

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

---

*In re* HERMAN, Minors.

UNPUBLISHED  
May 21, 2019

Nos. 346079; 346244  
Monroe Circuit Court  
Family Division  
LC No. 17-024087-NA

---

Before: STEPHENS, P.J., and GADOLA and LETICA, JJ.

PER CURIAM.

Respondents appeal by right the order terminating their parental rights to their three children—MSJ, TJ, and GLH—pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (the child is reasonably likely to be harmed if returned to the parent’s home). Respondent-mother appeals as of right in docket number 346079. Respondent-father appeals as of right in docket number 346244. The appeals have been consolidated for decision. We affirm.

I. BACKGROUND

Children’s Protective Services (CPS) first became involved with respondents’ family in August 2013 based on allegations of threatened harm, substance abuse, maltreatment, and improper supervision of MSJ, TJ and GLH. The allegations were substantiated and respondents’ family was provided a safety plan, parenting classes, domestic violence counseling, and random drug screens. The children were removed from the home and placed in foster care in March 2014, due to continued domestic violence incidents and mother’s positive screens for crack cocaine. After additional services were given to the family the children were returned, and the case closed on March 9, 2015, however, CPS continued to receive referrals concerning the family through 2015 and 2016.

In February 2017, petitioner learned that mother was arrested for an instance of domestic violence against father that occurred while the children were present. In the course of investigating the domestic assault, petitioner received reports that both respondents had relapsed into substance abuse and learned of an allegation of sexual abuse in July 2016, that “[MSJ] put his penis in [GLH’s] butt.” The court decided to place the children in foster care at the preliminary hearing on the petition and MSJ was placed separate from TJ and GLH. In March

2017, mother pled to allegations of unresolved substance abuse and incarceration, and father admitted to a history of alcohol abuse and domestic violence with the mother. The family was again provided services including substance abuse screens and domestic violence counseling with the goal of reunifying the family.

In February 2018, petitioner sought leave to file a supplemental petition for permanent custody. In the supplemental petition, it was alleged that respondents continued to abuse substances, had not benefitted from domestic violence counseling and father continued his codependent relationship with mother. Respondents challenged the petition and an adjudication trial was held over five months. Service providers testified as to the progress of each respondent. The lawyer guardian ad litem for the children reported on their progress made in foster care and the eagerness of their respective foster parents to adopt. Mother and father testified on their own behalf. The court also heard from respondents' adult daughter as well as from prior caregivers of the children. Following the trial, in October 2018, the court issued a Decision and Order terminating respondents' parental rights under MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (the child is reasonably likely to be harmed if returned to the parent's home). In addition, the court found that termination of respondents' parental rights was in the best interests of each child. On appeal, respondents challenge the statutory grounds for termination of parental rights and the court's best interests decision. Mother additionally argues that the court erred in considering respondents' prior 2014 CPS involvement. Father additionally argues that the supplemental petition for termination was filed prematurely and that petitioner failed to make reasonable efforts to rectify a condition that caused the children to enter into care.

## II. EVIDENTIARY ERROR

In Docket No. 346079, mother argues that the trial court's consideration of her prior neglect matter violated her due process rights where the contents of that file were not moved into evidence or judicially noticed. We disagree.

### A. STANDARD OF REVIEW

Mother did not present this challenge below. Unpreserved claims of evidentiary error are reviewed for plain error affecting the aggrieved party's substantial rights. *People v Schumacher*, 276 Mich App 165, 180; 740 NW2d 534 (2007).

### B. ANALYSIS

The court was not required to move into evidence respondents' prior neglect case with petitioner in 2014, involving their same children and similar allegations of domestic and substance abuse. Child protective proceedings regarding the same family or child are to be seen as one continuous proceeding, *In re Gillespie*, 197 Mich App 440, 446; 496 NW2d 309 (1992), and at any hearing, the "court must be aware of the total circumstances of the case before it," *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973). The court took note of the prior proceedings and those files on the record. Mother's due process claim fails where she had the opportunity to challenge the reports and evidence from her previous case during the pendency of the 2014 case.

Mother's additional contention that the court failed to take judicial notice of respondents' prior case file is similarly without merit. The court took judicial notice of the prior neglect matter in its Decision and Order. The court rules provide that judicial notice may be taken at any stage of a proceeding, whether requested or not. MRE 201(c), (e). A judicially noticed fact is "one not subject to reasonable dispute" because it is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." MRE 202(b)(2). "[A] court may take judicial notice of its own files and records," *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009), and the original record need not be introduced, *Matter of Stowe*, 162 Mich App 27, 33; 412 NW2d 655 (1987). Both the 2014 and 2017 neglect matters were filed in Monroe County. Thus, the facts of mother's 2014 matter could be readily and accurately determined by reference to the court's own file.

### III. STATUTORY GROUNDS FOR TERMINATION

Both respondents argue that the trial court erred in finding statutory grounds for termination under MCL 712A.19b(3)(c)(i), (g), and (j). We disagree.

#### A. STANDARD OF REVIEW

"We review for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). We also review for clear error the trial court's findings regarding reasonable efforts. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). "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." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

#### B. ANALYSIS

Only one statutory ground for termination is necessary to support termination of parental rights. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). Here the court found three grounds for termination were supported by clear and convincing evidence:

(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:

(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.<sup>1</sup>

\* \* \*

(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.

In accord with MCL 712A.19b(3)(c)(i), clear and convincing evidence was established with respect to both respondents that the conditions that led to the children's adjudication as temporary court wards continued to exist at the time of the termination trial. Respondents' pleas to the adjudication in March 2017 admitted a history of substance abuse and incarceration for domestic violence for the mother, and alcohol abuse and domestic violence for the father. At the time the children entered care in February 2017, mother was using crack cocaine and incarcerated for domestic violence. Additionally, father was abusing alcohol and a victim of mother's domestic violence. At the time of termination, more than 182 days later, mother had not completed any substance abuse program, was still producing positive drug screens, and engaging in domestic violence against father. Despite father's negative drug screens, the record established that he continued to abuse alcohol. Testimony from both respondents was that they continued as a couple, although in separate residences, where father financially supported mother and the two engaged in sexual relations. Neither parent progressed beyond supervised visitation with the children.

We reject father's additional contentions that termination was premature in light of Public Law 105-89 and that the court improperly considered father's alcohol abuse in its reasons for termination under MCL 712A.19b(3)(c)(i) where alcohol treatment was not part of his case service plan and father received no services to address this condition. MCL 712A.19a provides that, "if a child remains in foster care and parental rights to the child have not been terminated, the court shall conduct a permanency planning hearing within 12 months after the child was removed from his or her home . . . to review the status of the child and the progress being made toward the child's return home or to show why the child should not be placed in the permanent custody of the court." MCL 712A.19a(1) and (3). The statute contemplates 12 months being a sufficient amount of time for the provision of services and the review of a parent's progress. In respondents' case, the children entered foster care on February 15, 2017, a permanency planning hearing was held on January 30, 2018, and the supplemental petition for permanent custody followed on February 27, 2018. Applying the correct rule of law, the court did not prematurely authorize the filing of the petition for termination, nor was father's time to participate in services cut short.

---

<sup>1</sup> MCL 712A.19b(3)(g) has since been amended, effective June 12, 2018. See 2018 PA 58 ("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.").

Father additionally argues that the court improperly considered alcohol abuse in its reasons for termination under MCL 712A.19b(3)(c)(i) where alcohol treatment was not part of his case service plan and father received no services to address this condition. “In general, when a child is removed from the parents’ custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child’s removal by adopting a service plan. MCL 712A.18f(1), (2), and (4).” *Fried*, 266 Mich App at 542. Father’s contention that alcohol abuse was not part of his case service plan is incorrect where alcohol abuse was clearly stated as a demonstrated need in petitioner’s initial court report for father. The only service offered to father regarding his drug of choice was random screens. We concede those screens were not treatment. However, the fact that he was not offered services for his alcohol abuse does not overcome the fact that reasonable efforts were made to address the over-arching issues of domestic abuse and father’s toxic relationship with respondent mother.

Clear and convincing evidence also supported termination of respondents’ parental rights under MCL 712A.19b(3)(g) and (j). “A parent’s failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody.” *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014). Further, “a parent’s failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent’s home.” *Id.* at 711. In mother’s case, she both failed to participate and benefit from her case service plan. Her case service plan required that she maintain an income, housing, and sobriety, and participate in domestic violence and anger management classes. Mother was financially dependent on father, missed 124 screens and 16 of her 18 intensive outpatient therapy sessions, was not in counseling long enough to reach the point of anger management, and had no enlightenment into her role as the perpetrator of abuse. In father’s case, he participated in his case service plan but failed to benefit from it in any significant way. Father’s case service plan required that he maintain an income and housing, and participate in random screens and counseling. Father maintained his employment throughout the proceedings, had housing, provided negative substance abuse screens, and completed counseling. We also acknowledge father’s efforts at distancing himself from mother by filing a personal protection order against her and for divorce. His efforts were all for naught however when he continued to act as if he and mother were still a married couple by having sex with mother, financially supporting her addiction, and allowing her to come to his apartment. Domestic violence counselor Laurie Kosek could not give an opinion as to whether father benefitted from domestic violence counseling because he was still in a violent situation. Caseworker Tria Sparks echoed that there would be a substantial risk of harm to send the children home because of these unrectified issues. Father’s inability to take adequate precautions to keep the children safe supported the conclusion that there would be a reasonable likelihood, based on respondent’s conduct or capacity, that the child will be harmed if returned to respondent’s home. *In re Kaczkowski*, 325 Mich App 69, 77–78; 924 NW2d 1 (2018).

#### IV. BEST INTERESTS

Respondents argue that termination of their parental rights was not in the children’s best interests. Again, we disagree.

##### A. STANDARD OF REVIEW

Whether termination of parental rights is in the best interests of the child is reviewed for clear error. *In re Laster*, 303 Mich App 485, 496; 845 NW2d 540 (2013).

## B. ANALYSIS

“If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). “[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence.” *Moss*, 301 Mich App at 83. “In deciding whether termination is in the child’s best interests, the court may consider 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.” *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). A court may also consider whether it is likely “that the child could be returned to her parents’ home within the foreseeable future, if at all.” *In re Frey*, 297 Mich App 242, 249; 824 NW2d 569 (2012).

The record supports the trial court’s determination that termination of respondents’ parental rights was in the children’s best interests. Mother had a bond with MSJ, whose assault of her daughter she denied. However, her bond with the other two children did not appear as strong. At visits, mother only appeared to be interested in asking TJ how GLH was doing. Having denied the sexual abuse of GLH, mother’s visits with her were suspended shortly after the filing of the petition underlying this case. That relationship was tenuous, at best. Further, mother’s safety plan for GLH involved having GLH live with her estranged adult daughter. Father, on the other hand was bonded to his children and had a better relationship with them. Unfortunately, his ability to parent and provide the children with a stable environment was affected by his purposeful continued toxic relationship with mother. By his own admission, father failed to implement a plan to keep the children safe from mother’s abuse, allowed a portion of the family’s finances to be devoted to mother’s crack cocaine addiction, and continued to reengage with mother despite acknowledging that his relationship with her drove him to abuse alcohol. The performance of each parent made it unlikely that the children could be returned within the foreseeable future. In contrast, the children thrived in foster placements that wanted to adopt them.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Michael F. Gadola

/s/ Anica Letica