

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

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*In re* MRM, Minor.

UNPUBLISHED  
June 25, 2020

Nos. 351391; 351529  
Shiawassee Circuit Court  
Family Division  
LC No. 19-014410-NA

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Before: BORRELLO, P.J., and RONAYNE KRAUSE and RIORDAN, JJ.

PER CURIAM.

In Docket No. 351391, respondent-father appeals as of right the order terminating his parental rights to the minor child, MRM, pursuant to MCL 712A.19b(3)(g) (failure to provide care and custody), MCL 712A.19b(3)(i) (parental rights to one or more siblings terminated due to neglect or abuse and failure to rectify conditions), MCL 712A.19b(3)(j) (reasonable likelihood that child will be harmed if returned to parent), and MCL 712A.19b(3)(m)(i) (parent convicted of an enumerated offense and continuing the parent-child relationship would be harmful to the child). In Docket No. 351529, respondent-mother appeals as of right the same order terminating her parental rights to MRM pursuant to MCL 712A.19b(3)(b)(i) (parent abused child), MCL 712A.19b(3)(b)(ii) (parent failed to prevent abuse), MCL 712A.19b(3)(j) (child would likely be harmed if returned to parent), and MCL 712A.19b(3)(k)(iii) (severe physical abuse). The cases were consolidated for review. We affirm.

I. FACTS

On May 30, 2019, respondent-mother took MRM in for a routine medical appointment and the doctor noted that the four-month-old baby seemed to be favoring his right arm. X-rays revealed that MRM had fractures through both the radius and ulna in his right arm, and an expert in child abuse evaluation testified that the break was likely caused by someone suspending the baby’s full weight on the arm. Respondent-mother could not explain the injury and eventually indicated that she grabbed MRM out of his grandmother’s arms during an argument. She stated that she had been drinking at the time. Child Protective Services (CPS) initiated a petition to remove MRM and respondent-mother pleaded guilty to domestic violence.

At the time of the proceedings, respondent-father had been incarcerated for MRM’s entire life and had never met MRM. Respondent-father has an extensive criminal history, including a

1999 conviction for domestic violence against his ex-wife, multiple convictions for assault, and a 2005 conviction for assault with intent to commit criminal sexual conduct for impregnating an underage girl without force or threat of force (AWICSC). Respondent-father also testified that he has issues with alcohol, which caused parole violations in the past. Overall, respondent has been free of incarceration, parole, and probation for less than five years of his adult life.

Respondent-father was named MRM's legal and biological father on August 5, 2019. Respondent-father has four other children, MJ, SA, CH, and MA. At the time of the proceedings, MJ was 26 years old and SA was 21 years old. In 2011, MJ accused respondent-father of sexual abuse. DHHS substantiated the claim, but respondent-father did not lose his rights to MJ<sup>1</sup> and no criminal charges were filed. Respondent-father testified that he maintained contact with MJ and SA.

CH was born of the respondent-father's encounter with an underage girl, which also resulted in his 2005 AWICSC conviction. Respondent-father testified that he had seen CH once, but did not have further contact with CH because he believed that contacting CH's mother might result in additional legal trouble for him.

In 1999, respondent-father was convicted of domestic violence and CPS removed his then-wife's daughter, BP, from their care. The amended petition alleged that respondent-father perpetrated violence against BP, but no criminal charges were filed. Respondent-father had a baby, MA, with his then-wife, but CPS removed MA because BP was in foster care. Respondent-father's rights to MA were terminated in 2002 after he failed to comply with his service plan.

At trial, respondent-father testified that he was 100 days away from being released from prison and that he planned to live with his father or stepfather until he found a place of his own. He testified that he had a job lined up and had never had any problems holding down a job. Respondent-father's stepmother testified that she would help support him and commented that he was wonderful with children.

Respondent-mother had a daughter removed from her care in 2007 after respondent-mother overdosed on drugs. Respondent-mother did not lose her rights to that child, but did not care for her again. Respondent-mother admitted that she had problems with alcohol use, but claimed that she was attending counseling, substance abuse classes, and parenting classes at a local charity. She stated that she had to restart the classes after missing more than three classes. The CPS caseworker testified that respondent-mother arrived to four out of nine parenting time visits intoxicated and a neighbor testified that respondent-mother drank daily and that it seemed to interfere with her parenting ability. The CPS worker testified that she believed it was in MRM's best interests if both parents' rights were terminated so that MRM could have a stable environment that was free of violence.

Respondents pleaded no contest to the court's jurisdiction. Before accepting their pleas, the trial court explained that by accepting the plea, they would give up several rights, including

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<sup>1</sup> The record does not indicate whether MJ was 17 or 18 years old when DHHS substantiated the charges.

the right to call witnesses and have a jury decide if jurisdiction was proper. The trial court stated that it would “accept the petition as true for the purpose of establishing jurisdiction as if read in verbatim into the record,” but the trial court did not state the allegations contained in the petition. The trial court did not warn respondents that the plea could be used as evidence in a proceeding to terminate parental rights.

The trial court terminated respondent-father’s parental rights pursuant to MCL 712A.19b(3)(g), (i), (j), and (m). The trial court reasoned that respondent-father only had a five-year respite from criminal proceedings during his adult life, that most of his crimes involved violence, and that he did not understand his substance abuse issues enough to deal with them. The trial court noted that respondent-father did not have successful relationships with his other four children, and concluded that respondent-father could not provide a safe home for MRM within a reasonable time given MRM’s age.

The trial court terminated respondent-mother’s parental rights pursuant to MCL 712A.19b(3)(d)(i)-(ii), (j), and (k)(iii). The trial court reasoned that MRM had been physically injured while in respondent-mother’s care, and it would only be a matter of time until he was injured again if he were returned to her care and custody. The trial court also noted that respondent-mother minimized her problems of substance use, and concluded that it would be in MRM’s best interests to gain permanence elsewhere because he had never seen his father and had not led a life of safety and peace with his mother.

## II. ANALYSIS

We review for clear error the trial court’s determination that at least one statutory ground for termination is supported by clear and convincing evidence. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed . . . .” *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). If termination is supported by at least one statutory ground, additional grounds for the trial court’s decision need not be considered. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

### A. RESPONDENT-FATHER

Respondent-father argues that the trial court erred by terminating his parental rights pursuant to MCL 712A.19b(3)(j) because there was no indication that his past crimes or alcohol use would likely cause harm to MRM. We disagree.

MCL 712A.19b(3)(j) provides that termination is appropriate where:

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.

Here, the trial court considered respondent-father’s extensive, violent criminal history which spanned all but five years of his adult life. The trial court also noted that respondent-father had made limited progress in understanding the role substance abuse issues played in his poor decision-

making which led to his repeated incarceration. Respondent-father testified that his alcohol use and subsequent poor decisions were, in part, triggered by stressful circumstances, and that he was receiving services that helped him process these triggers in a more appropriate manner. Nonetheless, respondent-father's newfound skills had not been tested in an unstructured environment. Given his history of physically harming children in his care and custody and the likelihood that respondent-parent would face environmental stressors upon his release, we cannot conclude that the trial court committed error requiring reversal when it concluded that statutory grounds for termination existed pursuant to MCL 712A.19b(3)(j). Because one basis for termination has been established, we need not consider the additional grounds for termination considered by the trial court. *HRC*, 286 Mich App at 461.<sup>2</sup>

## B. RESPONDENT-MOTHER

Respondent-mother first argues that the trial court committed error requiring reversal by not informing her of the allegations in the petition or warning her that her plea to jurisdiction could be used against her during the termination trial, contrary to the plain language of MCR 3.971(B). We disagree.

We review respondent-mother's unpreserved claim of error for plain error affecting substantial rights. *In re Ferranti*, 504 Mich 1, 29; 934 NW2d 610 (2019). To prevail on her claim, respondent-mother "must establish that (1) error occurred; (2) the error was plain, i.e., clear or obvious; and (3) the plain error affected [her] substantial rights. And the error must have seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings." *Id.* (quotation marks and citations omitted; second alteration in original).

MCR 3.971(B) provides, in relevant part:

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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<sup>2</sup> Nonetheless, we conclude that termination was proper pursuant to MCL 712A.19b(3)(i) (parental rights to a sibling terminated due to neglect or abuse and failure to rectify conditions). Although respondent-father's parental rights to MA were terminated in 2002 because of his failure to participate in services after MA was automatically removed from his care and custody, it was respondent-father's physical abuse of BP that brought about MA's removal in the first place. Additionally, respondent-father admitted that he had not rectified the conditions that led to the termination of his parental rights to MA. We further conclude that termination was appropriate under MCL 712A.19b(3)(m)(i) (parent convicted of a sex offense and continuing the relationship would be harmful to the child). Respondent-father's AWICSC conviction, MCL 750.520g(1), is an enumerated offense in MCL 712A.19b(3)(m)(i). Respondent-father had never met MRM, and thus, there was no parent-child relationship for the trial court to consider. Additionally, respondent-father does not challenge the trial court's determination that termination was in MRM's best interests. Accordingly, termination in the instant matter also was appropriate under MCL 712A.19b(3)(m)(i).

- (1) of the allegations in the petition;
- (2) of the right to an attorney, if respondent is without an attorney;
- (3) that, if the court accepts the plea, the respondent will give up the rights to
  - (a) trial by a judge or trial by a jury,
  - (b) have the petitioner prove the allegations in the petition by a preponderance of the evidence,
  - (c) have witnesses against the respondent appear and testify under oath at the trial,
  - (d) cross-examine witnesses, and
  - (e) have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor;
- (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.

In this case, before respondents entered a plea to jurisdiction, the trial court warned them that by accepting the plea, they would give up several rights, including the right to call witnesses and have a jury decide if jurisdiction was proper. However, the trial court did not outline the allegations in the petition or provide the petition in writing to respondent-mother prior to accepting her plea. The trial court also did not inform respondents that the plea could be used as evidence in a proceeding to terminate parental rights. Thus, the trial court failed to comply with the requirements of MCR 3.971(B)(1) and MCR 3.971(B)(4).

Due process is denied when a trial court's fails to advise a respondent of the rights being waiving pursuant to MCR 3.971(B)(3) and the consequences of entering a plea pursuant to MCR 3.971(B)(4). *Ferranti*, 504 Mich at 31. Under such circumstances, reversal is required. *Id.* But a trial court's failure to comply with MCR 3.971(B)(4) does not result in a due process violation when the trial court has informed the respondent of most of their rights pursuant to MCR 3.971(B)(3). *In re Pederson*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2020) (Docket No. 349881); slip op at 10.

Respondent-mother was present at other hearings prior to entering her plea where the trial court discussed the allegations in the petition, and respondent-mother did not claim at trial, nor on appeal, that she did not understand the allegations in the petition. Moreover, the record indicates that respondent-mother was served with a summons prior to the adjudication hearing. MCR 3.920(G) provides that "a summons must be served . . . in accordance with [MCR 3.920(B)]." As it relates to child protective proceedings, MCR 3.920(B)(3)(d) requires that the summons must "have a copy of the petition attached." Respondent-mother does not contend that service was deficient in this case, or that she otherwise did not receive a copy of the petition that made her aware of the allegations well before she entered her plea. In fact, one month before entering her

plea in the instant case, respondent-mother pleaded guilty to one charge of domestic violence for breaking MRM's arm. Accordingly, we cannot conclude that respondent-mother's plea was unknowing or involuntary. *Ferranti*, 504 Mich at 31.

Additionally, respondent-mother provides no legal authority in support of her contention that the trial court's failure to inform her of the allegations pursuant to MCR 3.971(B)(1) resulted in a due process violation. Nor are we aware of any such authority that requires such a finding in the event that the trial court simultaneously fails to advise respondent of the consequences of entering her plea pursuant to MCR 3.971(B)(1). Rather, a due process violation occurs when a trial court fails to inform a respondent that they are waiving any of the important rights listed in MCR 3.971(B)(3) and fails to inform the respondent of the consequences of entering their plea as described in MCR 3.971(B)(4). *Ferranti*, 504 Mich at 31. Respondent-mother does not dispute that she was fully informed of all of the rights she was waiving by entering her plea pursuant to MCR 3.971(B)(3) even if she was not informed that her plea could be used against her as required by MCR 3.971(B)(4). Thus, we cannot conclude that any due process violation occurred. *Ferranti*, 504 Mich at 31; *Pederson*, \_\_\_ Mich App at \_\_\_. Accordingly, respondent-mother fails to carry her burden of demonstrating prejudice, and reversal is not required. *Pederson*, \_\_\_ Mich App at \_\_\_.

Respondent-mother next argues that the trial court erred by determining that the statutory grounds for termination were supported by clear and convincing evidence. We disagree.

"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." *VanDalen*, 293 Mich App at 139.

The trial court did not err by terminating respondent-mother's parental rights in part pursuant to MCL 712A.19b(3)(b)(i)(ii) and (j), which provide:

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

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(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

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(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.

Respondent-mother does not contest that she broke MRM's arm, causing him physical injury, but argues that the trial court erred by concluding that there was a reasonable likelihood that he would suffer further harm in her care. However, respondent-mother was drinking when the injury occurred. Her neighbor testified that respondent-mother drank daily and that it seemed to interfere with her ability to parent. Four out of nine parenting time visits were cancelled because respondent-mother was intoxicated. Respondent-mother's intoxication resulted in the removal of MRM's sibling, and respondent-mother had to restart her substance abuse classes because of her failure to appear at them. Under these circumstances, the trial court did not err by concluding that MRM likely would be injured again if returned to his mother while her substance abuse problem continued to be out of control and that termination of respondent-mother's parental rights are in MRM's best interests. Therefore, the trial court did not err by terminating respondent-mother's rights pursuant to MCL 712A.19b(3)(b)(i)(ii) and (j). We need not consider whether additional grounds for termination were proper. *HRC*, 286 Mich App at 461.<sup>3</sup>

### III. CONCLUSION

The trial court did not commit error requiring reversal when it terminated the parental rights of respondent-father and respondent-mother. Accordingly, we affirm.

/s/ Stephen L. Borrello  
/s/ Amy Ronayne Krause  
/s/ Michael J. Riordan

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<sup>3</sup> Nonetheless, we conclude that termination was proper pursuant to MCL 712A.19b(3)(k)(iii) (severe physical abuse) because respondent-mother broke MRM's arm in two places.