STATE OF MICHIGAN

COURT OF APPEALS

In re GOFORTH, Minors.

UNPUBLISHED
September 14, 2023

Nos. 364158 and 364159
Wayne Circuit Court
Family Division
LC No. 2016-523673-NA

Before: LETICA, P.J., and MURRAY and PATEL, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right a December 1, 2022 order, which terminated their parental rights to their minor children, LG, MG, and JG, under MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), and (j) (reasonable likelihood the children will be harmed if returned to the parent). We affirm.

I. BACKGROUND

These matters began when petitioner, the Department of Health and Human Services (DHHS), filed a petition in October 2016, with respect to LG and MG. In relevant part, the petition alleged: (1) respondents had an extensive history with Child Protective Services, and (2) respondents failed to obtain appropriate medical treatment for MG after he was burned while in respondents' care. It was requested the trial court authorize the petition, remove LG and MG from respondents' care and custody, and exercise jurisdiction. After a preliminary hearing, the trial court authorized the petition and placed LG and MG in foster care. Respondents were granted supervised visitation.

After respondents admitted to allegations in the petition, the trial court exercised jurisdiction and ordered reasonable efforts toward reunification be made. The initial dispositional hearing was held in December 2016. Respondents were ordered to comply with their case service plans, which required them to submit to psychological assessments and to comply with, and benefit from, (1) parenting classes; (2) mental health therapy; and (3) services to address substance abuse, including submitting to random drug screens. Respondents were also ordered to obtain and maintain suitable housing and legal sources of income, attend parenting time, and maintain contact with the caseworker. Respondents failed to submit to substance screenings, tested positive for

substances, and were terminated from services. Respondents also had difficulty maintaining stable housing.

In November 2017, JG was born to respondents. JG was born with diabetes and cocaine in his system. A petition was filed, requesting the trial court authorize the petition, take JG into care, and exercise jurisdiction over JG. The trial court exercised jurisdiction over JG after respondents admitted to allegations in the petition. Respondents were ordered to continue to engage in services, but their progress continued to be poor. In September 2019, DHHS filed a supplemental petition for termination. Following a termination hearing, the trial court found grounds for termination were established under MCL 712A.19b(3)(c)(*i*), (c)(*ii*) (other conditions exist that could have caused the children to come within the trial court's jurisdiction), (g) (failure to provide proper care and custody), and (j). However, the trial court found termination of respondents' parental rights was not in the children's best interests. Respondents were provided with additional services, but they failed to sufficiently progress. In March 2022, DHHS filed another supplemental petition for termination.

The trial court held the termination hearing in August 2022, and November 2022. The trial court found grounds for termination were established under MCL 712A.19b(3)(c)(*i*) and (j) and that termination was in the children's best interests. In so concluding, the trial court acknowledged JG was in the care of a relative and found reasonable efforts toward reunification were made. These appeals followed.[1]

II. REASONABLE EFFORTS TOWARD REUNIFICATION

Respondents argue the trial court clearly erred by finding DHHS made reasonable efforts toward reunification. We disagree.

A. STANDARD OF REVIEW

"We review for clear error the trial court's factual finding that DHHS made reasonable efforts to reunify respondents with the child[ren]." *In re A Atchley*, 341 Mich App 332, 338; 990 NW2d 685 (2022). "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 Miller*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 364195); slip op at 2.

B. ANALYSIS

DHHS "has a statutory duty to make reasonable efforts to reunify the child and family . . . ." *In re A Atchley*, 341 Mich App at 338 (cleaned up).

[1] The matters were consolidated "to advance the efficient administration of the appellate process." *In re Goforth Minors*, unpublished order of the Court of Appeals, entered December 21, 2022 (Docket Nos. 364158 and 364159).

> This means [DHHS] must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification. While [DHHS] 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. This means a respondent-parent must both participate in services and demonstrate that they sufficiently benefited from the services provided. [*Id*. at 338-339 (cleaned up).]

Respondent-mother argues reasonable efforts were not made because DHHS failed to provide her with specialized parenting classes, a parenting coach, or a parenting partner. However, the record establishes respondent-mother completed a parenting class and was referred for supportive visitation services in 2018, and 2019. Respondent-mother was terminated from the supportive visitation service. When another referral was made in 2022, the "Supportive Visitation agency would not accept the referral" because of respondent-mother's previous lack of compliance and benefit. Caseworker Katrina Hayden testified DHHS representatives provided coloring books and board games to encourage respondent-mother to interact with the children and bond with them during parenting time. Nonetheless, respondent-mother often failed to interact with the children. Respondent-mother's attendance at parenting time was also inconsistent, which resulted in MG no longer wanting to see respondent-mother. While respondent-mother complains the children were not provided with infant mental health services, LG and MG were provided with individual therapy during the lengthy proceedings.

Respondents both argue the relative caregivers who cared for LG and JG at times during the proceedings often failed to facilitate parenting time. While this was a persistent issue, DHHS attempted to resolve it. Indeed, DHHS attempted to remove LG and JG from their respective relative placements because of the relatives' unwillingness to facilitate parenting time. The foster care review board and the trial court concluded it would be improper to remove LG and JG from their respective relative placements because it would be contrary to their best interests. The relatives were warned during the proceedings they needed to facilitate parenting time. More importantly, DHHS provided respondents with makeup parenting time. Additionally, testimony supports respondents and the children were bonded at the time of termination.

While respondents argue they were not provided with bus tickets and their new home was not inspected, evidence supports bus tickets were available to respondents during the proceedings. Additionally, at times during the proceedings, respondents had access to a vehicle. While respondents complain they had to travel to the DHHS building to pick up the bus tickets in the weeks leading up to termination, the trial court found it was reasonable for respondents to do so. The trial court ordered this after a DHHS representative mailed bus tickets to an address that was no longer viable for respondents. During the November 21, 2022 termination hearing, respondent-mother was on a bus, which supports she was able to obtain transportation on her own. While it is true respondents' new housing had not been evaluated at the time of the November 21, 2022 termination hearing, the lease had only been signed that morning. Additionally, Hayden expressed concern about going to the home because of respondents' aggressive behavior. Importantly, respondent-mother admitted she called caseworkers names and that respondent-father would often speak in the background when she was on the phone with caseworkers. Respondents often behaved

inappropriately or aggressively during hearings, and respondent-father stated he would "blow up" on people if he felt disrespected.

Respondent-father also argues that DHHS did not make reasonable efforts toward reunification because it did not sufficiently accommodate his disability. If a parent suffers from a disability under the ADA or suffers from "a known or suspected intellectual, cognitive, or developmental impairment," DHHS has a duty to reasonably accommodate the parent's disability by offering services designed to facilitate the children's return to the home. *In re Hicks*, 315 Mich App 251, 281-282; 890 NW2d 696 (2016), vacated in part on other grounds 500 Mich 79 (2017) (emphasis omitted). In *In re Hicks*, 315 Mich App at 282, this Court explained

> DHHS must offer evaluations to determine the nature and extent of the parent's disability and to secure recommendations for tailoring necessary reunification services to the individual. That DHHS must then endeavor to locate agencies that can provide services geared toward assisting the parent to overcome obstacles to reunification. If no local agency catering to the needs of such individuals exists, then DHHS must ensure that the available service providers modify or adjust their programs to allow the parent an opportunity to benefit equally to a nondisabled parent.

"[E]fforts at reunification cannot be reasonable . . . if the [DHHS] has failed to modify its standard procedures in ways that are reasonably necessary to accommodate a disability under the ADA." *In re Hicks/Brown*, 500 Mich at 86.

In December 2017, respondent-father was evaluated by psychologist Erin Brandt, who concluded respondent-father had an intellectual disability. Brandt opined respondent-father was "the perfect candidate for specialized, one-on-one parenting classes to help him learn better parenting techniques and develop a better awareness of critical issues." Brandt recommended, in relevant part, respondent-father submit to: (1) an adaptive functioning assessment to determine "his level of ability to care for his children independently," and (2) one-on-one parenting classes.

Brandt's report was provided to respondent-father's caseworkers, attorneys, the referees, and the trial court. While it does not appear respondent-father was referred for an adaptive functioning assessment, respondent-father was referred to supportive visitation services in 2018, and 2019. Respondent-father was terminated from the service. When another referral was made in 2022, the "Supportive Visitation agency would not accept the referral" because of respondent-father previous lack of compliance and benefit. Respondent-father was provided with a service to address his needs, but he failed to participate. While respondent-father attempts to blame respondent-mother for his failure to participate and notes the caseworkers often communicated with respondent-mother instead of him, the fact of the matter remains respondent-father continued his relationship with respondent-mother throughout most of the proceedings. At the time of termination, respondents were living in the same home and respondent-mother was pregnant. Additionally, despite receiving services through the Neighborhood Service Organization, which provides services to people with disabilities, respondent-father continued to demonstrate poor decision-making skills and a lack of accountability in the time leading up to termination.

In sum, respondents failed to uphold their "commensurate responsibility" to engage in and benefit from the services offered by DHHS. See *In re Frey*, 297 Mich App at 248. We fail to see how respondents would have fared better if DHHS had offered other services. See *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005). The trial court did not clearly err by finding DHHS made reasonable efforts to promote reunification.

III. STATUTORY GROUNDS

Respondents next argue the trial court clearly erred by finding statutory grounds to terminate their parental rights to the children under MCL 712A.19b(3)(c)(*i*) and (j). We disagree.

A. STANDARD OF REVIEW

"We review for clear error the trial court's finding that there are statutory grounds for termination of a respondent's parental rights." *In re A Atchley*, 341 Mich App at 343. "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 Miller*, ___ Mich App at ___; slip op at 2.

B. ANALYSIS

"To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence." *In re Pederson*, 331 Mich App 445, 472; 951 NW2d 704 (2020). The trial court in this case found grounds for terminating respondents' parental rights were established under MCL 712A.19b(3)(c)(*i*) and (j). We conclude the trial court did not clearly err by finding termination of respondents' parental rights was proper under MCL 712A.19b(3)(c)(*i*), which states:

> (c) 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 . . . .:
>
> (*i*) The 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.

This Court has previously held that termination was proper under (c)(*i*) where "the totality of the evidence amply support[ed] that [the respondent] had not accomplished any meaningful change in the conditions" that led to adjudication. See *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009).

In this case, at the time of termination, "182 or more days" had "elapsed since the issuance of [the] initial dispositional order[s]" with respect to respondents. See MCL 712A.19b(3)(c). Furthermore, the record establishes respondents had not accomplished any meaningful change in the condition that led to adjudication, i.e., their inability or unwillingness to properly care for the children. Indeed, respondent-mother was often without legal income and respondents were often without suitable, stable housing during the proceedings. While respondent-father collected Supplemental Security Income (SSI) during the proceedings and respondents had housing at the

time of the November 21, 2022 termination hearing, respondent-father did not sign the lease until the hours leading up to that hearing. Respondents would only have assistance with paying rent on that housing for four months. Additionally, respondent-mother was listed as an occupant on the lease, and the suitability of the home had not yet been evaluated. Special steps would need to be taken to evaluate the home because of respondents' aggressive behavior toward caseworkers. Respondent-father's testimony supported the housing was only temporary, as he hoped to obtain Section 8 housing in the future. And while respondent-mother had employment at the time of termination, she had only recently acquired it.

Additionally, as found by the trial court, respondents were unable to properly parent the children because they had issues with anger management despite being referred for individual therapy during the lengthy proceedings. Respondents demonstrated an inability to behave appropriately during parenting time. Indeed, Hayden testified respondent-mother would get upset with caseworkers in the children's presence. Respondent-mother also had difficulty understanding the children's needs and was "easily frustrated." Her communication with the children was "questionable." During parenting time, respondent-mother would often "sit to the side." This occurred despite respondent-mother being offered supportive visitation services and completing parenting classes. While respondent-father interacted with the children, he often yelled at them and failed to redirect them. Respondents' attendance at parenting time was also inconsistent, which resulted in MG no longer wanting to see or talk about respondents. Hayden did not believe respondents were equipped to handle MG's extensive special needs, and respondents were never permitted to have unsupervised visits with the children during the lengthy proceedings. Respondent-mother also threatened Hayden after the August 2022 termination hearing, which resulted in respondents being unable to attend parenting time in a building that did not have on-site security. In sum, "the totality of the evidence amply" supports respondents "had not accomplished any meaningful change" in the condition that led to adjudication. See *In re Williams*, 286 Mich App at 272.

The record also does not support respondents would be able to rectify their issues within a reasonable time considering the children's ages. See MCL 712A.19b(3)(c)(*i*). At the time of termination, LG was 10 years old, MG was 8-½ years old, and JG was five years old. LG and MG had been out of respondents' care for six years. JG had been out of respondents' care for his entire life. Nothing in the record supports respondents would rectify their inability or unwillingness to properly care for the children within a reasonable time. Indeed, respondents blamed others for the children being in care and behaved inappropriately during the 2022 termination hearing and other legal proceedings. Respondents also demonstrated an unwillingness to cooperate with caseworkers. The children desperately needed permanency, and could not wait an indefinite amount of time for respondents to improve. See, e.g., *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991) (holding, because the Legislature did not intend for children to be left in foster care indefinitely, it is proper to focus on how long it will take a respondent to improve and on how long the involved children can wait). Thus, the record supports the condition that led to

adjudication continued to exist and there was no reasonable likelihood respondents would rectify it within a reasonable time. See MCL 712A.19b(3)(c)(*i*).[2]

IV. BEST INTERESTS

Respondents next argue the trial court clearly erred by finding termination of their parental rights was in the children's best interests. We disagree.

A. STANDARD OF REVIEW

We review a trial court's best-interest determination for clear error. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). "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 Miller*, ___ Mich App at ___; slip op at 2.

B. ANALYSIS

"The trial court must order the parent's rights terminated if the [DHHS] has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children's best interests." *In re White*, 303 Mich App at 713. "The trial court should weigh all the evidence available to determine the children's best interests." *Id*. This Court focuses on the children—not the parent—when reviewing best interests. *In re A Atchley*, 341 Mich App at 346. When determining best interests,

> the 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 at 713-714 (cleaned up).]

Evidence supports the children were bonded with respondents. However, evidence also supports the bonds were not healthy for the children. Indeed, at the time of termination, LG and MG had been out of respondents' care for six years, and five-year-old JG had been out of respondents' care for his entire life. Respondent-mother struggled with interacting with the children during parenting times, which never expanded to unsupervised parenting times. Respondents sometimes behaved inappropriately during parenting times, and respondent-father would yell at the children and fail to redirect them. Additionally, respondents' attendance at

[2] Because termination was proper under MCL 712A.19b(3)(c)(*i*), we need not specifically consider the additional ground upon which the trial court based its decision. See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). Nonetheless, to the extent we have considered it, we find termination was also appropriate under MCL 712A.19b(3)(j).

parenting times with MG, who has extensive special needs, was inconsistent. MG expressed that he no longer wanted to attend parenting times or talk about respondents. LG expressed an interest in being adopted. In sum, the children's bond with respondents was not healthy for the children, who desperately needed permanency and stability respondents could not provide. See *In re CR*, 250 Mich App 185, 197; 646 NW2d 506 (2002), overruled on other grounds by *In re Sanders*, 495 Mich 394 (2014) (holding because there was a "serious dispute on the record concerning whether [the respondent] had a healthy bond of any sort with her children," termination of her parental rights was in the children's best interests).

While the parent-child bond is only one factor for the trial court to consider, *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012), as already discussed at length, respondents failed to address their issues during the lengthy proceedings and were unable or unwilling to effectively parent the children. While respondents had housing and income at the time of termination, they had only recently obtained housing. At the time of termination, respondents were unable to provide long-term stability and permanency for the children. Meanwhile, the children were doing well in their respective placements. MG was bonded with his foster parent. And JG was bonded to his relative caregiver, with whom he had been placed for his entire life.

For these reasons, the trial court did not clearly err by finding termination of respondents' parental rights was in the children's best interests. In so indicating, we acknowledge the children will be separated from each other. Nonetheless, termination was in the children's best interests because the children were doing well in their placements and obtaining the care and stability they required. Record evidence supports it would be difficult for one person to care for all three children because of MG's extensive special needs. While JG was placed with a relative, a guardianship would not provide JG with the stability and permanency he required. Additionally, this goal does not appear to be feasible given respondents' aggressive behavior and difficulty with getting along with JG's relative caregiver during the proceedings. A preponderance of the evidence establishes termination of respondents' parental rights was in the children's best interests.

V. CONCLUSION

The trial court did not clearly err by finding reasonable efforts toward reunification were made. The trial court also did not clearly err by finding statutory grounds for termination and by determining termination was in the children's best interests. We affirm.

/s/ Anica Letica
/s/ Christopher M. Murray
/s/ Sima G. Patel