

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

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*In re* GATES/GOMEZ/RODRIGUEZ/FERGUSON,  
Minors.

UNPUBLISHED  
September 10, 2020

No. 352446  
Midland Circuit Court  
Family Division  
LC No. 15-004504-NA

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Before: CAVANAGH, P.J., and BORRELLO and TUKEL, JJ.

PER CURIAM.

Respondent appeals as of right the trial court’s order terminating her parental rights to the minor children, NG, AR, AG, CF, and DF, 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 of harm if returned to parent).<sup>1</sup> We affirm.

I. BACKGROUND

In October 2017, the children were removed from respondent’s care because she failed to address DF’s medical needs. Because DF’s skull was not developing appropriately, he needed to wear a helmet for approximately 22 hours every day to correct the shape of his head. Respondent admitted that she did not have DF wear the helmet as recommended. Because of this medical neglect, DF was at risk of developing vision, hearing, and jaw issues. After the children were removed from her care, respondent demonstrated significant progress in addressing the barriers to reunification as she maintained stable employment and housing. She was also participating in all services offered to her and appeared to be benefiting from these services. Therefore, in December 2018, the trial court granted the request of the Department of Health and Human Services (DHHS) to return the children to respondent’s care. However, at the next review hearing, the caseworker testified that the children were not returned to her care because there were “a lot of red flags” that

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<sup>1</sup> During the proceedings, the trial court also terminated the parental rights of the father of CF and DF. He is not a party to this appeal. NG’s father voluntarily relinquished his parental rights in 2007, and AR’s father voluntarily relinquished his parental rights in 2015. The trial court determined that AG had no legal father.

developed. In particular, it was substantiated that respondent's former long-term partner had sexually abused AR, and respondent's boyfriend was living with her in violation of her lease. In July 2019, the trial court granted DHHS's request to file a termination petition, which DHHS filed on August 1, 2019. Following a termination hearing, respondent filed an objection to the referee's recommendation to terminate her parental rights. The trial court held a hearing and ultimately concluded that it would reach the same decision.

## II. STATUTORY GROUNDS

Respondent argues that the trial court erred by finding that there was clear and convincing evidence to terminate her parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). We disagree.

“This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination.” *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). “A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016) (quotation marks and citation omitted).

Termination under MCL 712A.19b(3)(j) is proper when “[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.” In this case, the record supports the trial court's conclusion that based on respondent's mental health issues, the children would be harmed if returned to her care.

Respondent has a history of severe anxiety and depression, which causes her to “shut down” and makes it difficult for her to fulfill her responsibilities. The individual who performed respondent's psychological evaluation testified that based on her mental health issues, it was very likely that she would not be able to manage taking care of the children and that they would have to be removed from her care again. As the trial court stated, the children came into care because of the severe medical neglect of DF, and the children would “require significant services moving forward.” The children participate in a variety of speech, behavioral, physical, and occupational therapy services. However, the caseworker testified that respondent had “not shown any initiative” in engaging with these services as she never attended these sessions or even asked about the children's progress with these services. Given respondent's continuing mental health issues and lack of interest in the children's developmental needs, the trial court reasonably concluded that the children “would either suffer additional, possibly more serious, medical neglect or come back into the child protection system.” Accordingly, the trial court did not err by terminating respondent's parental rights under MCL 712A.19b(3)(j). Because only one statutory ground is required to terminate a respondent's parental rights, we need not address the additional statutory grounds on which the trial court terminated her parental rights. See *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012).

## III. BEST INTERESTS

Respondent argues that the trial court clearly erred by finding that termination of her parental rights was in her children's best interests. We disagree.

We review the trial court's determination that termination is in a child's best interests for clear error. *In re Schadler*, 315 Mich App at 408. "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *Id.* (quotation marks and citation omitted).

When determining whether termination is in the best interests of the child, the trial court should place its "focus on the child rather than the parent." *Id.* at 411. "[T]he 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 Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (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 children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714. Although it is generally in the best interests of each child to keep siblings together, the trial court must consider the best interests of each child individually. *In re Olive/Metts*, 297 Mich App at 42. "[I]f the best interests of the individual children *significantly* differ, the trial court should address those differences when making its determination of the children's best interests." *In re White*, 303 Mich App at 715.

Although respondent had a bond with the children, the trial court focused on how respondent failed to adequately benefit from the case service plan, the children's need for permanency and stability, and the high probability that the children would be adopted. In particular, the caseworker testified that respondent's progress throughout the case was cyclical. After the children were not returned to respondent's care in late 2018 or early 2019, she did not begin to demonstrate consistent progress again until July 2019. The caseworker also testified that she did not believe respondent made enough meaningful progress for the trial court to return the children to her care. The children had been in out-of-home placement for over two years. Further, NG's foster family expressed interest in adopting NG and potentially AG. CF and DF's foster family was willing to adopt them. Further, AR's foster family was willing to provide long-term placement until DHHS could find an adoptive home. The trial court found that adoption would "provide the Children with the best chance for healthy development and long term success." It also concluded that although there were some age gaps between the children, it did not need to address the best interests of each child separately because they were "all similarly situated" in that they were "quite young" and had a "high need for permanency."<sup>2</sup> Based on the record evidence, we discern no clear error in these findings or the trial court's determination that termination of respondent's parental rights was in the children's best interests.

#### IV. REASONABLE EFFORTS

Finally, respondent argues that DHHS did not provide reasonable efforts to reunify her with the children. We disagree.

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<sup>2</sup> At the time of the termination hearing, NG was 12, AR was eight, AG was four, and CF and DF were three.

Respondent did not object to the nature of the services or accommodations at the time the case service plan was adopted, so respondent's issue is unpreserved. See *In re Frey*, 297 Mich App at 247. We review respondent's unpreserved issue for "plain error affecting substantial rights." *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

Generally, "the [DHHS] has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017), citing MCL 712A.18f(3)(b) and (c); MCL 712A.19a(2). In order to make reasonable efforts, DHHS adopts a service plan aimed at rectifying the conditions that caused the child's removal. *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). See also MCL 712A.18f(3)(d) (stating that the service plan shall include a "[s]chedule of services to be provided to the parent . . . to facilitate the child's return to his or her home"). Although DHHS "has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of the respondent[] to participate in the services that are offered" and "demonstrate that [he or she] sufficiently benefited from the services provided." *In re Frey*, 297 Mich App at 248.

In this case, we are not persuaded that respondent would have fared better even if DHHS offered other services. See *In re Fried*, 266 Mich App at 543. The testimony at the termination hearing demonstrated that respondent showed inconsistent and insufficient progress despite being provided, and even engaging in, numerous services. Accordingly, the trial court did not plainly err by concluding that DHHS made reasonable efforts to preserve and reunify the family.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Stephen L. Borrello  
/s/ Jonathan Tukel