STATE OF MICHIGAN

COURT OF APPEALS

In re DOYLE, Minors.

UNPUBLISHED
May 21, 2020

Nos. 351473; 351474
Shiawassee Circuit Court
Family Division
LC No. 17-014021-NA

Before: SWARTZLE, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the trial court's order terminating their parental rights to their minor children, SRD and AMD, under MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), (c)(*ii*) (failure to rectify other conditions), and (g) (failure to provide proper care and custody). We affirm.

I. BACKGROUND

In January 2017, the Department of Health and Human Services (DHHS) filed a petition requesting the children's removal from respondents' home following respondents' arrest for possession and manufacturing of methamphetamine in their home.[1] In February 2017, the DHHS further amended the petition to reflect that respondent-father also had a history of drug use; an extensive criminal history of larceny, check fraud, and criminal sexual conduct; and a history of being physically abusive to a former girlfriend and her child. Although respondents failed to appear for the initial preliminary hearing, that hearing was adjourned, and respondents subsequently attended the adjourned preliminary hearing and waived their right to a hearing. The trial court scheduled a hearing to accept no-contest pleas regarding adjudication. For various reasons, the hearing was delayed until November 2017, when respondents tendered no-contest

[1] At the time of the children's removal, respondent-mother's son from another relationship, TG, also resided with respondents. The DHHS placed TG with his father during the pendency of this case and respondent-mother's parental rights over TG were not terminated.

pleas to the amended petition. Before accepting the no-contest pleas, the trial court informed respondents:

> I'm required to legally go over that which you are waiving under the circumstance. As the result of the Child Protection Act, petition filed and subsequent removal of the children, you have the right to a trial on the matter of whether or not the Court takes jurisdiction over the family.
>
> And, in this particular case, there's no petition to terminate your parental rights. But, should the Court take jurisdiction, it has the authority to impose participation in services. If you don't benefit from those services, there could subsequently possibly be a petition to terminate parental rights. But that would be an entirely different proceeding. So, nothing here today is directly connected to an —any termination.
>
> But your rights are as follows:
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> You have the right by a trial, to trial by jury of six people. You'd be represented at that trial. And, as would the Department. And, as would your minors. The Department would have the burden of proving by a preponderance of the evidence, which means more likely than not. It's not a strong burden as what you hear on [television] about criminal matters[,] which are beyond a reasonable doubt. But, by a preponderance of the evidence, that conditions existed at the time of the removal and continue to exist that would warrant taking jurisdiction.
>
> The Department would attempt to meet that burden by calling witnesses and presenting evidence. You would not have any burden to challenge that, but you would be free to if you wished to. At the end of the Department's case, you, again, it's not your burden to do anything. But, if you wished to put on a case. Call witnesses. Present evidence. You would be free to do that also. If there were any witnesses you felt could give relevant and helpful testimony who did not want to appear, I would order their appearance. And, if you wanted to testify, I would tell the jury to give your testimony the same consideration as any other witness. If you chose not to testify, I would not compel you to testify. And I would tell the jury that they are not to consider your silence in making a determination as to the evid —whether the evidence exists.
>
> If at the end of the trial the jury found in favor of the Department that the Court should take jurisdiction, you would have the right to appeal that to the Court of Appeals. Where they would review the transcripts and arguments to determine whether or not you had a fair trial. You would have the right to be represented at that hearing also.
>
> So, that's kind of a long diatribe. But, that's what you're waiving in exchange for this no contest plea.

* * *

> A no contest plea is not an admission of anything. And what you are doing is not contesting that I read the petition and accept the allegations as true for the purpose of taking jurisdiction.

After accepting their no-contest pleas, the trial court ordered respondents to comply with various services, including participating in substance-abuse-treatment programs, following the recommendations of any evaluations, attending parenting classes and counseling, and complying with the terms of probation.

In June 2018, however, the DHHS filed a supplemental petition with the trial court seeking termination of respondents' parental rights based on their convictions of methamphetamine-related crimes stemming from the initial investigation, respondents' noncompliance with the case-service plan, and substantiated allegations of abuse and maltreatment by respondent-father on his stepson, TG. The trial court declined to adopt a goal of termination but decided to schedule a dispositional hearing.

In January 2019, respondents tendered no-contest pleas to the supplemental petition regarding the statutory basis for termination of parental rights. Once again, before accepting respondents' no-contest pleas, the trial court advised respondents:

> Okay. I have to go through the rights you are waiving. We are set for a trial today[,] and you would have the right to have and contest everything in the petition.
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> It would be the Department's obligation to provide a statutory basis. And, to be clear, that doesn't mean the Department has to prove every allegation in the petition. It just means they're [sic] several approaches, several bases, and they would have to prove enough elements to meet one of them. And they would have to do so by clear and convincing evidence. They would be calling witnesses and presenting evidence.
>
> You would have no obligation to do anything, but you would have the opportunity through your counsel to challenge the evidence and cross-examine the witnesses.
>
> At the end of the statutory basis, well, you would also have the right to call your own witnesses in response to that. And, if anybody you felt could give relevant, helpful evidence did not wish to appear, then I would order their appearance. And, likewise, if you wanted to testify, I would consider your testimony in the same manner as any other witness. And if you did not want to testify, I would not compel you to do so nor would I hold that against you for exercising your right to be silent.
>
> We would, then move to the best interests. And, by the same burden of proof, the Department would have to prove that it would be in the best interests of

> the children to have your parental rights terminated[,] and it would work in much the same way in order for there to be termination.
>
> What the parties have basically agreed to, and the Court has consented to do, is taking up only the issue of statutory basis today. And then bifurcating. We're deferring for another day the issue of best interests. Your attorney advises that he believed that could give you the opportunity to show success in that matter.
>
> And, but in order to do so, you would be pleading no contest to the allegations in the petition. A no contest plea [sic] is not an admission, but what you're doing is you are—you are not contesting the Court's finding the allegations true by clear and convincing evidence for the purpose of establishing the statutory basis for termination.

Based on respondents' no-contest pleas, the trial court accepted the allegations contained in the supplemental petition as true by clear and convincing evidence and accepted the petition "as if read into the record word by word."

Subsequently, the trial court considered whether termination of respondents' parental rights was in the children's best interests. Over the course of a three-day hearing, the trial court heard testimony from respondents' probation agent; the children's foster mother; respondents' parenting-time coach and supervisor; the foster-care worker assigned to the case; and Dr. James Henry, director of the Southwest Michigan Children's Trauma Assessment Center and an expert in the field of child trauma, child assessment, and child development. Further, respondents presented a recorded interview between a forensic examiner and SRD for the trial court's consideration regarding the children's best interests.

Ultimately, the trial court concluded that termination of respondents' parental rights was in the children's best interests and issued an order terminating respondents' parental rights. Respondents now appeal, and this Court consolidated their appeals. See *In re Doyle Minors*, unpublished order of the Court of Appeals, entered December 9, 2019 (Docket Nos. 351473; 351474).

II. ANALYSIS

A. DUE-PROCESS CLAIMS

Respondents first argue that the trial court violated their due-process rights by committing various errors regarding respondents' no-contest pleas to jurisdiction and the existence of statutory grounds for termination.

Because respondents did not move to withdraw their no-contest pleas in the trial court and did not otherwise object to the advice of rights that they were provided, these issues are unpreserved. See *In re Zelzack*, 180 Mich App 117, 126; 446 NW2d 588 (1989). Claims of "adjudication errors raised after the trial court has terminated parental rights are reviewed for plain error." *In re Ferranti*, 504 Mich 1, 29; 934 NW2d 610 (2019). Generally, an error will not affect

a respondent's substantial rights if it did not affect the outcome of the proceedings. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

"In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase." *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). The trial court determines whether to take jurisdiction of the child during the adjudicative phase; once the trial court has jurisdiction, it determines during the dispositional phase what course of action will ensure the child's safety and well-being. *Id*. The "fact-finding adjudication of an authorized petition to determine if the minor comes within the jurisdiction of the court" is called the "trial." MCR 3.903(A)(27). The term "trial" includes a "specific adjudication of a parent's unfitness," which subjects the parent to "the dispositional authority of the court." MCR 3.903(A)(27).

A trial court can take and exercise jurisdiction if a respondent makes "a plea of admission or of no contest to the original allegations in the petition." MCR 3.971(A); see also *Ferranti*, 504 Mich at 15. At the time respondents' no-contest pleas were entered, MCR 3.971 provided, in relevant part:

> (B) Advice of Rights and Possible Disposition. Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:
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> (1) of the allegations in the petition;
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> (2) of the right to an attorney, if respondent is without an attorney;
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> (3) that, if the court accepts the plea, the respondent will give up the rights to
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> (a) trial by a judge or trial by a jury,
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> (b) have the petitioner prove the allegations in the petition by a preponderance of the evidence,
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> (c) have witnesses against the respondent appear and testify under oath at the trial,
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> (d) cross-examine witnesses, and
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> (e) have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor;
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> (4) *of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent*. [Emphasis added.]

As a preliminary matter, respondent-father argues that the trial court erred by failing to advise him of his appellate rights after he entered his no-contest pleas. We note, however, that the Michigan Supreme Court amended MCR 3.971 on June 12, 2019, the same day the Court issued

its opinion in *Ferranti*, 504 Mich 1, and the Court subsequently amended the rule on September 18, 2019, effective January 1, 2020. MCR 3.971 now allows a respondent to challenge a trial court's initial order of disposition following adjudication, as well as the "assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the court fails to properly advise the respondent of their right to appeal pursuant to subrule (B)(6)-(8)." MCR 3.971(B)(6); MCR 3.971(C); see also *Ferranti* 504 Mich at 9 n 1. Respondent-father's brief on appeal appears to treat the amended version of MCR 3.971 as having been the operative rule at the time of his two no-contest pleas. Because this provision was not in effect at the time of the pleas, however, respondent-father's argument in this regard is without merit.

Respondent-mother also argues that the trial court erred by failing to advise her of the contents of the petition as required by MCR 3.971(B)(1). Based on the record in this case, we are unable to determine whether the trial court advised respondents of the contents of the February 2017 petition before accepting their no-contest pleas to jurisdiction because there is no transcript of the preliminary hearing at which the petition would have been read. Nonetheless, the record indicates that respondents and their counsel appeared at the adjourned preliminary hearing and waived their right to the hearing while scheduling the matter for a hearing on the no-contest-pleas. Moreover, respondents' counsel indicated that they were entering no-contest pleas to the amended petition, thereby suggesting that counsel and respondents were aware of the contents of the petition.

Further, as noted above, respondents did not raise their due-process argument before the trial court. Because no record exists that supports a conclusion that respondents were unaware of the allegations at the time of the pleas, respondent-mother is unable to meet her burden of establishing that a plain error occurred. Further, aside from claiming that her due-process rights were violated, respondent-mother fails to establish how the alleged error affected the outcome of the proceedings. This Court is not required to unravel and elaborate on respondent's arguments and may deem the argument abandoned. *People v Cameron*, 319 Mich App 215, 232; 900 NW2d 658 (2017).

Respondents both argue that when accepting their no-contest pleas to establish jurisdiction over the children and their subsequent no-contest pleas to establish statutory grounds, the trial court erred by failing to advise them of all of the consequences as required by MCR 3.971(B). Specifically, respondents contend that the trial court failed to comply with MCR 3.971(B)(4) by failing to advise them that their pleas could be used against them during subsequent termination proceedings. Respondents rely upon our Supreme Court's decision in *Ferranti*, 504 Mich 1, to support their assertion that any failure to comply with any portion of MCR 3.971(B) creates reversible error. In light of this Court's recent decision in *In re Pederson*, ___ Mich App ____; ____ NW2d ___ (2020) (Docket No. 349881), we conclude that even though the trial court erred when it failed to advise respondents of all of the consequences of their pleas, respondents are unable to show that the error affected the outcome of the proceedings, and therefore are unable to establish a due-process violation that affected their substantial rights.

In *Pederson*, the respondents argued that the trial court failed to advise them of the rights outlined in MCR 3.971(B)(3), and further argued that, like the trial court in *Ferranti*, the trial court effectively tainted the adjudicative stage of the proceeding, requiring reversal. *Pederson*, ___ Mich App at ____; slip op at 8. Indeed, the Court noted that the trial court failed to advise the

respondents that their pleas could "later be used as evidence in a proceeding to terminate parental rights" as required by MCR 3.971(B)(4). *Id*. at ___; slip op at 12. The Court also noted, however, that the respondents were informed of most of the rights that they were waiving, including their rights to a trial by judge or jury, to have witnesses against them appear, and to subpoena witnesses. *Id*. Further, there was evidence to support a conclusion that the respondents reviewed the allegations in the petition with their attorney, who represented them at the plea hearing. *Id*. at ____; slip op at 11. The Court concluded that although the respondents were not informed that their pleas could "later be used as evidence in a proceeding to terminate parental rights," they were informed on several occasions that, if the pleas were accepted, a consequence of their pleas would be that they would be required to comply with the case-service plans and that their parental rights could be terminated if they did not comply with the case-service plans. *Id*. at ____; slip op at 12. Ultimately, we concluded that based on the information relayed to them, the respondents in *Pederson* failed to carry their burden of demonstrating prejudice. *Id*. at ____; slip op at 12-13. Further, we noted that even if "respondents' substantial rights were affected, respondents would not automatically be entitled to reversal" because "respondents have not argued that they would not have pleaded to some of the allegations in the petition had the trial court informed them that their pleas could be used as evidence against them if termination proceedings commenced." *Id*. at ____; slip op at 13. Thus, this Court's decision in *Pederson* clarifies that reversal is not warranted based solely on a trial court's failure to reiterate every item required by MCR 3.971.

In this case, like in *Pederson*, the record supports that on both occasions, before accepting respondents' no-contest pleas to jurisdiction and statutory grounds, the trial court advised respondents of most of the rights listed in MCR 3.971. As petitioner acknowledges, however, the trial court did not provide advice consistent with MCR 3.971(B)(4) that the no-contest pleas could later be used as evidence in a proceeding to terminate parental rights. Nonetheless, at the jurisdictional-plea hearing, the trial court did advise the parents that "[s]hould the court take jurisdiction, it has the authority to impose participation in services. If you don't benefit from services, there could subsequently possibly be a petition to terminate parental rights." Likewise, prior to accepting respondents' no-contest pleas to statutory grounds, the trial court advised respondents that by entering no-contest pleas to the allegations in the petition, respondents were not contesting "the Court's finding the allegations true by clear and convincing evidence for the purpose of establishing the statutory basis for termination." Accordingly, at all times, respondents were on notice that their no-contest pleas could lead to the termination of their parental rights.

Moreover, respondents' no-contest pleas at the statutory-grounds stage further distinguishes this case from *Ferranti* and *Pederson*. In both of those earlier cases, the respondent challenged the petitioner in the trial court with respect to whether there was clear and convincing evidence of at least one statutory ground for termination. See *Ferranti*, 504 Mich at 12-13; *Pederson*, __ Mich App at __; slip op at 13. Given this, the failure to advise the respondent in those cases that the adjudication-stage plea could be used as evidence to establish a statutory ground at the dispositional stage had some practical impact, as the trial court actually weighed conflicting evidence to find a statutory ground by clear and convincing evidence. Here, unlike in both *Ferranti* and *Pederson*, the respondents pleaded no-contest to statutory grounds and, therefore, there was no weighing of conflicting evidence at this stage. The trial court informed respondents that it was accepting the allegations as true, and respondents conceded this. Thus, in this respect, respondents were not prejudiced at the statutory-grounds stage by the trial court's

failure to inform them that their adjudication no-contest pleas could be used as evidence against them.

Finally, even had respondents not pleaded to the statutory grounds, there was sufficient evidence to establish a statutory ground for termination independent from the allegations to which respondents pleaded at the adjudication stage. One of the statutory grounds to which respondents pleaded no-contest was MCL 712A.19b(3)(c)(*ii*). This provision provides that a trial court may terminate parental rights 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 . . . the following:
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> * * *
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> (*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. [MCL 712A.19b(3)(c)(*ii*).]

The supplemental petition in which the DHHS sought termination of respondents' parental rights indicated that both respondents had been convicted of methamphetamine-related crimes, that they were not in compliance with the service plan, and that the DHHS had substantiated allegations that respondent-father had abused and maltreated TG. At a statutory-review hearing, a foster-care specialist testified that parenting-time visits recommenced after respondents' release from incarceration, and that the children's behaviors had regressed significantly as a result. When deciding to terminate respondents' parental rights, the trial court noted that the children had been in care for approximately two years, recognized that both respondents had been incarcerated because of their involvement with methamphetamine, and pointed out that visitation with respondents had a negative impact on the children. Thus, separate from the allegations and evidence supporting jurisdiction at the adjudication stage, there was sufficient additional evidence supporting a statutory ground for termination. Only one statutory ground needs to exist. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). Accordingly, respondents were not prejudiced by the trial court's failure to inform them that their adjudication no-contest pleas could be used later as evidence to find a statutory ground for termination.

B. BEST INTERESTS

Respondents also argue that the trial court erred when it concluded that it was in the children's best interests to terminate their parental rights. We conclude that the trial court did not err in evaluating the children's best interests.

This Court reviews the trial court's determination of best interests for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "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." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). When considering best interests, the focus is on the child, not the parent. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *Id*. at 90.

Initially, we note that the trial court held a separate evidentiary hearing on best interests after it had accepted respondents no-contest pleas to statutory grounds. In its written opinion on best interests, it recounted the procedural background of the cases (including the no-contest pleas), but it did not rely on the earlier no-contest pleas as substantive evidence on whether to terminate respondents' rights.

Respondent-father claims that the trial court erred by considering evidence in support of termination regarding his treatment of TG. More specifically, respondent-father claims that the trial court erred when it relied on the doctrine of anticipatory neglect in reaching a conclusion regarding termination of his parental rights to his biological children.

The doctrine of anticipatory neglect allows an inference that a parent's treatment of one child is probative of how that parent may treat other children. *In re Kellogg*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 349930); slip op at 5. Even though "jurisdiction may be properly assumed on the basis of the anticipatory neglect doctrine, that does not also mean that it will always be sufficient." *Id*. Indeed, in applying the doctrine of anticipatory neglect, the trial court is required to evaluate the relative differences in the circumstances of the children at issue, including age and medical condition. *Id*.

In this case, TG resided in the same home with respondents and their joint biological children until his removal in January of 2017. Aside from TG's not being respondent-father's biological child, respondent-father cannot establish a significant difference in the circumstances of the children. Although TG was older than the other children, the gap between TG and SRD was less than two years. Moreover, the children's disclosures suggested that respondent-father was abusive toward more than one child, and all three children were subsequently diagnosed with PTSD during their trauma evaluations. Accordingly, at the time of respondent-father's interactions leading up to these proceedings, the children appear to be similarly situated.

Nonetheless, there was sufficient evidence regarding emotional harm to the children that was independent of the evidence of respondent-father's maltreatment of TG. Indeed, while respondent-father's maltreatment of TG constituted direct evidence of physical maltreatment, the children's testimony and disclosures suggested that the children were directly exposed to fighting by respondents and other violence in the home. Additionally, SRD testified that respondent-father had also hurt him, including one time when he was "pinched in the throat," and Dr. Henry testified that during his evaluation he concluded that the children were "traumatized" and frequently thought about the "scary things" that had occurred to them prior to removal from respondents' care. Accordingly, even without considering respondent-father's treatment of TG, sufficient evidence existed to support the trial court's conclusion that maltreatment occurred in respondents' home. Moreover, given respondents' failure to address the issues surrounding domestic violence and TG's maltreatment, there was no evidence to suggest that the children would not continue to suffer harm if returned home.

Respondent-father also claims there was insufficient evidence of domestic violence by himself toward respondent-mother. The record indicates, however, that the minor children disclosed incidents of domestic violence, and the trial court's conclusion that domestic violence occurred was supported by respondent-father's behaviors before Dr. Henry and the foster-care worker. Further, while respondents argue that the trial court failed to consider the probation agent's testimony about respondents' positive relationship, this Court must give deference to the trial court's special opportunity to judge the credibility of the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Accordingly, to the extent that the trial court may have disregarded the probation agent's testimony that she did not observe respondents in any form of agitation or disagreement with one another, the testimony by the foster care worker and Dr. Henry about their perception of abuse, coupled with the children's disclosures, may have outweighed the probation agent's testimony. Reviewing the record as a whole, we are not left with "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." *BZ*, 264 Mich App at 296-297.

Respondents also take issue with the fact that the trial court categorized SRD's interview by the trained forensic interviewer as a "forensic interview." Respondents fail to establish, however, how such a categorization affected their rights or how this categorization constitutes clear error in regard to the trial court's best-interests determination. As noted above, this Court is not required to unravel and elaborate on respondent's arguments and may deem the argument waived. *Cameron*, 319 Mich App at 232. Nonetheless, even if the trial court erred when it labeled SRD's interview as being a "forensic interview," this error was harmless because the evidence presented made it clear that it was in the minor children's best interests to have respondents' parental rights terminated.

As noted above, there is significant testimony that demonstrated that the children had serious behavioral problems, including PTSD, and that respondent-mother was defensive regarding allegations of domestic abuse occurring within the home. Indeed, there were continual reports of behavioral issues with the minor children, particularly surrounding visits or contact with respondents, and respondent-father's visitation was suspended as a result of these behaviors. Further, Dr. Henry testified that he had to intervene and terminate the parent-child interaction due to his concerns about the children's dysregulation and respondents' failure to intervene to correct their dysregulation. Dr. Henry also explained that the children needed permanency to improve their behavioral issues and begin to heal. He also opined that in light of respondents' failure to acknowledge any form of wrongdoing whatsoever in having their children in care, the healing process could be a long one if termination of respondents' parental rights did not occur.

As noted above, respondents were noncompliant in several aspects of the case-service plan. Respondents' unwillingness to take responsibility for their actions further supported a conclusion that they would not benefit from continued services. In sum, while respondents participated in some services, they did not demonstrate a benefit from those services. In contrast, the children's foster mother indicated a willingness to provide the children with permanency through adoption, and this would provide the children with the permanence they needed.

Accordingly, when considering all of the evidence, the trial court did not clearly err by finding that termination of respondents' parental rights was in the children's best interests.

Affirmed.

/s/ Brock A. Swartzle
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly