

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

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*In re* TOLMACS/SPENCE-TOLMACS, Minors.

UNPUBLISHED  
April 30, 2020

No. 351479  
Kalamazoo Circuit Court  
Family Division  
LC No. 2019-000300-NA

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Before: M. J. KELLY, P.J., and K. F. KELLY and SERVITTO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights to two of his minor children, TT and AST, pursuant to MCL 712A.19b(3)(a)(i), (f), (h) and (j).<sup>1</sup> We affirm.

I. BASIC FACTS

Respondent was only 14-years old when his first child was born. After his second child was born, petitioners, the maternal great-grandparents of the minor children, obtained a guardianship to avoid intervention by Child Protective Services and the children's placement in foster care. There was domestic violence between respondent and the children's mother, Mia Tolmacs (Tolmacs), and drug use occurred in their home. Petitioners were appointed full-time co-guardians on July 29, 2010. According to the order appointing petitioners as the guardians, respondent was to provide reasonable support for the children and was entitled to reasonable parenting time.

Despite the order, petitioners received a one-time payment of \$19.08 through the state when respondent was in jail. Respondent did not regularly send birthday or Christmas gifts or basic items such as clothing or food. He did not consistently visit, but occasionally petitioners and the children saw respondent in town. Respondent saw the children when he went to remove his items from petitioners' garage or when respondent and Tolmacs went to petitioners' home to borrow money. Petitioners would invite respondent to visit with the children at a McDonald's,

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<sup>1</sup> A third minor child, MT, was not at issue in this appeal.

but he did not want to have supervised visitation with his children. Although respondent had been in jail or prison for approximately six of the last nine years, he did not telephone or write the children.

In the fall of 2016, petitioners allowed respondent and Tolmacs, their granddaughter, to live with them in order to save money and get back on their feet again. At the time, respondent had been drug-free for five months and was employed. Despite living with his children, respondent spent very little time with them. He only watched television with them, and he spent most of his time sleeping. After respondent started using drugs again, he lost his job, and Tolmacs threw him out of petitioners' home in January 2017.

Petitioners filed the request for termination of parental rights for long-term planning purposes. Petitioners were in their early to mid-seventies in age. Although the great-grandfather was retired, the great-grandmother continued to work as a hairdresser two days a week. The children were well-behaved and performed well in school. The termination of respondent's parental rights would allow petitioners to adopt the children. For estate planning purposes, the adoption of the children would ensure that the children received petitioners' federal benefits, an option not available through the guardianship.

Tolmacs supported the termination of respondent's parental rights. During her ten-year relationship with respondent, he was physically abusive. When Tolmacs sought to stop using drugs, respondent sabotaged those efforts. Although the couple married in 2015, she was preparing to file for a divorce. Additionally, she blocked receipt of telephone and email communications from respondent one year earlier. When the email communications had occurred, Tolmacs estimated that respondent asked about the children once or twice. Rather, his interest in communicating with them peaked after he thought he was dying in prison. When the telephone communications had occurred, respondent asked about MT, who was not cared for by petitioners, but was in Tolmacs' custody. Tolmacs advised respondent that he should contact the children directly, but he never asked for their address or phone number.

Tolmacs testified that respondent held their youngest child MT hostage when he was using methamphetamine. He took MT and promised to return her if Tolmacs gave him \$200 and "weed." Tolmacs was able to raise \$170 and obtain the return of MT. She opined that respondent's parental rights should be terminated, and it was in the children's best interests. Tolmacs testified that the years she spent with respondent were the worst of her life and that the children should not have the same experience. She indicated that respondent promised to change, but he never did. Instead, he was abusive and in and out of jail. The children were taken care of by petitioners, and it was best that they stay in their care. Tolmacs testified that if respondent's parental rights were terminated, she would agree to termination of her parental rights to allow the children to be adopted by petitioners.

Respondent testified that it was his "third time in prison." In between terms of imprisonment, he indicated that there were times that he saw the children and "bought them things." In the fall of 2016 until January 2017, respondent acknowledged that he also lived with petitioners and had a "little drug issue." However, he denied that he exposed the children to his drug use. Respondent claimed that he purchased pizza for the family as a birthday dinner. He acknowledged "sleeping a lot" at the time, but still watched television with the children when he

was not working. He testified that he took the children to the gas station and bought them things for their birthdays. Although “[a] lot of things [were] blurry,” respondent believed that he taught them how to play football and taught AST how to ride a skateboard. Additionally, he saw the children “for a minute” when he went to petitioners’ home to borrow money. During those brief interactions, respondent hugged the children and told them he loved them. Respondent “did the best” he could.

Respondent testified that throughout the nine-year guardianship, petitioners denied him visitation. However, he acknowledged that for six of the last nine years, he was unavailable for visits because of imprisonment. Additionally, respondent testified that he was scheduled to be released, but he got into a fight with another inmate. Consequently, he was placed in “the hole.” His minimum release date was now November of 2020 and his maximum release date was in 2032. Respondent also needed to take a substance abuse class while in prison and complete his GED. He did not want his parental rights terminated, but instead hoped to be released, get a job, and “turn that all around.”

Respondent claimed that he tried to contact the children, but Tolmacs would not provide petitioners’ telephone number or address. He wrote a letter to the children when he suffered from a blood clot in his brain while in prison. Petitioners explained the reason for the adoption to respondent before he went to prison. Yet, respondent wanted to try and get his children back because he loved them.

Respondent acknowledged that he earned illegal income from stealing cars, but did not provide any support to petitioners. Further, he was unaware that petitioners received \$19.08 through the state until the testimony at the hearing. Respondent also denied holding MT hostage for money. Rather, he claimed that Tolmacs’ friend lost respondent’s wedding ring, and he wanted money for the lost ring. Finally, respondent claimed that AST opposed the termination of parental rights. However, the guardian ad litem for the children indicated that the children flourished in petitioners’ care and wanted to be adopted by them.

The trial court noted that the children had been in petitioners’ care for the majority of their lives and did not find a bond between respondent and the children. The trial court concluded that the statutory grounds for termination were established and that termination was in the children’s best interests.

## II. APPLICABLE LAW

“To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). “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.” *Id.*; see also MCR 3.977(K). Once a statutory ground for termination has been established, the trial court must conclude that termination of parental rights is in the child’s best interests before it can terminate parental rights. MCL 712A.19b(5); *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). A trial court’s decision regarding a child’s best interests is also reviewed for clear error. *In re Laster*, 303 Mich App 485, 496; 845 NW2d 540 (2013). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been

committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *Id.* at 491.

### III. JURISDICTION

Respondent contends that the trial court erred in assuming jurisdiction over the children because he expended funds on and had regular contact with the children. We disagree.

To acquire jurisdiction, the trier of fact must conclude by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2. *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993). A proper exercise of jurisdiction occurs when the trial court finds a statutory ground for jurisdiction exists. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). Jurisdiction must be established by a preponderance of the evidence. *Id.* The jurisdiction determination is examined in light of the minor’s circumstances at the time the termination petition is filed. *In re Long*, 326 Mich App 455, 459; 927 NW2d 724 (2018). The trial court’s decision to exercise jurisdiction is reviewed for clear error in light of its factual findings. *Id.*

Jurisdiction is acquired over a juvenile who is under 18 years of age, found within the county, and subject to a guardianship provided the following two criteria are established:

(A) The parent, having the ability to support or assist in supporting the juvenile, has failed or neglected, without good cause, to provide regular and substantial support for the juvenile for 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for 2 years or more before the filing of the petition.

(B) The parent, having the ability to visit, contact, or communicate with the juvenile, has regularly and substantially failed, or neglected, without good cause, to do so for 2 years or more before the filing of the petition. [MCL 712A.2(b)(6).]

Respondent contends that the trial court erred in assuming jurisdiction because, although he failed to make regular support payments, he “purchased gifts” for the children and made one small payment. Additionally, he asserts that he “had fairly regular contact” with the children.

In light of the record, we cannot conclude that the trial court clearly erred in assuming jurisdiction. MCL 712A.2(b)(6)(A) and (B) require that the parent failed to provide, without good cause, “regular and substantial support” as well as the regular and substantial failure to visit with the child for two or more years before the filing of the petition. Respondent testified that he was unaware of the payment of \$19.08 by the state to petitioners. Further, because he was imprisoned for six of the last nine years, his financial support was nominal. Additionally, he declined to meet with the children at McDonald’s for supervised visitation. Therefore, his financial support was limited to an occasional pizza and gifts from a gas station to celebrate the children’s birthdays. Further, he was unable to visit with the children during his substantial period of imprisonment. Moreover, he acknowledged that he merely saw the children “for a minute” when he went to petitioners’ home to borrow money. Petitioners presented testimony that respondent did not have substantial contacts with the children and did not provide substantial support. In light of respondent’s own testimony, the trial court did not clearly err by assuming jurisdiction.

#### IV. STATUTORY GROUNDS FOR TERMINATION

Respondent contends that the trial court clearly erred in concluding that the statutory grounds for termination were met because the guardianship was established to preserve his right to remain the father and he was never offered a parent-agency agreement and services to give him a chance to be a father. We disagree.

Respondent's argument does not challenge the statutory grounds relied upon by the trial court. Instead, he asserts that he should have been given a parent-agency agreement and services. However, even if this petition had been filed by a state agency, respondent was not entitled to services. Indeed, reunification services are not required when termination is the agency's goal. *Moss*, 301 Mich App at 91; MCR 3.977(E). Accordingly, respondent's contention that he was entitled to services is unfounded.

We conclude that the trial court did not clearly err in determining that MCL 712A.19b(3)(j), addressing the reasonable likelihood that the children would be harmed if returned to the home of the parent, was satisfied. Respondent was unable to maintain long-term employment and changed jobs frequently. He stole cars for an illegal source of income, but did not contribute financially to provide for the children's basic needs despite a court order. Respondent engaged in drug use, and Tolmacs testified that he held MT hostage in an attempt to obtain funds for his use of methamphetamine. Additionally, he repeatedly engaged in criminal behavior resulting in his incarceration for six of the last nine years. He was currently incarcerated, and the possibility of release was delayed until November 2020, because he fought with another inmate. The trial court properly found that the evidence supported this statutory ground.

#### V. BEST INTERESTS

Respondent asserts that the trial court erred in concluding that termination of parental rights was in the children's best interests because services were not offered to respondent, and it was improper to render a decision premised on financial considerations. We disagree.

As discussed, there was no requirement that respondent be offered services. *Moss*, 301 Mich App at 91; MCR 3.977(E). Although respondent contends that the trial court's decision was rendered premised on financial considerations, the argument ignores the facts and circumstances of the case. As guardians, petitioners assumed the role of caring and providing for the children for nearly ten years. During that time period, respondent did not secure employment or attend drug rehabilitation programs. He continued to engage in criminal activity that caused him to be incarcerated for more than half the children's lives. Although petitioners offered their home to respondent to save money, he engaged in drug use and lost his job. Accordingly, after nearly ten years of inaction by respondent, petitioners had to prepare for the long-term care of the children in light of their advanced age. Although petitioners had financial means to support the children and family support, the couple sought to secure financial resources for the children that were unavailable through a guardianship, but permitted through adoption in the event petitioners passed. Contrary to respondent's assertion, the trial court did not render a decision in favor of the party with the most financial resources. Rather, the court considered the care provided by petitioners, the emotional support the children received that allowed them to excel in school, and the children's

preference. In light of the complete record, respondent's contention that his rights were terminated because of his financial challenges is without merit.

We conclude that the trial court did not clearly err in holding that termination of parental rights was in the children's best interests. The children had been the subject of a guardianship for nearly ten years. In that period, respondent had not engaged in actions to have his children returned to his care. Tolmacs testified that respondent physically hit her and sabotaged her efforts to give up drugs. She also noted that respondent made false promises that he would change, but did not do so. Because of her experience with respondent over ten years, she opined that the children should not be subjected to the same conduct when petitioners provided a permanent, safe environment. The trial court did not clearly err.

Affirmed.

/s/ Michael J. Kelly  
/s/ Kirsten Frank Kelly  
/s/ Deborah A. Servitto