

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

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*In re* A. R. MERLO, Minor.

UNPUBLISHED

August 13, 2020

No. 351148

Eaton Circuit Court

Family Division

LC No. 18-019924-NA

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Before: MURRAY, C.J., and CAVANAGH and SWARTZLE, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court's order terminating his parental rights to his daughter AM under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that the child would be harmed if returned to the parent). Respondent-mother released her parental rights and did not appeal. Petitioner chose not to file an appellate brief addressing respondent-father's arguments. Based on our review of the record, we affirm the termination of respondent-father's parental rights.

**I. BACKGROUND**

Police pulled over respondent-father while he was driving a vehicle with AM in the back seat. Police found methamphetamine residue inside the vehicle, and discovered a handgun, ammunition, and brass knuckles in the back of the vehicle within reach of AM. A search of respondent-father's home, which he shared with respondent-mother, revealed methamphetamine and weapons. The petitioner initiated this case and removed the child from respondents' home. Two days before the preliminary hearing, petitioner received a new referral indicating that methamphetamine was being used in the house and that AM had walked in on respondent-father using methamphetamine. Both parents admitted using drugs and tested positive in drug screens. While he was out on bond, respondent-father committed an act of domestic violence against respondent-mother. He eventually pleaded guilty to that crime and other crimes related to the evidence found by police, and he also entered a plea to adjudication in this case. Because of his criminal convictions, respondent-father was incarcerated during the pendency of this case.

The caseworker indicated that no face-to-face parenting time occurred between the child and respondent-father once he was incarcerated because the jail could not accommodate such visits

in a manner that was safe for the child. The trial court suspended parenting time unless an appropriate accommodation could be made by the jail and it was recommended by the guardian ad litem and the child's counselor. While incarcerated, respondent-father attempted to stay in contact with AM by sending her letters and a handmade coloring book, but the child reacted badly to this contact, suffering nightmares. AM did not want to talk about respondent-father with her therapist, and she displayed disassociation, a reaction related to severe trauma, when respondent-father was brought up. AM was diagnosed with Post-Traumatic Stress Disorder, among other psychological issues caused by exposure to neglect and domestic violence. AM acted out domestic abuse and arrest scenes with her therapist, and she explained that the safest place to hide when a father was hitting a mother was under the couch. While in prison, respondent-father participated in the limited services available to him. Petitioner recommended that he take a Keeping Families Together course, but indicated that the course would take between six and nine months to complete, and the services could not begin until his release from prison. AM's therapist testified that the time it would take to reunite AM with respondent-father would be harmful to her, and that she needed permanence and stability to help resolve her issues.

Respondent-father requested that AM be placed in his mother's care in Texas. He testified at trial that he offered his mother as a family placement for the child at the outset of the case, and that he continued to ask for that placement throughout the pendency of the case. Petitioner took the position that placement of the child with respondent-father's relative in Texas was inappropriate, so long as the goal was reunification of the child with respondent-father, because reunification services would be difficult if the child was in Texas and respondent-father was in Michigan. At trial, respondent-father conceded that petitioner advised him that it would be difficult to plan for reunification if the child were placed in Texas, and he agreed to have AM placed close to home as part of agreeing to reunification.

After a trial at which respondent-father testified, the trial court terminated his parental rights on the statutory grounds described above, and this appeal followed.

## II. ANALYSIS

Termination of parental rights is appropriate when the petitioner proves one or more statutory grounds for termination by clear and convincing evidence. *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012). This Court reviews for clear error a trial court's decision that the statutory grounds for termination have been met. *Id.* "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).

### A. STATUTORY GROUNDS

The statutory grounds for termination are listed in MCL 712A.19b(3). Only one statutory ground needs to be proven by clear and convincing evidence to terminate parental rights. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "The mere present inability to personally care

for one's children as a result of incarceration does not constitute grounds for termination." *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010).

The trial court did not clearly err by finding that statutory grounds to terminate respondent-father's parental rights existed under MCL 712A.19b(3)(c)(i). The termination of parental rights is appropriate under subparagraph (c)(i) when more than 182 days have passed since the child came under the trial court's jurisdiction, the conditions that led to adjudication continue to exist, and there is no reasonable likelihood that those issues will be rectified in a reasonable time considering the child's age. Here, it is undisputed that 182 days had passed between the date the child came under the trial court's jurisdiction and the termination of respondent-father's parental rights.

The evidence presented at trial indicated that AM was diagnosed with PTSD and had other psychological issues as a result of neglect and violence she had witnessed. When visiting her therapist, AM played out scenes of arrests and domestic violence between her parents. AM did not want to talk about respondent-father, and did not want his letters read to her. AM's therapist testified that the child needed permanence and stability to resolve her behavioral issues. Petitioner's witnesses further testified that respondent-father needed to take the Keeping Families Together course to develop the parenting skills necessary to reunite with the child, and that it would take between six and nine months, at best, for him to complete that course. AM's therapist testified that it would be harmful for AM to have to wait that length of time while respondent-father attempted to remedy his issues. Because AM had a significant need for permanence and stability, she had serious issues with interacting with respondent-father, and he needed six to nine months to improve his parenting skills, the trial court did not clearly err by determining that there was no reasonable likelihood that the conditions that led to adjudication would be resolved within a reasonable time, considering the needs and age of AM. Because only one statutory ground for termination need be established, we need not consider the other statutory grounds on which the trial court relied to terminate respondent-father's parental rights. See *Ellis*, 294 Mich App at 32.

On appeal, respondent-father argues that the trial court erroneously based its decision to terminate his parental rights on the fact that he was incarcerated. We recognize that the failure to personally care for one's child as a result of incarceration does not constitute proper grounds for termination. *In re Mason*, 486 Mich at 160-161. A parent may provide proper care and custody for a child while in prison because the parent does not need to personally care for the child. *Id.* at 161.

Respondent-father argues that the trial court erred in terminating his parental rights because he requested that AM be placed in his mother's care in Texas, and the child was placed with nonrelatives. This argument is unpersuasive. At trial, respondent-father conceded that petitioner advised him that it would be difficult to plan for reunification if the child were placed in Texas, and he agreed to have AM placed close to home as part of agreeing to reunification. Further, although respondent-father was incarcerated for the majority of the time this case was pending, the trial court did not rely on MCL 712A.19b(3)(h) (respondent is imprisoned for a period exceeding two years) as a basis for termination of his parental rights. Therefore, respondent-father's argument is without merit, and this Court's decision in *In re Baham*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2020) (Docket No. 349595) is inapplicable.

As explained above, the trial court's decision to terminate respondent-father's parental rights under MCL 712A.19b(3)(c)(i) was not based solely on his incarceration. Petitioner provided testimony that respondent-father would need six to nine months to complete a program necessary to improve his parenting skills, and that testimony was based specifically on respondent-father's circumstances, not on how the average case progresses. Unlike the respondent in *Baham*, respondent-father's parental visitation was suspended, and AM reacted badly to his letters. In addition, while respondent-father intended to live with his father after incarceration, and he was interested in having his mother involved with AM, there was not the same level of family support present in this case as noted in *Baham*. Therefore, *Baham* does not require reversal in this case.

The trial court did not clearly err by finding that statutory grounds to terminate respondent-father's parental rights existed under MCL 712A.19b(3)(c)(i).

#### B. BEST INTERESTS

A trial court may terminate parental rights, after finding that the statutory grounds for termination are met, only if termination is in the child's best interests. See *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). This determination is made by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court reviews for clear error the trial court's determination regarding the child's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The trial court may consider factors such as the child's bond with the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of the foster home over the parent's home. *Id.* The trial court may also consider the parent's past history of domestic violence, the parent's compliance with the service plan, the parent's visitation with the child, the child's well-being in care, and the possibility of adoption. *Id.* at 714.

Here, the trial court did not clearly err by determining that termination of respondent-father's parental rights was in AM's best interests. AM had serious issues with respondent-father and she had negative emotional reactions whenever he was mentioned to her. AM had a need for permanence and stability to improve her psychological and behavioral issues. AM's therapist testified that the time needed for respondent-father to reunify with AM would be harmful to AM because AM needed stability to deal with her issues with abandonment and separation anxiety. Meanwhile, the foster family met her needs and was willing to adopt her. In light of this evidence, the trial court did not clearly err by determining that termination of respondent-father's parental rights was in AM's best interests.

Affirmed.

/s/ Christopher M. Murray

/s/ Mark J. Cavanagh

/s/ Brock A. Swartzle