

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

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*In re* K. M. BRENNER, Minor.

UNPUBLISHED  
January 21, 2021

No. 354170  
Allegan Circuit Court  
Family Division  
LC No. 17-057794-NA

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Before: REDFORD, P.J., and MARKEY and BOONSTRA, JJ.

PER CURIAM.

Respondent-father appeals the order terminating his parental rights to minor child KB<sup>1</sup> under MCL 712A.19b(3)(b)(i) (parent’s act caused sexual abuse), (c)(i) (conditions that led to adjudication continue to exist), (j) (reasonable likelihood of harm if returned to parent), and (k)(ix) (sexual abuse of a sibling). We affirm.

I. FACTUAL BACKGROUND

During December 2016, respondent engaged in a multiday conversation with another man over the Kik messaging application. The man discussed sexually abusing his own minor child and respondent sent the man several sexually explicit images depicting young girls. Respondent also stated that he sexually abused his minor stepson and, when asked for a photo, sent the man a picture of an unrelated child. Respondent maintained that he did not believe the man was a pedophile and sent him the sexually explicit images thinking it was a joke. A search conducted pursuant to a warrant revealed that respondent had two additional sexual images of children on his phone, one video, and several images depicting bestiality activity with the family dog, which respondent denied. Respondent pleaded guilty to one count of possession of child sexually abusive materials (CSAM), and was ordered to have no contact with his wife or stepson.

KB was born in October 2017, and the Department of Health and Human Services (DHHS) filed a supplemental petition six days later. Respondent was sentenced to serve 24 months’ imprisonment for his conviction and was paroled in March 2020. While incarcerated, respondent

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<sup>1</sup> KB’s mother was not a respondent in this action and is not a party to this appeal.

completed multiple programs aimed at his sexual issues and issues with substance abuse. Three different sexual offender risk assessments concluded that respondent presented a low risk to reoffend and respondent was waived from completing the Michigan Sex Offender Program because of his low risk classification. One risk evaluator offered an addendum to his initial report after learning about the additional sexual material found on respondent's devices, and noted that respondent was much more sexually preoccupied than he presented in his interview, but that did not change the evaluator's conclusion regarding respondent's low risk to reoffend. The trial court declined to allow respondent to have any contact with KB throughout the case, finding that respondent posed a potential risk of harm to her.

At the termination trial, respondent maintained that he sent the CSAM images as a joke and denied that he sexually abused his stepson or committed bestiality. The trial court terminated respondent's parental rights to KB pursuant to MCL 712A.19b(3)(b)(i), (c)(i), (j), and (k)(ix). The trial court concluded that respondent lacked credibility and continued to downplay his actions and refused to accept responsibility. The trial court found that respondent still had not rectified the issues that led to adjudication and that he posed a risk of harm to KB. The court also found that respondent had sexually abused his stepson based on his Kik conversation, although the stepson did not indicate any abuse at a forensic interview. The court found that termination served KB's best interests because respondent had never met her and had no bond with her, respondent was morally unfit to have any contact with her, and the risk of future contact remained an ongoing issue.

## II. ANALYSIS

### A. REASONABLE EFFORTS TOWARD REUNIFICATION

Respondent first argues that the trial court erred by terminating his parental rights because DHHS failed to make reasonable efforts toward reunification. We disagree.

We review for clear error a trial court's determination of whether petitioner made reasonable efforts to provide services aimed at reunification. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005).

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). However, MCL 712A.19a(2)(d) provides that reasonable efforts are not required if "(t)he parent is required by court order to register under the sex offenders registration act." In this case, respondent pleaded guilty to one count of CSAM possession and was required to register as a Tier II sex offender for 25 years. Therefore, DHHS had no obligation to make reasonable efforts to reunify respondent with KB. Regardless, DHHS provided respondent with multiple services aimed at reunification. Respondent's caseworker referred him to a psychological evaluation, provided him with a workbook until he could begin services while incarcerated, and maintained communication with respondent's counselors and parole officer to ensure that respondent completed necessary services both during and after incarceration. Therefore, the trial court did not err by finding that DHHS made reasonable efforts toward reunification.

## B. STATUTORY GROUNDS FOR TERMINATION

Respondent next argues that the trial court erred by terminating his parental rights pursuant to MCL 712A.19b(3)(c)(i) and (j). We disagree.

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, 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) (citation omitted).

If termination is supported by at least one statutory ground, the additional grounds for the trial court's decision need not be considered. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). In this case, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i), (c)(i), (j), and (k)(ix), but respondent challenges termination on only two grounds: MCL 712A.19b(3)(c)(i) and (j). Because respondent raises no error regarding two of the four grounds for termination, we need not address the remaining grounds. Nevertheless, we conclude that the trial court did not err by finding that clear and convincing evidence established grounds for terminating respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (j).

Respondent first argues that the trial court erred by terminating his parental rights pursuant to MCL 712A.19b(3)(c)(i) because he rectified the conditions that led to adjudication. We disagree.

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

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 . . . [t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

In this case, although respondent completed programs while incarcerated aimed at his sexual and substance abuse issues, the trial court concluded that the record evidence established that the positive reports were not necessarily reliable. The record supports the trial court's conclusion because respondent refused to address the true issues, failed to take responsibility, minimized his behaviors, and failed to address the issues that led to adjudication. At least one evaluator issued an addendum to his initial report because respondent failed to be honest about the extent of his sexual behavior. At trial, respondent continued to downplay his activities despite clear evidence to the contrary. Respondent described his Kik conversation as lasting only an hour during one drunken evening. The transcript of the chat conversation, however, showed that it went on for several days, including more than 12 straight hours of active conversation during which respondent repeatedly requested CSAM videos. Respondent denied having any additional CSAM material or bestiality encounters, but detectives recovered photos of both from respondent's phone. Respondent also denied any domestic violence against his ex-wife, but she testified that he had put his hands around her throat and pushed her against a wall. Despite the positive assessments and

completed programs, respondent failed to take responsibility and continued to minimize his behavior by making light of it as if such conduct constituted a joke. Clear and convincing evidence established that respondent had not rectified the conditions that led to adjudication and would not do so within a reasonable time given KB's age.

Respondent next argues that the trial court erred by terminating his parental rights under MCL 712A.19b(3)(j) because he did not pose a risk of harm to KB. We disagree.

Under MCL 712A.19b(3)(j), termination is appropriate where "[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." Although three sexual risk assessments categorized respondent as a low risk to reoffend, the trial court found the evidence unpersuasive because respondent downplayed his behavior to at least one evaluator. Further, at trial, respondent downplayed his activities despite clear evidence to the contrary. Although respondent's caseworker recognized that no statistical evidence established that respondent's CSAM conviction alone showed that he was more likely to commit sexual contact with a child, the trial court found based on respondent's admissions in his chat with the other person that respondent had sexually abused his stepson. In the Kik chat, respondent also discussed in detail the other man's sexual abuse of the man's daughter. Respondent declared his own sexual abuse of his stepson, repeatedly expressed his admiration and envy of the other man's sexually abusive conduct, requested photos of the sexual abuse, and stated that he "was good with any age" including "babies." Further, some of the images recovered from respondent's electronic devices depicted children as young as three years old. The trial court did not err by finding that such evidence established that respondent posed an active risk of sexual harm to a child, particularly one of KB's age. Clear and convincing evidence established statutory grounds for terminating respondent's parental rights pursuant to MCL 712A.19b(3)(j).

### C. SUSPENSION OF PARENTING TIME

Respondent next argues that the trial court erred by suspending his parenting time without making a finding of harm as required by MCL 712A.13a(13). We disagree.

We review a trial court's decision to suspend parenting time for an abuse of discretion. *In re Laster*, 303 Mich App 485, 490-491; 845 NW2d 540 (2013). The interpretation and application of court rules are questions of law which we review de novo. *In re Mu*, 264 Mich App 270, 276-277; 690 NW2d 495 (2004).

MCL 712A.13a(13) provides:

If a juvenile is removed from the parent's custody at any time, the court shall permit the juvenile's parent to have regular and frequent parenting time with the juvenile. Parenting time between the juvenile and his or her parent shall not be less than 1 time every 7 days unless the court determines either that exigent circumstances require less frequent parenting time or that parenting time, even if supervised, may be harmful to the juvenile's life, physical health, or mental well-being. If the court determines that parenting time, even if supervised, may be harmful to the juvenile's life, physical health, or mental well-being, the court may

suspend parenting time until the risk of harm no longer exists. The court may order the juvenile to have a psychological evaluation or counseling, or both, to determine the appropriateness and the conditions of parenting time.

This Court has recognized that “[t]he primary goal of statutory interpretation is to discern the intent of the Legislature by first examining the plain language of the statute.” *In re Harper*, 302 Mich App 349, 354; 839 NW2d 44, 47 (2013) (quotation marks and citation omitted). The statute must be read in its entirety, with every word or phrase given its plain and ordinary meaning. *Id.* “When the language is clear and unambiguous, no further judicial construction is required or permitted, and the statute must be enforced as written.” *Id.* (quotation marks and citation omitted).

MCL 712A.13a(13) lacks ambiguity and plainly states that “[i]f a juvenile is *removed* from the parent’s custody at any time” (emphasis added), then a finding of harm is required. In this case, respondent was convicted of CSAM possession before KB was born and KB’s mother had sole legal and physical custody of KB. Respondent never had custody of KB and, in fact, had never met her. KB, therefore, had not been “removed” from respondent’s custody and MCL 712A.13a(13) did not apply. Further, the trial court’s decision to suspend parenting time did not “remove” KB from respondent’s care because the trial court simply continued the standing custody order that had been implemented during respondent’s divorce from KB’s mother. Therefore, the trial court did not err.

#### D. BEST INTERESTS

Respondent also argues that the trial court erred by failing to weigh all the evidence when reviewing the best interests of KB. Respondent further argues that the trial court erred by failing to note that KB’s placement with her mother weighed against termination. We disagree.

We review for clear error a trial court’s decision that termination serves a child’s best interests. *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 . . . .” *In re BZ*, 264 Mich App at 296.

Best interests are determined on the basis of the preponderance of the evidence. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). When determining the best interests of the child, this Court focuses on the child, rather than the parent. *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016). A trial court should weigh all the evidence and consider a variety of factors, including:

[T]he 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. 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 701, 713-714; 846 NW2d 61 (2014) (quotation marks and citations omitted).]

Respondent first argues that the trial court did not give adequate weight to KB's placement with her mother when determining KB's best interests. Respondent's argument lacks merit. In *In re Schadler*, 315 Mich App 406, 412-413; 890 NW2d 676 (2016), this Court considered a similar claim of error and clarified that:

MCL 712A.13a(1)(j) defines "relative," and biological mother is not included in the definition. See MCL 712A.13a(1)(j). Therefore, because BS's biological mother was not a "relative" for purposes of MCL 712A.19a, the trial court was not required to consider that relative placement. Respondent's argument is misplaced.

In this case, although the trial court recognized that KB was in the custody of her mother, it was not required to factor that into its best-interest determination. Accordingly, the trial court did not err in this regard.

The trial court considered the applicable factors and analyzed the well-developed factual record. The trial court discussed a multitude of factors at length to determine that termination served KB's best interests. The trial court found that a preponderance of the evidence established that respondent lacked moral fitness to have any contact with KB not only because of his CSAM activity and alleged sexual abuse of his stepson, but also because of his substance abuse, drinking and driving activity, and testimony of domestic violence. Further, the record established that respondent had no bond with KB. Respondent's continuing minimization of his behavior despite the evidence to the contrary established that KB faced an ongoing serious risk of harm. A preponderance of the evidence supported the trial court's finding that termination of respondent's parental rights served KB's best interests.

Affirmed.

/s/ James Robert Redford

/s/ Jane E. Markey

/s/ Mark T. Boonstra