issue.

**I. FACTS**

**A. FIRST PETITION FOR JURISDICTION**

In December 2009, the Department of Human Services (DHS) petitioned the trial court to take jurisdiction over the children and issue an order removing them from the home. The petition alleged that the younger daughter tested positive for opiates when she was born because A. Page had ingested Vicodin during her pregnancy. The petition alleged that the Pages rarely visited the younger daughter while she was being treated in the hospital, and on one occasion, they came to visit her while they were intoxicated. Consequently, the doctor refused to release the younger daughter to the Pages because the child was still receiving doses of prescription methadone. In addition, the petition alleged that T. Page was convicted of maintaining a drug house and sold drugs while the son was present in the home. There were also allegations that the Pages left the children unattended either at home or in the car while they went to bars. The last incident leading to the children's removal occurred on December 18, when T. Page attempted suicide. He allegedly became upset at A. Page for leaving the bar with another man, so he slit his wrists.

At the first preliminary hearing, the trial court determined that it was not in the children's best interests to remain in the home. However, the hearing was continued so that the Pages could obtain counsel. In the meantime, the children were referred to DHS for placement, although they were placed with their respective grandparents.

At the continuation hearing, DHS made amendments to the petition. Specifically, the allegations that the children were left in the home while the Pages went to the bar and that the Pages visited the younger daughter while they were intoxicated were deleted. The Pages then pleaded to the allegations in the amended petition. The trial court found that the Pages' pleas established statutory grounds to exercise jurisdiction over the children and authorized the petition.

At the time of the first dispositional review hearing in January 2010, the son and the older daughter were residing with the older daughter's paternal grandparents. The younger daughter was residing with unrelated foster care parents because she needed to be in a low-stimulation environment due to her drug-dependency and a heart-defect. The Pages were compliant with parenting time and substance-abuse counseling, and were working toward reunification. The trial court ordered the Pages to continue with the case service plan. The trial court found that the son and the older daughter's placement with paternal grandparents was adequate to safeguard them from risk of harm and also authorized DHS to place the younger daughter with them.

By the second dispositional review hearing in April 2010, the Pages were married and obtained stable housing. However, the Pages both tested positive for morphine. In March 2010, A. Page mixed drugs together and attempted suicide. The trial court ordered the Pages to continue with the case plan, but added a requirement that DHS search the Pages' home and vehicles for controlled substances.

A third review hearing was held in July 2010, where it was recommended that the Pages start receiving overnight visits. By stipulation, the Pages had been receiving unsupervised visits with the children since June, which were going well. The Pages were testing negative for drugs, and they had established adequate living arrangements. Once again the trial court ordered the Pages to continue with the case plan, but this time it gave DHS discretion to return the children to the parents after observing overnight visits.

In October 2010, the trial court entered an order terminating its jurisdiction over the children.

## B. SECOND PETITION FOR JURISDICTION AND TERMINATION OF PARENTAL RIGHTS

In August 2011, DHS filed a petition requesting that the trial court take jurisdiction over the children, issue an order removing the children from the home, and terminate the Pages' parental rights. The petition alleged that the children had been staying with their grandparents, who did not have guardianship rights or the power of attorney over the children. T. Page left the younger daughter with her paternal grandmother in May 2011. Also, in May 2011, A. Page entered a domestic violence shelter with the son and the older daughter. The petition stated that after one or two nights, the son contacted his maternal grandmother to pick him up. The older

daughter, however, stayed with A. Page in the shelter until July 2011, when the maternal grandmother picked her up after she was found on the floor in old clothes and a dirty diaper. The petition alleged that A. Page admitted she would test positive for morphine, suboxone, and THC. Likewise, T. Page admitted that he would test positive for opiates and THC. The petition also alleged that the Pages were homeless and unemployed, and they were not providing financial support to the children. Further, the petition alleged that T. Page had assaulted A. Page and had pending larceny charges.

The trial court found that it was contrary to the children's welfare to remain in the Pages' custody. Specifically, T. Page was in jail awaiting criminal charges, and A. Page's whereabouts were unknown. A. Page did not show up for the preliminary hearing until it was almost over. Despite testimony that DHS had left many messages for her, she stated that she never received them. The trial court ordered that the children be placed with DHS for care and supervision. In the meantime, the trial court recommended that the younger daughter stay in her current placement with her paternal grandparents. However, because the son and the older daughter's maternal grandmother could no longer care for them, the trial court recommended that they be placed in foster care immediately.

The preliminary hearing was continued, at which time the trial court conducted a probable cause determination. The trial court found that there was probable cause that one or more of the allegations in the petition were true and authorized the petition. It then proceeded to conduct a permanency planning hearing.

Julie Stevenson, was the CPS worker who was assigned to this case shortly after jurisdiction was terminated in October 2010, due to complaints that both the Pages had drug relapsed. Most of her testimony reiterated the allegations in the petition. The older daughter's paternal grandmother did not feel the Pages were able to care for the children. Alicia Burke, a foster care worker, and Stevenson recommended that the younger daughter be moved to the foster home with her siblings because there was a bond between them. However, the paternal grandmother testified that the younger daughter did not have much of a bond with the older two siblings. Burke did note that the move might cause stress to the younger daughter. Further, she was not recommending parental visitation, especially because the children had not asked about their parents since they entered the foster home. According to Burke, there did not appear to be a strong bond between the Pages and the children.

The trial court determined that it would be detrimental to the children's welfare to try to reunify the family. It also determined that even supervised parenting time would be harmful to the children. For those reasons, the trial court found that the children should not be returned to the Pages. Further, the trial court approved the permanency plan of "proceed[ing] to terminate parental rights and mak[ing] the children eligible for adoption."

### C. TERMINATION HEARING

The termination hearing was held in October 2011. At the hearing, A. Page admitted that she has a history of mental-health issues, including bipolar disorder, ADHD, and anxiety. Before she even met T. Page, she was using intravenous drugs. Likewise, T. Page's mother testified that he also had a long history of substance abuse. According to his mother, T. Page's substance

abuse problems started when he joined a gang at age 15. T. Page testified that he has had trouble with alcohol, opiates, and THC since then. T. Page also had a significant criminal history, which included convictions for assault and battery, larceny in a building, maintaining a drug house, and retail fraud. He also has had two charges for malicious destruction of property. Recently, he entered a plea on another charge for larceny in a building. T. Page testified that the son was in the house when he sold marijuana, which led to his conviction for maintaining a drug house.

Although they had made sufficient progress for the trial court to terminate its jurisdiction under the first petition in October 2010, the Pages admitted that they relapsed shortly after the children were returned to them. A. Page said that she could not pay the rent and things became stressful. T. Page said that even though the addiction services he was receiving were helpful, the pressure of losing his job probably caused the relapse. He used drugs “[p]retty much, every other day.” A. Page stopped using drugs and remained sober from November 2010 to February 2011. However, she started using drugs again in February due to financial strains. She admitted that even with financial problems, the Pages somehow always afforded the drugs. A. Page testified that sometimes T. Page would be “the middleman” so they could afford drugs for themselves. But these transactions never occurred in the house.

Although they never sold drugs in the house, the Pages testified that they would use drugs in the bedroom, with the children in the house. According to the paternal grandmother, T. Page told her that the maternal grandmother would babysit the children in the front room of the house, while the Pages did drugs elsewhere in the house. Even though she knew the younger daughter was born with a drug dependency, the maternal grandmother denied being aware that the Pages used drugs until after the first petition was filed.

In the summer of 2011, T. Page left the younger daughter with his mother to try to find a job. A. Page bounced to different friends’ homes, while the other two older children stayed with their maternal grandmother. However, the Pages did not give the grandparents any legal authority over the children. In September 2011, T. Page was living in some abandoned boxcars, and A. Page was living in Oshkosh, Wisconsin, in a studio apartment with a male friend. Further, at the time of the termination hearing, A. Page was facing charges for retail fraud and possession of narcotics.

CPS worker Stevenson opined that it was in the children’s best interest to terminate the Pages’ parental rights. According to Stevenson, the bond shared between the Pages and the children seemed superficial. She testified that it would traumatize the children more to visit their parents in jail.

In its written opinion, the trial court found that DHS had provided clear and convincing evidence to support termination of the Pages’ parental rights under MCL 712A.19b(3)(g) and (j). Specifically, the trial court explained as follows:

The court finds by clear and convincing evidence that there is a long-term pattern of chronic neglect by these parents. They have been offered extensive services but have not benefitted from them. The children have not had a stable life and have been cared for by the parents, grandparents[,] and friends whose last names are unknown.

Turning to the children's best interests, the trial court further stated as follows:

Although there is some bonding between the parents and the children it remains in their best interest that parental rights be terminated so that these children can have a safe, stable[,] and loving home by responsible parents. They are at a very adoptable age and they cannot afford to wait the many years it would take these parents to become fit parents, if they ever could.

The trial court then issued an order terminating the Pages' parental rights.

The Pages now appeal.

## II. STATUTORY GROUNDS FOR TERMINATION

### A. STANDARD OF REVIEW

The Pages argue that the trial court clearly erred by terminating their parental rights because there was not clear and convincing evidence that established the statutory grounds for termination. To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.<sup>1</sup> We review for clear error a trial court's decision terminating parental rights.<sup>2</sup> A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.<sup>3</sup> We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.<sup>4</sup>

### B. MCL 712A.19b(3)(g)

MCL 712A.19b(3)(g) provides as follows:

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, . . . [that] [t]he parent, without regard to intent, 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.

Although, at the termination hearing, the Pages expressed a desire to give the children a life they deserve, their actions demonstrated otherwise. Both the Pages have an extensive history

---

<sup>1</sup> MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

<sup>2</sup> MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

<sup>3</sup> *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

<sup>4</sup> MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

of substance abuse problems and have been unable to stay sober for an appreciable period of time. A. Page used drugs while she was pregnant with her youngest child, who was born with a drug dependency. After jurisdiction was terminated the first time and the Pages were reunified with their children, they relapsed within a month. The Pages admitted to leaving the children unsupervised while they did drugs in the bedroom. Further, the Pages could not hold a job and were unable to pay rent. In the summer of 2011, the Pages lost their apartment and have been homeless since then. A. Page moved to Oshkosh, Wisconsin, four hours away from her children. And she was recently charged with a felony. T. Page pleaded to larceny in a building. Thus, both the Pages were facing potential jail time. Despite the various services provided to the Pages, both of them continued to relapse and use drugs. DHS and the trial court made reasonable efforts to reunify the family, but the Pages still failed to provide the children with proper custody and care. The record supports the trial court's finding that the Department of Human Services presented clear and convincing evidence that the Pages were unable to provide proper care and custody for the children.

### C. MCL 712A.19b(3)(j)

MCL 712A.19b(3)(j) provides as follows:

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, . . . [that] [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.

Before this case came under the trial court's jurisdiction in 2009, T. Page was convicted of maintaining a drug house and admittedly sold marijuana while the oldest child was present in the house. There was also evidence in the record that the Pages frequently used drugs in the house, while the children were there. Further, T. Page admitted that he kept drugs and needles in the home, and he did not dispose of the needles in a safe way. Even after treatment, the Pages were unable to stop using drugs. They were provided numerous services, from which they did not benefit. When the children were returned to the Pages after the first DHS case, things only became worse. There was evidence that the Pages' relationship became physically violent, and the Pages' became unemployed and homeless. Moreover, the Pages both attempted suicide. Given the Pages' past conduct, there was a reasonable likelihood that this harmful behavior would continue if the children were returned to the home. The record therefore supports the trial court's finding that there was reasonable likelihood that the children will be harmed if returned to the Pages' home.

In sum, we conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of the Pages' parental rights under MCL 712A.19b(3)(g) and (j).

## III. BEST INTERESTS DETERMINATION

### A. STANDARD OF REVIEW

The Pages also argue that the trial court erred in finding that termination was in the children's best interests. Once DHS has established a statutory ground for termination by clear

and convincing evidence, if the trial court also finds from evidence on the whole record that termination is in the child's best interests, then the trial court is required to order termination of parental rights.<sup>5</sup> There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.<sup>6</sup> We review for clear error the trial court's decision regarding the child's best interests.<sup>7</sup>

## B. LEGAL STANDARDS

In determining the child's best interests, a trial court may consider a variety of factors including the parent's history, unfavorable psychological evaluations, the child's age, inappropriate parenting techniques, and continued involvement in domestic violence.<sup>8</sup> A trial court may also consider the strength of the bond between the parent and child, the visitation history, the parent's engaging in questionable relationships, the parent's compliance with treatment plans, the child's well-being while in care, and the possibility of adoption.<sup>9</sup> A trial court may also consider the child's need for permanence and the length of time the child may be required to wait for the parent to rectify the conditions, which includes consideration of the child's age and particular needs.<sup>10</sup>

## C. ANALYSIS

The trial court found that even though the children had a bond with the Pages, it was in their best interests to be provided with a stable and drug-free home. The trial court stated that it would probably take the Pages years to become fit parents, if they ever could.

The Pages argue that termination is not in the children's best interest because the children have a strong and loving bond with the Pages, and the caseworker mischaracterized the bond shared with them. However, there was other evidence presented that the Pages did not have a strong bond with the children. The Pages left the children with the grandparents for an entire summer. While they were gone, the paternal grandmother testified that she showed the youngest child pictures of her parents, but she did not recognize them. There was also evidence that the other two children did not ask for their parents while in foster care. In addition, the Pages are both potentially facing jail time. The Department of Human Services's caseworker testified that it would be traumatic for the children to have to visit their parents in jail. Further, even A. Page acknowledged that the children should not have to wait for the Pages to get their life back

---

<sup>5</sup> MCL 712A.19b(5); MCR 3.977(H)(3)(b); *In re Trejo Minors*, 462 Mich at 351.

<sup>6</sup> *In re Trejo Minors*, 462 Mich at 353.

<sup>7</sup> *Id.* at 356-357.

<sup>8</sup> See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

<sup>9</sup> See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

<sup>10</sup> See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).

together. The evidence presented does not indicate that termination of the Pages' parental rights would be harmful to the children.

However, recently, in *In re Olive/Metts*,<sup>11</sup> this Court held that the trial court must evaluate whether termination is in the best interest of each child separately, and further reiterated that the trial court is to specifically evaluate the impact of relative placement in reaching its termination decision. Here, the trial court did not specifically break down its findings to discuss its decision concerning each child separately. Moreover, the trial court did not specifically discuss in its opinion what bearing the fact that the Pages' younger daughter was in relative placement had, or did not have, on its decision to terminate the Pages' parental rights.<sup>12</sup> In *In re Olive/Metts*, we held that "[a] trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best interests determination and requires reversal."<sup>13</sup> Thus, at least with respect to the Pages' younger daughter, a remand is warranted.

We affirm with respect to the son and the older daughter. We affirm in part, vacate in part, and remand for further proceedings with respect to the Pages' youngest daughter. We retain jurisdiction.

/s/ Douglas B. Shapiro  
/s/ Joel P. Hoekstra  
/s/ William C. Whitbeck

---

<sup>11</sup> *In re Olive/Metts*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2012), slip op p 4, citing *In re Mason*, 486 Mich 142, 163-164; 782 NW2d 747 (2010); *In re Mays*, 490 Mich 993, 993; 807 NW2d 304 (2012).

<sup>12</sup> See MCL 712A.19a(6)(a).

<sup>13</sup> *In re Olive/Metts*, \_\_\_ Mich App at slip op p 4.