

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

---

*In re* BROWN/BROWN-NOEL, Minors.

UNPUBLISHED  
March 24, 2020

No. 349151  
Wayne Circuit Court  
Family Division  
LC No. 15-520937-NA

---

Before: M. J. KELLY, P.J., and FORT HOOD and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to the minor children TM, TY, TI, and TL, under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). Because there are no errors warranting reversal, we affirm.

I. BASIC FACTS

In October 2015, TL and TI’s paternal grandmother discovered that respondent had left TM and TY, both of whom were under the age of 10, at home without supervision. Because the children could not open the door, the police were called. It was further determined that there was minimal food in the home and that no sleeping arrangements had been made for the children. On the basis of respondent’s failure to properly care for her children, petitioner, the Department of Health and Human Services (DHHS) filed a petition asking the trial court to make the children temporary court wards. Following an adjudication trial, the court found grounds to take jurisdiction over the children. TI and TL were placed with their paternal grandmother, and TM and TY were placed in a nonrelative foster home.

During supervised visits, respondent initially experienced difficulty controlling the children. Additionally, TY and TM demonstrated significant behavioral issues in their placement. However, respondent complied with her agency agreement, completing her psychological and psychiatric evaluations, as well as her parenting classes and coaching, and she participated in individual therapy sessions and visits with all four children. Because she appeared to be making progress toward reunification, respondent was permitted unsupervised visits. However, shortly after being allowed unsupervised visitation, the DHHS substantiated an allegation that respondent was whipping the children with a clothes hanger during the visits. As a result, the visits returned to being supervised, and respondent volunteered to participate in increased parenting coaching and

individual therapy to address the concerns related to the physical abuse. Thereafter, over the next one-and-a-half to two years, respondent received additional and continued services, including a second round of parenting coaching and supportive visitation, substance abuse therapy, individual therapy, and community mental health services. After respondent attended a parenting time visit while intoxicated, the trial court ordered increased drug and alcohol screenings. Eventually, the DHHS felt that respondent was ready for unsupervised visits, and the DHHS reported to the trial court that it anticipated respondent could be reunited with all four children in the near future.

Yet, after several unsupervised visits, the DHHS filed a permanent custody petition for all four children on the basis of several issues regarding the children's behavior and respondent's conduct. At the termination hearing, the DHHS presented testimony showing that respondent was unable to effectively intervene when TY was physically aggressive toward TL and TI at several visits, resulting in injuries to the two children. At one unsupervised visit, respondent was sleeping and had to be awoken by the foster care worker. Additionally, one child threatened self injury because he was upset that he could not get ice cream, but respondent did not disclose this incident to the DHHS or to the child's therapist. Respondent also had visits with her child, TAZM, who is diabetic with severe medical needs, and who was in a guardianship. A caseworker testified that respondent explained her failure to manage TAZM's medical needs during one visit because she felt that the 12-year-old child was responsible for taking his own insulin and measuring his levels. Respondent's failure to manage her child's medical needs nearly resulted in his hospitalization. There was also testimony that respondent missed numerous drug screens, that she discontinued her mental-health medication, and that she made concerning statements during the case, including that the children made her so upset that she wanted "to whip them." Respondent also commented to caseworkers on multiple occasions that "she's not the one with the problem, that the kids are the problem."

Following the termination hearing, the trial court found that the DHHS made reasonable efforts toward reunification, and found clear and convincing evidence of grounds for termination of her parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). The trial court also found that termination of respondent's parental rights was in the children's best interests.

## II. STATUTORY GROUNDS

### A. STANDARD OF REVIEW

Respondent argues that the trial court erred by finding statutory grounds to terminate her parental rights. This Court reviews "for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). 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 had been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

### B. ANALYSIS

Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). "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).

Termination is proper under MCL 712A.19b(3)(c)(i) and (c)(ii) if the court finds by clear and convincing evidence that:

(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.

(ii) Other conditions exist that cause the child to come within the court’s jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

Here, more than 182 days elapsed since the initial dispositional order was issued. The condition leading to adjudication was respondent’s failure to provide proper care and custody for her children. Throughout the case, there were also concerns regarding respondent’s parenting abilities, including her substantiated use of physical discipline (whipping a child with a hanger) and her inability to properly supervise the children (falling asleep during visitation and failing to prevent the children from harming each other). Other barriers to reunification included respondent’s mental-health issues and her alcohol abuse. Respondent was provided with services to rectify the conditions leading to adjudication and the other conditions causing the children to come within the court’s jurisdiction. She was referred to a parent-partner on two occasions, received drug screens, participated in substance-abuse therapy and individual therapy, and was allowed both supervised and unsupervised parenting time with the children. She also completed a psychological evaluation, a psychiatric evaluation, parenting classes, and a supportive-visitation program. Despite the services offered, respondent’s parenting skills remained a concern throughout the case.

On appeal, respondent suggests that the condition leading to adjudication was rectified or could be rectified within a reasonable time. In support, she directs this Court to statements from her caseworkers that she had made dramatic progress in her parenting abilities and that the DHHS was anticipating a successful reunification. Respondent correctly notes that the caseworkers made those comments at a dispositional hearing less than two months before the DHHS filed a petition seeking termination of respondent’s parental rights. Yet, the fact that respondent appeared to be making “dramatic progress” two months before the DHHS changed the goal from reunification to termination is not dispositive. The impact of respondent’s progress at that point in time is weakened by the evidence that afterward she took actions demonstrating that she had not actually benefitted as greatly from the services received as it initially appeared. Events occurring in child

protective proceedings are not to be evaluated in isolation. Rather, when making a termination decision, the court must view the entirety of proceedings, which is what the court did in this case.

Here, caseworkers testified that respondent failed to effectively intervene when TY was physically aggressive toward TL and TI at multiple visits. As a result, the children sustained gashes, scratches, bruises, and—on one occasion—one of the children was kicked in the genital area. At one unsupervised daytime visit, respondent fell asleep, leaving the children unsupervised, and at another one she hit all four children with a hanger. Respondent failed to report that one child threatened self-harm during a visit. And while visiting her 12-year-old child, respondent neglected to aid him in managing his diabetes, which nearly resulted in his hospitalization. Respondent explained her failure by indicating that the 12-year-old was responsible for managing his medical condition. Respondent also confirmed that she did not consistently give her children their prescribed psychotropic medications.

Respondent directs this Court to *In re Newman*, 189 Mich App 61; 472 NW2d 38 (1991). In *Newman*, this Court overturned the trial court's termination decision, noting that in light of "the professionals' inability to handle this child, even in structured settings, we find it incredible that respondents were deemed unfit because of their inability to adequately control him." *Id.* at 68. Respondent notes that in this case the children's foster parents have difficulty handling them, and she argues that her inability to handle them, therefore, should not be grounds to terminate her parental rights. Although some of the challenging behaviors exhibited by the children when in respondent's care were also taking place in their respective foster homes, particularly for TM and TY, the record also reflects that TM's behavior significantly improved in various foster placements. Furthermore, unlike the parents in *Newman*, see *id.*, respondent was offered opportunities to visit with only one or two children, but respondent nevertheless exhibited inadequate parenting skills or difficulty controlling their behavior at these visits. Further, additional circumstances exist in this case, including respondent's decision to hit the children with a hanger, to sleep during unsupervised visitations, and to sometimes not administer the children's prescribed medications. Accordingly, the comparison to *In re Newman* is unavailing.

Respondent's ability to manage her mental health also remains a barrier to reunification. Respondent lapsed in her participation in individual therapy. She reported to the DHHS that she did not take her psychotropic medications as prescribed because she believed they were unnecessary, but she informed her psychiatrist that she was taking the medications as prescribed. Respondent also had alcohol-related issues, including showing up to parenting time intoxicated on one occasion. Throughout the case, she missed numerous drug and alcohol screens. Considering that the children had been under the care of the DHHS for approximately three years, the trial court did not err by finding that respondent was not reasonably likely to rectify the concerns with her mental health and alcohol use within a reasonable time. Therefore, there was clear and convincing evidence for the trial court to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i) and (c)(ii).

Similarly, termination was warranted under MCL 712A.19b(3)(g). Termination is proper under subdivision (g) if "[t]he 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." Here, respondent's failure to benefit from the services offered is evidence that

respondent could not provide proper care or custody for the children. See *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014) (“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.”). Respondent demonstrated serious deficiencies with her ability to parent the children safely, despite the provision of extensive services over approximately three years, including: assistance with obtaining employment, mental-health services, individual therapy, substance abuse treatment, a supportive visitation program, referrals for utility payment assistance, and two rounds of parent partner coaching. For example, the incident of respondent falling asleep in an unsupervised visit occurred after engaging in two courses of parenting partners and supportive visitation. Additionally, respondent’s missed drug screens suggested she did not benefit from substance abuse therapy, while respondent’s discontinuance of her medication regimen and lapse in mental health therapy suggested a lack of benefit from individual therapy. Finally, the trial court found that there was “never an issue of housing” and was “never an issue of income.” Nothing on the record suggests that these findings were clearly erroneous and respondent does not challenge them on appeal. Accordingly, there was sufficient evidence to terminate respondent’s parental rights to the children under MCL 712A.19b(3)(g).

There was also sufficient evidence to support termination under MCL 712A.19b(3)(j). Termination is proper under subdivision (j) if “[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 believes that the DHHS filed the petition for permanent custody solely on the basis of her failure to administer her child’s diabetic medication during one visit. Respondent notes that her child experienced no lasting harm from having elevated blood sugar levels as a result of the incident. However, as discussed previously, the failure to administer her child’s medication resulted in his near hospitalization. And, while no long-term harm resulted from this particular incident, the potential consequences were severe. Respondent’s rationale that the 12-year-old was solely responsible for maintaining his insulin demonstrated distressing parental judgment. The trial court properly inferred that given respondent’s conduct—i.e. placing responsibility for managing a potentially life-threatening medical condition on a 12-year-old—there was a reasonable likelihood that her children would be harmed if returned to respondent’s care. The likelihood of harm is further supported by evidence that respondent did not, in fact, consistently administer the children’s prescribed medications. There is also the evidence that the children injured each other while under respondent’s care, which resulted in scratches, bruises, and gashes. Finally, “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.” *In re White*, 303 Mich App at 711. As noted previously, respondent failed to comply with significant aspects of her agency agreement, including missing drug screens, discontinuing her medication regimen, and lapsing in participation in mental health therapy. Therefore, there was clear and convincing evidence for the trial court to terminate respondent’s parental rights under MCL 712A.19b(3)(j).

### III. BEST INTERESTS

#### A. STANDARD OF REVIEW

Respondent argues that the trial court erred by finding that termination of her parental rights was in her children's best interests. "The trial court's decision on the best interests question is reviewed for clear error." *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004).

#### B. ANALYSIS

"With respect to the trial court's best-interest determination, we place our focus on the child rather than the parent." *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016). "The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App at 713. The trial court must consider the best interests of each child individually. *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012). However, the trial court does not err "if it fails to explicitly make individual and—in many cases—redundant factual findings concerning each child's best interests." *In re White*, 303 Mich App at 716. The trial 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*, 297 Mich App at 41-42 (citations omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the child's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714.

Respondent argues that the trial court erred because it failed to consider whether she was bonded with the children. However, respondent's parenting skills, despite years of services, remained deficient. She missed numerous drug and alcohol screens, and had not shown that she benefitted from her mental-health treatment plan. In fact, she discontinued her psychotropic medication without consulting with her mental-health treatment providers. Although a bond existed between respondent and the children, "that bond was outweighed by the children's need for safety, permanency, and stability." *In re Jones*, 316 Mich App 110, 120; 894 NW2d 54 (2016). The children had been in care for over three years and required stability and permanence. The court found that TI and TL were thriving in their paternal grandmother's home and the court found that adoption would allow the grandmother—who wished to adopt—to parent the children absent any negative influence from respondent. Further, although TM and TY were not in a preadoptive home, the court correctly noted that the children were at a critical age, where, the longer the case continued, the greater the likelihood that they would not obtain a permanent plan before reaching the age of majority. The trial court did not clearly err by finding it was in the children's best interests to terminate respondent's parental rights.

Affirmed.

/s/ Michael J. Kelly  
/s/ Karen M. Fort Hood  
/s/ Stephen L. Borrello