STATE OF MICHIGAN

COURT OF APPEALS

In re SANTIAGO, Minors.

UNPUBLISHED
September 2, 2021

Nos. 356503; 356504
Mackinac Circuit Court
Family Division
LC No. 2019-006198-NA

Before: TUKEL, P.J., and K. F. KELLY and GADOLA, JJ.

PER CURIAM.

In Docket No. 356503, respondent-mother appeals as of right the order terminating her parental rights to SS, AS, and BS, under MCL 712A.19b(3)(c)(*i*) (conditions that led to the adjudication continue to exist), (c)(*ii*) (other conditions exist and have not been rectified), and (j) (reasonable likelihood of harm if returned to the parent). In Docket No. 356504, respondent-father appeals as of right the same order terminating his parental rights to the children under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), and (j). For the reasons stated in this opinion, we affirm the trial court's order terminating respondents' parental rights in Docket Nos. 356503 and 356504.

I. UNDERLYING FACTS

Respondents are intellectually impaired. Respondent-mother had her parental rights to two other children terminated in 2013 and 2014.[1] On June 13, 2019, the Department of Health and Human Services (DHHS) filed the petition in this case to remove the children from the home. The children ranged in age from two months old to four years old. The DHHS had received a complaint that respondents had been homeless for about 10 months, they had been bouncing from hotel to hotel, and they would have no place to live as of June 14. Additionally, Children's Protective Services (CPS), which had been in contact with respondents since June 3, 2019, had concerns about whether the children were receiving enough to eat, respondents' supervision of the children, and the children's overall well-being. SS and AS were both anemic. AS had several developmental delays and could not walk or talk at nearly three years of age. The braces prescribed for her ankles had been lost in 2018 and respondents did not replace them. AS was not

[1] Respondent-father was not the father of those children.

participating in her physical therapy. BS was also developmentally delayed and, at three months of age, was unable to hold her head up and her legs did not show age-appropriate motor function. AS had diagnosed and untreated impetigo, and BS had diagnosed and untreated thrush. CPS workers had observed respondents outside their hotel room while the children were alone inside the room. Additionally, BS was observed in a bouncing seat on a bed with a bottle propped up. Despite respondents' being told that it was unsafe to leave a baby in a bouncing seat on a bed, the following day CPS workers again observed BS in a bouncing seat on a bed with a bottle propped up.

Respondents each admitted sufficient allegations from the petition for the trial court to assume jurisdiction over the children. The children were placed together in a foster home. Psychological evaluations of both respondents were conducted on July 30, 2019, by clinical psychologist Timothy Strauss. Respondents were assessed as intellectually impaired, and their prognosis for parenting was extremely poor because of their intellectual limitations. The evaluations provided recommendations for services and recommended that services be demonstrated, either by video or by hands-on demonstration. The evaluations additionally recommended a parent-child observation. After the October 17, 2019 parent-child observation, Strauss concluded that it was unlikely that either respondent would ever be in a position to handle the children independently without the assistance of a third person.

The DHHS provided a number of services, including supervised parenting time, parenting time observation and parenting skills education, housing assistance, budgeting assistance, family planning, hygiene, anger management, infant mental health services, developmentally disabled services for respondent-mother, and life management skills support. Services were tailored to accommodate respondents' intellectual limitations. Skills taught were reinforced with repetition, but by the next parenting visit respondents would need to be prompted and guided to implement the skills. Parenting time was chaotic and overwhelming for respondents, with respondents unable to control the children or to effectively impose discipline. While there is no dispute that respondents complied with their case service plans; they were bonded with the children; and they made progress with some services, such as housing, respondents were unable to manage the children, even in a controlled setting. The service workers did not believe that respondents made progress in their parenting skills and techniques, or that they had the ability to keep the children safe. Both Strauss and the family's therapist at Hiawatha Behavioral Health (HBH) opined that neither parent would be able to parent independently without a support person. Ultimately, the trial court concluded that respondents had not sufficiently benefited from services and that it was in the children's best interests to terminate respondents' parental rights. These appeals followed.

II. DOCKET NO. 356503

A. RESPONDENT-MOTHER'S PLEA

Respondent-mother argues that the trial court should not have accepted her plea without taking "special care" to ensure that she had the capacity to enter a knowing, understanding, and voluntary plea. We find no error in the plea-taking process and, therefore, disagree.

1. PRESERVATION AND STANDARD OF REVIEW

A respondent preserves a motion to withdraw his or her plea by filing a motion to withdraw it in the trial court. *In re Pederson Minors*, 331 Mich App 445, 462-463; 951 NW2d 704 (2020). Respondent-mother failed to do so. Thus, the issue is unpreserved.

Unpreserved issues are reviewed for plain error. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id*. (quotation marks omitted), citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008). The appellant bears the burden of persuasion with respect to prejudice. See *Carines*, 460 Mich at 763 ("It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice.") (quotation marks and citation omitted).

2. ANALYSIS

At the time of the plea, MCR 3.971 provided, in part, as follows:[2]

> (B) Advice of Rights and Possible Disposition. 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:
>
> (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
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> (a) trial by a judge or trial by a jury,
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> (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

[2] MCR 3.971(B)(7) and (8) became effective on June 12, 2019. Respondent-mother entered her plea in this case on July 29, 2019. MCR 3.971 has been amended twice since then, but for the purposes of this opinion we will address the version that existed at the time respondent-mother entered her plea.

(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.

* * *

(6) that appellate review is available to challenge a court's initial order of disposition following adjudication, and such a challenge can include any issues leading to the disposition, including any errors in the adjudicatory process;

(7) that an indigent respondent is entitled to appointment of an attorney to represent the respondent on appeal of the initial dispositional order and to preparation of relevant transcripts; and

(8) the respondent may be barred from challenging the assumption of jurisdiction in an appeal from the order terminating parental rights if they do not timely file an appeal of the initial dispositional order under MCR 3.993(A)(1), 3.993(A)(2), or a delayed appeal under MCR 3.993(C).

(C) Appellate Review. The respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the respondent's parental rights are terminated at the initial dispositional hearing pursuant to MCR 3.977(E). In addition, the respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the court fails to properly advise the respondent of their right to appeal pursuant to subrule (B)(6)-(8).

A review of the plea transcript shows that respondent-mother was not advised of the rights in MCR 3.971(B)(6) to (8). Thus, respondent-mother "may challenge the assumption of jurisdiction in [this] appeal." MCR 3.971(C).

MCR 3.971(D)(1) states that "[t]he court shall not accept a plea of admission or of no contest without satisfying itself that the plea is knowingly, understandingly, and voluntarily made." See also *In re Pederson*, 331 Mich App at 464 (quotation marks and citation omitted) ("for a plea to constitute a valid waiver of constitutional rights, the person entering it must be made fully aware of the direct consequences of the plea."). Jurisdictional pleas in child-protective proceedings invoke constitutional due process guarantees. *In re Pederson*, 331 Mich App at 464-465. As explained in *In re TK*, 306 Mich App 698, 706; 859 NW2d 208 (2014):

It is axiomatic that a parent has a fundamental liberty interest in the care, custody, and management of his or her child, which is constitutionally protected. Both the Michigan Constitution and the United States Constitution preclude the government from depriving a person of life, liberty, or property without due process of law.

> There are two types of due process: procedural and substantive. Procedural due process requires notice and a meaningful opportunity to be heard before an impartial decision-maker. The essence of a substantive due process claim is the arbitrary deprivation of liberty or property interests. Ultimately, due process requires fundamental fairness. [Quotation marks and citations omitted.]

Respondent-mother appears to invoke procedural, rather than substantive, due process by arguing that the trial court failed to adequately ensure that her plea was knowing, understanding, and voluntary. Consequently, we now consider whether the trial court plainly erred by failing to sua sponte implement additional procedural safeguards to ensure respondent-mother's plea was knowing, understanding, and voluntary in light of her cognitive impairment.

The plea hearing transcript shows that the trial court complied with MCR 3.971(B)(1) to (4). At the time of respondent-mother's plea, the trial court was aware of the allegations in the first amended petition, including that in 2010 respondent-mother had a child removed from her care due, in part, to mental health concerns and developmental disabilities, and that she was cognitively impaired. The record before the trial court, however, failed to establish the extent of respondent-mother's cognitive impairment. As such, the trial court was forced to rely on its own observations of respondent-mother in the courtroom. The trial court evidently acknowledged respondent-mother's cognitive impairment because it altered its normal plea-taking process by taking a short recess before taking respondent-mother's plea and allowed respondent-mother's counsel, instead of counsel for the DHHS, to question respondent-mother to establish the factual basis for the plea after respondent-mother apparently became emotionally distraught before offering her testimony. Accordingly, the record reflects that the trial court took extra steps to ensure respondent-mother's plea was knowing, understanding, and voluntary. While the trial court failed to sua sponte take the extra precautions respondent-mother now asks for, it did not plainly err by doing so.

Finally, to the extent respondent-mother argues the trial court was required to make additional accommodations for her under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*., we note that respondent-mother failed to include this argument in her statement of questions presented. "An issue not contained in the statement of questions presented is waived on appeal." *English v Blue Cross Blue Shield of Mich*, 263 Mich App 449, 459; 688 NW2d 523 (2004); See also MCR 7.212(C)(5) (requiring appellants to state their arguments in their statement of questions involved). As such, the issue is waived. Furthermore, respondent-mother additionally failed to develop this argument. As such, the issue is abandoned. See *Cheesman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015) ("An appellant may not merely announce a position then leave it to this Court to discover and rationalize the basis for the appellant's claims; nor may an appellant give an issue only cursory treatment with little or no citation of authority."). Consequently, we decline to address this issue further.

As noted earlier, at the time of the plea the trial court had limited information about respondent-mother's intellectual disability. Respondent-mother does not suggest what accommodations should have been made, nor does she offer any authority in support of her contention that the ADA is applicable to the plea-taking procedure. There is nothing in the transcript of the plea hearing that would suggest that respondent-mother did not understand the language used by the trial court.

B. REASONABLE ACCOMMODATIONS IN COURT PROCEEDINGS

Respondent-mother argues that the trial court failed to make reasonable accommodations for her intellectual disability so that she could participate in court proceedings, thereby denying her the protections of the ADA as well as her right to due process under the Fourteenth Amendment.

1. PRESERVATION AND STANDARD OF REVIEW

Arguments for additional accommodations under the ADA must be made in a timely manner at the trial court level. *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). Respondent-mother raises her ADA argument for the first time on appeal. Thus, the issue is unpreserved. As explained earlier, unpreserved issues are reviewed for plain error. *In re VanDalen*, 293 Mich App at 135.

2. ANALYSIS

The ADA does not provide a defense to proceedings to terminate parental rights, but the ADA requires the DHHS to reasonably accommodate a disabled parent when providing services directed at removing the barriers to reunification.[3] *Terry*, 240 Mich App at 24-25. Respondent-mother argues that the ADA similarly requires the trial court to reasonably accommodate an intellectually disabled parent during court proceedings, and that due process and fundamental fairness require that she understand the trial court proceedings.[4] But this Court has already concluded that the ADA does not apply to termination of parental rights proceedings. *Id*. at 25 ("[W]e hold that a parent may not raise violations of the ADA as a defense to termination of parental rights proceedings."). Rather, the ADA imposes requirements on *petitioner* to accommodate a respondent's disability, not on the trial court to alter its procedures. *Id*. at 24-25. Consequently, the ADA did not require the trial court to make accommodations for respondent-mother during its proceedings.

Respondent-mother additionally argues, however, that her right to due process required the trial court to make accommodations for her disability. Respondent-mother relies on the three-part due-process test established by the United Stated Supreme Court in *Mathews v Eldridge*, 424 US 319; 96 S Ct 893; 47 L Ed 2d 18 (1976), which this Court has previously ruled applies to

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[3] Title II of the ADA requires that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 USC 12132. Public entities, such as the DHHS, must make "reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless . . . the modifications would fundamentally alter . . . the service" provided. 28 CFR 35.130(b)(7) (2016).

[4] Respondent-mother asserts that reasonable accommodations might include modifying language to be easier to understand, or "exploring the idea" of appointing a next friend or guardian.

termination of parental rights cases. See *In re Vasquez*, 199 Mich App 44, 46-48; 501 NW2d 231 (1993). As the Supreme Court explained in *Matthews*:

> [O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. [*Mathews*, 424 US at 334-335.]

Terminating a parent's parental rights to his or her children undoubtedly is an exceptionally important private interest. Additionally, the risk of an erroneous deprivation of that right because a parent lacks the mental capacity to understand the proceedings is certainly greater than if the parent understands the proceedings. The value of ensuring the parent understanding the proceedings, therefore, is also high and does not impose an especially high burden on the trial court, especially if a guardian ad litem is appointed for the parent. But this issue does not merely require us to determine if the trial court should have made accommodations for respondent-mother. Rather, we must determine whether the trial court failed to make accommodations to the extent that the trial court's procedures warrant reversal under plain error review.

We need not determine which accommodations the trial court should have made for respondent-mother, however, because respondent-mother has failed to establish how she was prejudiced by the trial court's procedures. Respondent-mother's due process argument on this issue amounts to a facial challenge to the trial court not sua sponte appointing a guardian ad litem for her given her limited mental capacity. But respondent-mother fails to establish how the lack of a guardian ad litem prejudiced her or how a guardian ad litem for respondent-mother could have changed the outcome of the termination proceedings.[5] Consequently, respondent-mother cannot establish plain error requiring reversal and she is not entitled to relief on this issue.

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[5] Respondent-mother relies on a potentially misleading citation to the Michigan Rules of Professional Conduct for this portion of her argument. Respondent-mother claims that she cites to MRPC 1.14, but she actually cites to the comments following MRPC 1.14 and its discussion of the challenges an attorney faces when his or her client has a mental disability. MRPC 1.14, in its entirety, provides:

> (a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority or mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

C. REASONABLE ACCOMMODATIONS IN SERVICES[6]

Respondent-mother argues that the DHHS did not modify the services it provided, to accommodate her intellectual disability under the ADA. We disagree.

1. PRESERVATION AND STANDARD OF REVIEW

"The time for asserting the need for accommodation in services is when the court adopts a service plan . . . ." *Terry*, 240 Mich App at 27. If a respondent fails to timely "object or indicate that the services provided to [him or her] were somehow inadequate," the issue is not preserved. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Respondent-mother did not assert in the trial court that services were not tailored to accommodate her intellectual disability. Thus, the issue is unpreserved. As explained earlier, unpreserved issues are reviewed for plain error. *In re VanDalen*, 293 Mich App at 135.

2. ANALYSIS

"In general, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). The service plan must outline "the steps that both [petitioner] and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *In re Hicks/Brown Minors*, 500 Mich 79, 85-86; 893

> (b) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

Respondent-mother asks us to conclude that the trial court should somehow know when a party lacks sufficient mental capacity without the party's attorney directing the trial court's attention to the issue. We decline to do so. MRPC 1.14 adequately addresses the situation and its comments highlight the potential problems an attorney may face when raising the issue of a client's lack of mental capacity. While asking for a guardian ad litem is not an easy decision, the Michigan Rules of Professional Conduct provide adequate guidance for attorneys on the issue and, contrary to respondent-mother's arguments on appeal, do not create a situation in which the trial court must act as a watchdog to ensure that parties have sufficient mental capacity to participate in proceedings. A party's attorney is in a much better position than the trial court to make that determination and it would require a truly exceptional situation for a trial court to commit plain error requiring reversal by failing to sua sponte determine that a party lacked mental capacity to effectively participate in proceedings. This case does not present such a situation.

[6] Although respondent-mother's statement of the question presented refers to a challenge to the statutory grounds for termination, the body of the argument in her brief does not address the statutory grounds for termination. Rather, respondent-mother's argument relates to the DHHS's failure to accommodate her disability under the ADA in its case service plan and the provision of services to her. As such, we will address that argument on appeal and consider her statutory grounds argument abandoned. See *Cheesman*, 311 Mich App at 161.

NW2d 637 (2017). When servicing a parent with disabilities, the ADA requires petitioner to make " 'reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless . . . the modifications would fundamentally alter . . . the service' " provided. *Hicks/Brown*, 500 Mich at 86, quoting 28 CFR 35.130(b)(7) (2016) (alterations in original). The DHHS fulfills its duty of reasonable accommodation when it "modif[ies] its standard procedures in ways that are reasonably necessary to accommodate a disability under the ADA." *Id.*

Respondent-mother does not explain how the services provided should have been modified to accommodate her intellectual disability, nor does she specify what services should have been offered but were not. In *In re Sanborn*, ___ Mich App ___; ___ NW2d ___ (2021) (Docket Nos. 354915 and 354916), this Court was faced with a similar deficiency in the respondent's argument. This Court said:

> Notably, mother's entire argument merely provides conclusory statements about the services that were offered and how those services were not appropriate given her intellectual disability. However, mother does not provide any substantive argument on how those services were deficient or how they were not reasonable or appropriate in light of her intellectual disability. Mother also does not identify any service that she believes would have benefited her more than the services that were actually provided. Mother merely lists the results of the psychological evaluation and the recommendations of Dr. Kieliszewski to essentially argue that the services offered by the DHHS were insufficient. But, when challenging the services offered, mother must establish that she would have fared better if other services had been offered. See *In re Fried*, 266 Mich App at 542-543. Without an identification of services to accommodate mother's intellectual disability, we are left to speculate what other services the DHHS *could* have offered. [*Id.* ___; slip op at 5 (emphasis in original).]

This Court concluded that the respondent-mother's "blanket denial that the services offered were insufficient in light of her intellectual disability, without identifying any services that would have been appropriate in light of such disability or how the services that were offered were deficient . . . does not establish plain error affecting substantial rights." *Id.* at ___; slip op at 6.

In this case, the DHHS recognized and made reasonable accommodations for respondent-mother's intellectual disability when providing a variety of services aimed at reunifying her with the children. Service professionals provided in-home parenting education and used visual aids, demonstrative techniques, and hands-on demonstrations to teach parenting skills. The service providers used repetition in an effort to help respondent-mother retain the skills being taught. Instead of giving respondent-mother "normal" books to read and homework for her to do, an "easy reader" book was provided to respondent-mother. The foster care worker used abbreviated case service plans with simpler terms, and went over the case service plans with respondent-mother. The DHHS obtained a four-week extension of in-home services from U.P. Kids supportive visitation to accommodate respondent-mother's slower pace of learning. The DHHS thereafter contracted with another worker to provide respondent-mother with additional parenting time observation and parenting skills education. The worker was proactive and intervened during parenting time to demonstrate parenting techniques. The DHHS also had respondent-mother's

caseworker at Hiawatha Behavioral Health join the sessions when budgeting services were being provided in an attempt to deal with respondent-mother's anger during the sessions so that she could make progress with budgeting.

Overall, the DHHS made significant accommodations for respondent-mother. Respondent-mother has not shown that the accommodations made were not reasonably sufficient, nor does she identify how the services could or should have been better tailored in light of her intellectual disability. She similarly has not established that she would have fared better if other services had been offered. Thus, respondent-mother has failed to establish plain error affecting her substantial rights.

III. DOCKET NO. 356504

A. BENEFIT FROM SERVICES

Respondent-father first argues that the trial court clearly erred by finding that he failed to benefit from services. We disagree.

1. PRESERVATION AND STANDARD OF REVIEW

Whether respondent-father benefitted from services was a central issue at the trial court. Thus, the issue is preserved. *In re TK*, 306 Mich App at 703.

This Court "reviews for clear error the trial court's factual findings." *In re White*, 303 Mich App 701, 709-710; 846 NW2d 61 (2014). To be clearly erroneous, a trial court's determination must be more than possibly or probably incorrect. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.* Finally, this Court must consider "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id.*

2. ANALYSIS

As an initial matter, we note that respondent-father argues that the trial court erred by finding that he failed to benefit from the services the DHHS provided him. But respondent-father fails to establish the importance of this factual finding. For example, whether respondent-father benefitted from his services is central to the trial court's statutory basis and best-interests findings, but, standing alone, an incorrect factual finding without more does not warrant reversal. Yet this is precisely how respondent-father presents this issue—as a free-floating evaluation of whether the trial court was correct or incorrect regarding whether respondent-father benefited from services, unmoored from any legal significance an error in that regard would have created. Given that respondent-father argues that the trial court erred by finding that the termination of his parental rights was in the children's best interests—and that he does not make any statutory basis argument—we assume respondent-father raises this issue in light of the trial court's best-interests findings. We take the time to mention this in the hope that future briefs will not have the same shortcoming. Nevertheless, we now address the trial court's factual finding that respondent-father did not benefit from the services the DHHS provided to him.

Generally, when a child is removed from the parent's custody, the petitioner must make reasonable efforts to rectify the conditions that caused the child to be removed, by adopting a case-service plan outlining the steps petitioner and the respondent will take to rectify the conditions and unify the family. *In re Hicks/Brown*, 500 Mich at 85. "While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App at 248. A respondent also must demonstrate that he or she has benefitted from services proffered. *Id*.

The trial court did not clearly err when it found that respondent-father failed to benefit from the services provided. While respondent-father did maintain employment and, with the help of service providers, secured housing and financial assistance for the housing for a year, he made no progress on budgeting, and it was unknown whether he will be able to be maintain the housing when the financial assistance ends in November 2021. Service workers saw no improvement in parenting ability, including discipline, supervision, and safety. Despite repetitive lessons and demonstrative and hands-on techniques, respondent-father needed prompting and guidance to implement the parenting skills being taught, even in the therapeutic setting. As late as January 2021, respondent-father became stressed during a parenting time visit and had to end the visit early. He was overwhelmed and exasperated when alone with the children. At the time of the termination hearing, the therapist for the family testified that respondent-father would be unable to parent the children without the assistance of another person. Thus, the record does not support respondent-father's argument that the trial court clearly erred by finding that he failed to benefit from services.

B. REASONABLENESS OF SERVICES DURING THE COVID-19 PANDEMIC

Respondent-father argues that if he failed to benefit sufficiently from services it was because of the lack of in-person services during the COVID-19 pandemic shutdown. We disagree.

1. PRESERVATION AND STANDARD OF REVIEW

A party must challenge in the trial court the adequacy of services provided to him or her. *In re Frey*, 297 Mich App at 247. Respondent-father, however, challenges for the first time on appeal the adequacy of services offered to him. Thus, the issue in unpreserved. Respondent-father similarly argues for the first time on appeal that the services offered to him violated his right to due process. That argument also is unpreserved because respondent-father failed to make it at the trial court level. See *In re TK*, 306 Mich App at 703. As explained earlier, unpreserved issues are reviewed for plain error. *In re VanDalen*, 293 Mich App at 135.

2. ANALYSIS

Respondent-father does not identify how the services that were provided between March 2020 and June 2020 were deficient, except that the services were not in-person.[7] Respondents received mostly in-home services from June 2019 until COVID-19 pandemic shutdowns were imposed in March 2020. At the review hearing on May 4, 2020, which was the first hearing after the pandemic shutdown, respondent-father's counsel agreed with the recommendations in the DHHS court report, and requested only that "visits go unsupervised overnight at some point." The trial court noted that, because of the pandemic, a number of in-person services were not safe to have at that time. The trial court explained that if services could not be conducted within the statutory time frame for reunification it would "not be holding that against anyone if services cannot be safely conducted." The trial court said that parenting education, mental health services, parenting time, case management services, and financial assistance had been offered for at least part of the reporting period.

At the permanency planning hearing on June 8, 2020, the foster care worker said that services had been provided by video conference and telephone since the pandemic shutdown began. In-person parenting time was resuming that week. Respondent-father points to the foster care worker's testimony that the lack of in-person services between March and June 2020 impacted the progress that he made during that period. The foster care worker said that, because of the cessation of in-person services, the parents needed more time for in-person parenting education and in-person services from HBH. The trial court agreed, and declined to change the permanency plan. The trial court noted that the state was in a "COVID emergency" during a large part of the reporting period and that there had been restrictions on services. The trial court also said that it was difficult to say that the DHHS was not making reasonable efforts "if those things that they typically did could not be done, and it's also difficult to say parents weren't making progress if they weren't able to access services the trial court ordered."

It appears that in-person services were primarily limited only during the period of March to June 2020. Nonetheless, services continued during this period, although by videoconference and by phone. At the August 31, 2020 dispositional review hearing, the foster care worker said that the family was having in-office therapy at HBH, respondents had taken the children to a dentist's appointment, and respondents would be attending the children's medical appointments in September. A worker was providing parenting education and observing unsupervised parenting time visits, and Wraparound services in the home were beginning that week. Respondents had obtained a larger home in June 2020 with assistance from Community Action, and Community Action was assisting respondents with budgeting.

The record establishes that the DHHS provided respondent-father with extensive services. These services continued, albeit remotely, when the COVID-19 pandemic prevented the DHHS from offering in-person services. Respondent-father blames these remote services for his lack of

[7] We have already stated the legal requirements for offering services to a respondent, see Part III(A)(2), and due process challenges, see Parts II(A)(2) and II(B)(2). We find it unnecessary to repeat those legal standards here.

progress with his service plan. But he has not established how those services prejudiced him. Indeed, we do not see how they could have prejudiced respondent-father because meeting in person from March to June 2020 was not an option given the governor's emergency orders. The DHHS's only alternative was to offer respondent-father remote services, which it did. These services did not prevent respondent-father from adequately participating in proceedings and they adequately weighed the risk of infection with respondent-father's need for in-person services. Indeed, the DHHS offered respondent-father in-person services long before much of the state reopened after the initial COVID-19 shutdowns. Thus, on this record, respondent-father has failed to show that the DHHS did not provide adequate services, nor has he shown that he was denied due process as a result of the temporary suspension of in-person services at the beginning of the COVID-19 pandemic. Respondent-father has failed to demonstrate plain error.

C. THE CHILDREN'S BEST INTERESTS

Respondent-father argues that the trial court clearly erred by finding that it was in the best interests of the children to terminate respondent-father's parental rights. We disagree.

1. PRESERVATION AND STANDARD OF REVIEW

Whether termination of respondent-father's parental rights was in the children's best interests was a central component of the trial court proceedings. As such, the issue is preserved. See *In re TK*, 306 Mich App at 703.

"[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's ruling regarding best interests are reviewed for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016).

2. ANALYSIS

"The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App at 713. In considering the child's best interests, the trial court's focus must be on the child and not the parent. *In re Moss*, 301 Mich App at 87. "In deciding whether termination is in the child's best interests, the 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. When the trial court makes its best interests-determination, it may rely upon evidence in the entire record, including the evidence establishing the statutory grounds for termination. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized in *In re Moss*, 301 Mich App at 83. In cases concerned with multiple children, the trial court must determine each child's interests individually. *In re Olive/Metts*, 297 Mich App at 43-44. But a trial court is not required to make individual and redundant best-interest findings for each child when the best interests of the children do not significantly differ. *In re White*, 303 Mich App at 715-716.

Respondent-father does not dispute that the children were thriving together in the same foster care home placement. He argues that that the trial court did not adequately consider the progress he was making before the pandemic caused a temporary termination of in-person services and that he should be given more time to participate in services. Specifically, he emphasizes his bond with the children and his consistent parenting time, success in maintaining employment and obtaining housing, and engagement with service providers. He maintains that, with additional proper training, he would be capable of learning to parent effectively.

The trial court considered this evidence in its opinion and order, acknowledging the bond between respondent-father and the children and recognizing that respondent-father maintained housing and employment. He consistently participated in parenting time. However, the trial court found that the crux of the matter centered on respondent-father's ability to parent. Although respondent-father complied with the case service plan, seemed to understand the demonstrative parenting skills being taught, and cooperated with the service providers, there was no evidence that he sufficiently benefited, if he benefited at all, from nearly 20 months of services aimed at improving his parenting skills. He needed prompting to implement parenting techniques and skills during every visit. Parenting time remained chaotic, and respondent-father was unable to control the children using the disciplinary and supervisory techniques taught, despite constant repetition. He became overwhelmed while attempting to parent the children by himself. He did not reach a level where he could safely parent the children without assistance. Concerns existed about respondent-father's understanding of the children's medical needs. The therapist from HBH testified that respondent-father would need 24-hour assistance to parent safely. Similarly, the clinical psychologist who conducted respondent-father's psychological evaluation and who performed a parent-child observation opined that the prognosis for respondent-father to be able to parent the children was extremely poor because of his intellectual impediments.

In view of the testimony demonstrating respondent-father's limitations, as well as the children's substantial medical needs, the trial court did not clearly err by concluding that termination of respondent-father's parental rights was in the best interests of the children. The evidence shows that respondent-father's intellectual strictures rendered him incapable of providing adequate care to the children, either at the time of the termination hearing or within a reasonable time. In contrast, the testimony showed that the children were thriving in foster care, where they had been placed together since the initial removal. They were bonded to their foster parents, their medical needs were being met, and they were happy and well-adjusted. The young children had been in foster care for 20 months and needed permanency and stability. This Court has previously upheld termination of parental rights under similar circumstances when, although the respondent loved her children and was participating in parenting classes, she was diagnosed as developmentally disabled, did not comprehend her child's medical issues, and would require day-to-day assistance in caring for her children's basic needs. *Terry*, 240 Mich App at 16, 20, 23. Accordingly, the trial court did not clearly err by finding that it was in the children's best interests to terminate respondent's parental rights.

IV. CONCLUSION

For the reasons stated in this opinion, we affirm the termination of respondent-mother's parental rights in Docket No. 356503 and the termination of respondent-father's parental rights in Docket No. 356504.

/s/ Jonathan Tukel
/s/ Kirsten Frank Kelly
/s/ Michael F. Gadola