

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* K. T. HICKS, Minor.

UNPUBLISHED  
April 23, 2019

Nos. 344595; 344596  
Wayne Circuit Court  
Family Division  
LC No. 13-511863-NA

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Before: MURRAY, C.J., and SAWYER and REDFORD, JJ.

PER CURIAM.

In Docket No. 344595, respondent-mother appeals as of right the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), (i), and (j). In Docket No. 344596, respondent-father appeals as of right the same order, which terminated his parental rights to the child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm in each appeal.

Respondent-mother has three older children, the oldest of which has been placed in a guardianship with respondent-mother's sister. Respondent-father is not the father of these other children. Respondent-mother's parental rights to her second and third child were terminated in April 2015, after she failed to complete a court-ordered treatment plan to attain reunification with the second child. This Court affirmed that decision in *In re Wiley/Warrick*, unpublished per curiam opinion of the Court of Appeals, issued December 8, 2015 (Docket Nos. 327412 and 328812).

The minor child tested positive for exposure to marijuana at birth in 2016. Petitioner filed a petition requesting that the court exercise jurisdiction over the child and terminate respondent-mother's parental rights at the initial dispositional hearing. The petition also named respondent-father as a respondent, but did not request termination of his parental rights. Following a bench trial in September 2016, the trial court exercised jurisdiction over the child with respect to both respondents, but declined to terminate respondent-mother's parental rights. The court ordered both respondents to participate in services and comply with parent-agency treatment plans. Respondents' compliance was inconsistent at best. Both respondents missed several supervised visits, failed to comply with services (most notably drug screening), and neither respondent allowed the caseworker to verify whether he or she had suitable housing.

Consequently, petitioner filed a supplemental petition to terminate respondents' parental rights, which the trial court granted on February 28, 2018.

## I. STANDARD OF REVIEW

In an action to terminate parental rights, the petitioner must prove by clear and convincing evidence that at least one statutory ground for termination in MCL 712A.19b(3) exists. MCR 3.977(A)(3) and (H)(3); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). The trial court's decision is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356. Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5). The trial court's best-interest decision is also reviewed for clear error. *In re Brown/Kindle/Muhammad Minors*, 305 Mich App 623, 637; 853 NW2d 459 (2014). A finding is clearly erroneous when the reviewing court is left with the definite and firm conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

## II. DOCKET NO. 344595 (RESPONDENT-MOTHER)

Respondent-mother argues that the trial court erred by finding that a statutory ground for termination was established by clear and convincing evidence.

The trial court terminated respondent-mother's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), (i), and (j), which, at the time the trial court entered its order, permitted termination under the following circumstances:<sup>1</sup>

(c) 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:

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<sup>1</sup> MCL 712A.19b(3)(g) and (i) were amended by 2018 PA 58, effective June 12, 2018. As amended, these subsections now provide:

(g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

\* \* \*

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and the parent has failed to rectify the conditions that led to the prior termination of parental rights.

(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.

\* \* \*

(g) The 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.

\* \* \*

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(j) 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.

Preliminarily, we note that respondent-mother does not address § 19b(3)(i). Petitioner is required to prove only one statutory ground for termination of parental rights. *In re Trejo*, 462 Mich at 355. Where a respondent does not challenge the trial court's determination as to one of several statutory grounds, this Court may conclude that the trial court did not clearly err by finding that the unchallenged ground was proved by clear and convincing evidence. See *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998), overruled in part on other grounds by *In re Trejo*, 462 Mich at 353. Further, "[a] party abandons a claim when it fails to make a meaningful argument in support of its position." *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008). Accordingly, respondent-mother's failure to challenge the termination of her parental rights under § 19b(3)(i) precludes any relief with respect to her argument that a statutory ground for termination was not established by clear and convincing evidence. In any event, we conclude that the evidence supports each of the challenged grounds.

With respect to § 19b(3)(c)(i), the child was removed from respondent-mother's care at birth because he was exposed to marijuana in utero, and because respondent-mother failed to rectify her parental deficiencies in the prior proceeding, which led to the termination of her parental rights to two other children. During this proceeding, respondent-mother failed to resolve her substance abuse issue or benefit from services. She failed to comply with drug screening until she was required to submit drug screens at parenting time visits. Of her 26 drug screens, 20 tested positive for THC. She continually claimed that she was trying to obtain a medical marijuana license, but she never obtained a license over the 18-month course of this proceeding. She also never permitted petitioner's workers to verify that her housing was suitable. In addition, respondent-mother failed to complete individual therapy or continue with mental health treatment. She was inconsistent with visitation and inattentive to her child during visits. The evidence clearly establishes that respondent-mother failed to rectify the conditions that led to the adjudication. Further, considering that respondent-mother failed to satisfy her

treatment plan requirements in her prior case, and her lack of progress in this case, there was no reasonable likelihood that she would be able to rectify the conditions within a reasonable period of time considering the child's age.

With respect to § 19b(3)(g), the evidence supported the trial court's finding that respondent-mother lacked "the supplies or the infrastructure necessary to care for a child during visits." The court remarked that respondent-mother never progressed to unsupervised visitation, failed to conscientiously attend to the child even in the limited circumstances of supervised visitation, and attended only 61 of the 95 offered visits. The court also found that respondent-mother fell asleep during visits, left the room for extended periods, and paid closer attention to her phone than to the child. Respondent-mother would not allow the caseworker to assess her housing, and continued to illegally use marijuana. She failed to continue with her mental health treatment, citing her belief that she no longer needed it. The evidence showing respondent-mother's failure to fully cooperate with services, and her lack of benefit from the services she received, supports the trial court's termination of her parental rights under § 19b(3)(g).

The evidence supporting termination of respondent-mother's parental rights under §§ 19b(3)(c)(i) and (g) also supports termination under § 19b(3)(j). Given respondent-mother's substance abuse, poor parenting skills, untreated mental illness, and unstable housing and income, there is a reasonable likelihood that the child would be harmed if returned to respondent's home.

For many of these same reasons, we reject respondent-mother's argument that termination of her parental rights was not in the child's best interests. Respondent-mother has three older children, but she has been unable to care for any of them. In the five-year period since her first involvement with petitioner in 2013, she has been unable to overcome her parenting deficiencies or establish a suitable home for a child. Respondent-mother has never had custody of the instant child, and she had little knowledge of the child's medical needs. She attended only 61 of 95 offered visits, and the court found that she did not have a significant bond with the child. The child was at an age where he was entering critical periods of development, enhancing his need for permanency and stability. His foster parents, with whom he had resided his entire life, were meeting his needs and willing to adopt him. The trial court did not clearly err by finding that termination of respondent-mother's parental rights was in the child's best interests.

Respondent-mother also argues that, given her mental health issues, she was entitled to special accommodation under the Americans with Disabilities Act ("ADA"), 42 USC 12101 *et seq.* The ADA does not provide a defense to proceedings to terminate parental rights. *In re Terry*, 240 Mich App 14, 24-25; 610 NW2d 563 (2000). However, the ADA requires petitioner to reasonably accommodate a disabled parent in the provision of services to achieve reunification and avoid termination of parental rights. *In re Hicks*, 500 Mich 79, 86; 893 NW2d 637 (2017). Petitioner's obligations under the ADA dovetail with its affirmative duty "to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks*, 500 Mich at 85-86, citing MCL 712A.18f(3)(b) and (c), and MCL 712A.19a(2). Failure to make reasonable efforts toward reunification may prevent a court from finding that statutory grounds for termination have been established. *In re Newman*, 189 Mich App 61, 65-68; 472 NW2d 38 (1991). But if a parent is simply unable to meet the needs of her child, then "the needs of the

child must prevail over the needs of the parent.” *In re Terry*, 240 Mich App at 28 (quotation marks and citation omitted). The ADA does not require petitioner to provide a parent “with full-time, live-in assistance with her children.” *Id.* at 27-28. In order to prevail on the argument that petitioner’s reunification efforts were inadequate, respondent must demonstrate that she would have fared better if sufficient services were offered. *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005).

Respondent-mother does not state what accommodations were necessary to reasonably accommodate her disability or explain how petitioner’s efforts at reunification were insufficient in view of her disability. She was already receiving mental health treatment, but she decided to discontinue that treatment because she did not believe it was necessary. Further, she was provided with referrals for psychological and psychiatric evaluations, and required to comply with any recommendations. She did not follow through with the psychiatric evaluation referral, thereby preventing an evaluation of whether any additional accommodations may have been appropriate or necessary. Moreover, she failed to comply with her other treatment plan requirements. Accordingly, she has not demonstrated that she would have fared better if sufficient services were offered. *Id.*

### III. DOCKET NO. 344596 (RESPONDENT-FATHER)

Respondent-father argues that the trial court erred by finding that petitioner presented sufficient evidence to establish statutory grounds to terminate his parental rights.

The trial court terminated respondent-father’s parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), and the evidence supported its decision. The child could not be placed with respondent-father after birth because respondent-father did not have adequate housing. Respondent-father reported having two jobs, but he failed to document his earnings. Respondent-father had a history of substance abuse, and during the proceedings he never resolved these deficiencies. He failed to participate in substance abuse treatment, did not attend parenting classes, and failed to consistently visit the child. Although respondent-father argues that he worked conscientiously toward reunification before his efforts were derailed by his injuries and recovery from an automobile accident, he was terminated for noncooperation with parenting classes before the accident. He was re-referred for classes in May 2017 and August 2017, after he was discharged from the rehabilitation facility, but he did not complete these classes. Additionally, respondent-father attended only 30 of 73 parenting time visits, and when he did visit, he often fell asleep or left early. He also refused drug screens before they became a requirement for visitation, and then tested positive for cocaine and THC. He never established housing or made progress toward doing so. This evidence supports the trial court’s finding that respondent-father failed to rectify the conditions that led to the adjudication and was not reasonably likely to rectify them within a reasonable time, justifying termination under § 19b(3)(c)(i).

This evidence also supports termination of respondent-father’s parental rights under §§ 19b(3)(g) and (j). Respondent-father’s failure to establish a stable home, where the child would receive consistent care, with no exposure to substance abuse, prevented him from providing proper care and custody. The child was reasonably likely to be harmed in this environment if placed in respondent-father’s home. Respondent-father’s argument that his

progress was interrupted by his accident and rehabilitation is contrary to the evidence. He failed to make progress both before the accident and after his discharge from rehabilitation. Accordingly, the trial court did not clearly err by finding that clear and convincing evidence supported the statutory grounds for termination with respect to respondent-father.

Respondent-father also argues that termination of his parental rights was contrary to the child's best interests. During the 18-month course of these proceedings, respondent-father never demonstrated a commitment to reunification. He missed half of his scheduled visits, and failed to meaningfully participate in substance abuse treatment and parenting classes. He also did not cooperate with drug screens. Although respondent-father argues that his accident and rehabilitation was only a temporary setback, he did not make progress toward reunification in the months preceding the accident or following his discharge from rehabilitation.

In addition to respondent-father's parenting deficiencies, the child had never resided with respondent-father, who did not have a significant bond with the child. As indicated earlier, the child was at an age where he was entering critical periods of development, enhancing his need for permanency and stability. His foster parents, with whom he had resided his entire life, were meeting his needs and willing to adopt him. Accordingly, the trial court did not clearly err by finding that termination of respondent-father's parental rights was in the child's best interests.

Affirmed.

/s/ Christopher M. Murray  
/s/ David H. Sawyer  
/s/ James Robert Redford