# STATE OF MICHIGAN

# COURT OF APPEALS

*In re* A. L. SHERRILL, Minor.

UNPUBLISHED
April 22, 2021

No. 354987
Wayne Circuit Court
Family Division
LC No. 19-000856-NA

Before: GLEICHER, P.J., and BORRELLO and SWARTZLE, JJ.

PER CURIAM.

The circuit court terminated respondent-father's parental rights to his then 3½-year-old daughter, AS, under MCL 712A.19b(3)(j) (child is reasonably likely to be harmed if returned to the parent's home), without first providing reunification services. Reunification services were not required and termination of parental rights was supported given evidence that respondent had murdered the child's mother in the child's presence. We affirm.

## I. BACKGROUND

On March 1, 2019, police found respondent standing over the dead body of his ex-girlfriend, AS's mother. The body lay on the ground outside her vehicle, and young AS was in her car seat inside. The mother had suffered a gunshot wound to the back of her neck. Respondent claimed that the mother had shot herself or that the gun accidentally discharged when he tried to take it from her. AS witnessed these events; she described that her mother was "sleeping" and fell out of the car. Police arrested respondent at the scene, the prosecutor charged him with first-degree premediated murder, and he remained in jail awaiting his criminal trial throughout these proceedings.

Respondent pleaded to grounds for jurisdiction as he was incarcerated and could not provide care and custody for his child. AS and her mother had been living with the child's maternal grandparents for over a year and the court continued the child's placement with her grandparents. The court determined that reunification efforts would not be made given the aggravated circumstances in this case. And no services were ever offered or provided to respondent.

Respondent's criminal trial was repeatedly adjourned and apparently still has not happened. Respondent eventually pleaded no contest to the existence of a statutory ground for

termination of his parental rights—that AS was reasonably likely to be harmed if placed in respondent's care. A Children's Protective Services report with information on the investigation into AS's mother's death, a postmortem report, and a forensic report on the safety features of the gun which killed AS's mother were entered into the record in support of the plea. The court later ruled that terminating respondent's parental rights was in AS's best interests.

## II. DISCUSSION

Respondent now challenges the termination of his parental rights without the provision of reunification services. He further contends that termination was "premature" as his criminal trial had yet to be held and that termination was not in the child's best interests as she was placed with relatives.

### A

Respondent did not make a timely objection to the court's ruling that reunification services were not required in this case. See *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). In any event, any objection would have been fruitless.

Pursuant to MCL 712.19a(2), services to reunify parent and child must be provided absent certain aggravated circumstances. Respondent correctly contends that the murder of the subject child's other parent is not a listed aggravated circumstance excusing the state from providing services. However, "this Court will affirm when the trial court reaches the right result for the wrong reason." *Demski v Petlick*, 309 Mich App 404, 441; 873 NW2d 596 (2015). Here, respondent had already pleaded to court jurisdiction and termination was sought in the initial petition. Under such circumstances, MCR 3.977(E) provides that "additional efforts for reunification of the child with the respondent shall not be made." Stated differently, reunification efforts are not required "when termination of parental rights is the agency's goal" from the outset. *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013) (quotation marks and citation omitted). The Department of Health and Human Services sought termination of respondent's parental rights in the initial petition. Accordingly, respondent was not entitled to reunification services.

### B

Respondent's contention that his parental rights could not be terminated until after his criminal conviction is also unavailing.

> Child protective proceedings are not criminal proceedings. The purpose of child protective proceedings is the protection of the child, while criminal cases focus on the determination of the guilt or innocence of the defendant. The juvenile code is intended to protect children from unfit homes rather than to punish their parents. [*In re Brock*, 442 Mich 101, 107-108; 499 NW2d 752 (1993) (citations omitted).]

Different burdens of proof apply in child protective and criminal proceedings as well. The petitioner must present clear and convincing evidence to support statutory grounds for termination. *In re HRC*, 286 Mich App 444, 453; 781 NW2d 105 (2009). The petitioner is not required to prove

beyond a reasonable doubt in the child protective proceeding that respondent committed the crime underlying the criminal matter.

Here, respondent pleaded no contest to a ground supporting termination—that AS would face likely harm if placed in his care. This plea was supported by record evidence underlying the criminal charges. Clear and convincing record evidence existed to support that respondent killed the child's mother in the child's presence. A jury ultimately might determine that this evidence is insufficient to establish beyond a reasonable doubt that respondent committed murder. But that could not prevent a civil court from finding termination appropriate.

C

Respondent also argues that the trial court's best-interest decision was clearly erroneous because AS was placed with relatives. In determining whether termination is in a child's best interests, the trial court

> should consider a wide variety of factors that may include 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. 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 6 1(2014) (quotation marks and citations omitted).]

A child's placement with relatives is an "explicit factor to consider" in a best-interest analysis and generally weighs against termination. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012).

The court did take AS's relative placement into account when considering whether termination was in the child's best interests. Indeed, the court delayed the best-interest hearing to allow respondent an opportunity to develop his evidence and argument in this regard. In its ruling, the court explicitly discussed AS's placement with her maternal grandparents and concluded that AS's need for stability and the risk of harm to AS because of respondent's involvement in her mother's death outweighed the relative placement factor. Respondent is therefore not entitled to relief.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ Stephen L. Borrello
/s/ Brock A. Swartzle