# STATE OF MICHIGAN

# COURT OF APPEALS

*In re* J. L. Medina-Ovalle, Jr., Minor.

UNPUBLISHED
April 23, 2019

No. 345597
Grand Traverse Circuit Court
Family Division
LC No. 18-004506-NA

Before: BORRELLO, P.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court's order terminating his parental rights to the minor child JLMO pursuant to MCL 712A.19b(3)(g), (h), and (j). For the reasons set forth in this opinion, we affirm.

## I. BACKGROUND

In July 2017, Child Protective Services (CPS) opened an investigation regarding respondent-father and JLMO's mother because CPS was concerned about substance abuse after mother overdosed on heroin. Shortly before CPS was set to close the investigation, on February 11, 2018, JLMO's mother died from an opioid overdose. It was unclear whether JLMO was with mother at the time of her death, but shortly before her death, mother sent a text message to a friend indicating that respondent-father took JLMO to "pick up drugs." On the same night, respondent-father rented two hotel rooms at the Hotel Indigo using mother's debit card. The following morning, a CPS supervisor, a CPS investigator, and two police detectives went to the hotel to investigate the death. The police found drugs, drug paraphernalia, and a gun in the hotel room where respondent-father was staying with JLMO and other family members. Many of the items of paraphernalia and drugs were accessible to JLMO. Police arrested respondent-father on an outstanding warrant.

On February 12, 2018, the Department of Health and Human Services (DHHS) petitioned the trial court to take jurisdiction of JLMO and to terminate respondent-father's parental rights. Following a pretrial hearing, the trial court authorized the removal petition and JLMO was placed in protective custody in the care of his maternal grandmother.

On August 16, 2018, DHHS filed an amended petition for permanent jurisdiction and termination of respondent-father's parental rights. The amended petition indicated that on June 1, 2018, respondent-father pleaded guilty to possession of fentanyl, felony-firearm, and illegal use of a financial transaction device; the petition alleged that respondent-father was sentenced to serve a minimum of 33 months in prison.

The trial court held an adjudication trial before a jury on September 5, 2018. At the adjudication hearing, a police officer testified that police conducted a search of respondent-father's hotel room following mother's death. Police located drug paraphernalia, a handgun, a plastic bag with heroin or fentanyl, and a small quantity of crack cocaine. The majority of the drug-related items were in the bathroom. The jury found one or more grounds for assumption of jurisdiction under MCL 712A.2(b), and the trial court entered an order of adjudication.

On the following day, the trial court held a bench trial to address termination. A CPS supervisor testified that she went to respondent-father's hotel room following mother's overdose. The room was "hazy" and both respondent-father and JLMO were present in the room. JLMO mimicked the act of "shooting up" on his arm. Respondent-father tested positive for cocaine, marijuana, and benzodiazepines. A police officer testified that respondent-father "seemed high" and did not "seem right" when confronted by police. Police discovered heroin, fentanyl, and other smoking devices and drug paraphernalia in respondent-father's hotel room. Some of the items were in a location that was accessible to a small child. Police officers also searched respondent-father's home and discovered heroin and fentanyl paraphernalia and a drug-sniffing dog alerted to the presence of drugs in locations of respondent-father's vehicle. A police detective testified that respondent-father's family was involved with dealing drugs in the county and that respondent-father sold drugs. The police detective testified that respondent-father's family was a "major narcotics supplier" in Grand Traverse County.

JLMO's maternal grandmother testified that she cared for JLMO for the previous seven months. She testified that JLMO was well adjusted, had started preschool, and was thriving in her care. The maternal grandmother was willing to adopt JLMO. The maternal grandmother testified that JLMO had a normal relationship with respondent-father and was attached to respondent-father at the time he was removed. However, respondent-father perpetrated physical and emotional abuse toward mother when mother was alive. The maternal grandmother testified that respondent-father did not contribute financially.

Amanda Hessem, a CPS caseworker, testified that she first contacted mother and respondent-father in September 2017, because there were concerns about substance abuse. Respondent-father tested positive for drugs in all five of the oral fluid tests that Hessem administered from September 2017 through February 2018. He also tested positive for drugs in five out of eight urinalysis tests administered through January 2018. According to Hessem, JLMO "was definitely more attached to [mother] and clung to [mother] . . . If she was in the room, he was definitely with her." JLMO also appeared to have a bond with respondent-father when mother was not present. According to Hessem, the last time that she spoke with mother was "at the very end of January" when she "talked to both of them about closing the case."

Respondent-father completed a substance abuse assessment at Catholic Human Services, and a report from the assessment stated that he had "used and had issues with substances and

used heroin and opiates since age 16 to 18," although he "denied using any opiates for the past three years." He stated that he quit using heroin and opiates "cold turkey" when he was 18 years old and he "never went back to heroin or opiate pills." Respondent-father also reported that he started using benzodiazepines when he was 19 years old and he continued to use them for two years. Hessem testified that a CPS worker contacted respondent-father in April 2017 "[t]o discuss allegations regarding methamphetamine use or manufacturing as well as improperly dressing [JLMO]." At that time, respondent-father submitted "to a drug test in which he said he would test positive for marijuana," and he stated that he used marijuana around JLMO. Hessem was not aware that respondent-father had a medical marijuana card, but she explained that respondent-father "had a court order to not use marijuana whether he had a card or not."

Hessem believed that JLMO's placement with the maternal grandmother was appropriate. She stated that respondent-father requested that JLMO be placed with respondent-father's brother or his great-grandmother, and Hessem "passed on" the names "to the foster care workers" to perform a "background study." Hessem recommended that respondent-father's parental rights be terminated and that termination was in JLMO's best interests. JLMO had "progressed" in the maternal grandmother's care; he was receiving infant mental health services, he was properly cared for, and he was not exposed to any contraband or illegal activity.

Following the termination trial, the trial court concluded that there was clear and convincing evidence establishing the statutory grounds for termination under MCL 712A.19b(3)(g), (h), and (j). The trial court also determined that a preponderance of the evidence established that it was in JLMO's best interests to terminate respondent-father's parental rights. The trial court entered an order terminating respondent-father's parental rights to JLMO. This appeal ensued.

## II. STANDARD OF REVIEW

"We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest."[1] *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "A trial court's decision is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012) (quotation marks, alteration, and citation omitted).

## III. STATUTORY GROUNDS

Respondent-father argues that the trial court erred in finding statutory grounds for termination.

[1] Respondent-father does not challenge the trial court's determination regarding best interests.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011).

In this case, the trial court found clear and convincing evidence to terminate respondent-father's parental rights in part pursuant to MCL 712A.19b(3)(j), which directs a trial court to terminate parental rights when there is 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."

Respondent-father argues that the trial court erred by failing to make specific findings of fact and conclusions of law regarding MCL 712A.19b(3)(j). MCL 712A.19b(1) provides in relevant part that a trial court "shall state on the record or in writing its findings of fact and conclusions of law with respect to whether or not parental rights should be terminated." MCR 3.977(I)(1) contains similar language. In this case, the record demonstrates that the trial court stated definite and pertinent findings of fact and conclusions of law on the record. Although the trial court did not make findings that applied exclusively to subsection (3)(j), the trial court implied that its articulated findings applied to all three of the statutory grounds for termination set forth in the petition. Specifically, the trial court found that JLMO "suffered from both the parents as a result of drugs" and that they exposed him to their drug use. The trial court determined that respondent-father abused drugs and that he continued to do so throughout the pendency of this case because he tested positive for cocaine. The trial court also noted the presence of drugs and a handgun in respondent-father's hotel room where respondent-father and JLMO were staying when mother overdosed on drugs. These findings complied with MCL 712A.19b(1) and MCR 3.977(I)(1).

Respondent-father also argues that the evidence did not support termination under MCL 712A.19b(3)(j). This argument lacks merit. The record showed that respondent-father had a long history of substance abuse and involvement with illegal drugs. Police found heroin, fentanyl, drug paraphernalia, and a handgun in the hotel room where respondent-father was staying with JLMO and many of the drug items were accessible to JLMO. Police also found drugs and drug paraphernalia in respondent-father's apartment, and there was testimony that respondent-father cared for JLMO while respondent-father was nodding off and falling asleep because he was under the influence of narcotics. Respondent-father told a CPS employee that he used marijuana around JLMO, there was evidence that respondent-father took JLMO with him to purchase drugs, and there was testimony that JLMO mimicked intravenous drug use.

In sum, there was evidence that respondent-father had a long history of substance abuse, he exposed JLMO to illegal drugs and drug paraphernalia, and he cared for JLMO while he was under the influence of narcotics. Moreover, respondent-father refused to acknowledge and seek treatment for his substance abuse during the time that CPS investigated him before mother died of an overdose. On this record, we are not left with a definite and firm conviction that the trial court erred in finding that there was a reasonable likelihood that JLMO would be harmed if he

was returned to respondent-father's care. Therefore, termination was proper under MCL 712A.19b(3)(j).[2]

Respondent-father argues that termination was improper because DHHS did not make sufficient reasonable efforts at reunification and failed to provide him with services. We disagree. "Generally, reasonable efforts must be made to reunite the parent and children unless certain aggravating circumstances exist." *In re Moss*, 301 Mich App 76, 90-91; 836 NW2d 182 (2013) (citation omitted). "However, the petitioner 'is not required to provide reunification services when termination of parental rights is the agency's goal.' " *Id*. at 91, quoting *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Moreover, DHHS may "request termination in the initial petition." *Id*., citing MCL 712A.19b(4); MCR 3.961(B)(6). MCR 3.977(E) governs termination at the initial disposition and provides as follows:

> 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
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> (1) the original, or amended, petition contains a request for termination;
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> (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;
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> (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*), (m), or (n);
>
> (4) termination of parental rights is in the child's best interests.

In this case, termination at the initial disposition was proper under MCR 3.911(E). DHHS sought termination in its initial and amended petitions and the jury found grounds for assumption of jurisdiction under MCL 712A.2(b). See MCR 3.911(E)(1) and (2). In addition, as discussed above, the trial court found by clear and convincing evidence that facts in the petition established at least one statutory ground for termination and that termination was in JLMO's best

[2] Because the trial court did not clearly err by finding one statutory ground for termination, we need not address the additional grounds on which the trial court relied. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

interests. See MCR 3.911(E)(3) and (4). Therefore, the requirements of MCR 3.977(E) were met and reunification efforts were not required. See *In re Moss*, 301 Mich App at 91-92.

Affirmed.

/s/ Stephen L. Borrello
/s/ Douglas B. Shapiro
/s/ Michael J. Riordan