STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JDH, Adoptee.

KYLE DERRICK HELMLINGER and SHERI ANN HELMLINGER,

Petitioners-Appellants,

v

VICTOR MIKE JUNCAJ,

Respondent-Appellee.

UNPUBLISHED
January 5, 2010

No. 291839
Macomb Circuit Court
LC No. 2008-017996-AY

VICTOR JUNCAJ,

Plaintiff-Appellee,

v

SHERI HELMLINGER,

Defendant-Appellant.

No. 291850
Macomb Circuit Court
LC No. 2008-000663-DP

Before: Gleicher, P.J., and Fitzgerald and Wilder, JJ.

PER CURIAM.

These consolidated cases arise from the parties' competing claims involving minor JDH, born in December 1995 to Sheri Ann VanDewinkle (now Helmlinger). In February 2008, Victor Juncaj filed a complaint against Sheri Helmlinger in the Macomb Circuit Court seeking "filiation, custody, parenting time and child support" ("the custody case," lower court #2008-000663-DP, COA #291850). The parties stipulated to DNA testing, which established that Juncaj fathered JDH. In May 2008, Sheri Helmlinger and her husband, Kyle Helmlinger, filed a petition in the Macomb Probate Court requesting the termination of Juncaj's parental rights and a stepparent adoption ("the adoption case," lower court #2008-017996-AY, COA #291839). The custody and adoption cases were consolidated and tried before the Macomb Circuit Court, which declined to terminate Juncaj's parental rights, denied the petition for a stepparent adoption, and

granted Juncaj parenting time. The Helmlingers now appeal these decisions as of right,[1] and this Court has consolidated the appeals. *In re JDH, Minor*, unpublished order of the Court of Appeals, entered May 13, 2009 (Docket Nos. 291839, 291850).

I. Docket No. 291839

A. Circuit Court Subordination of Termination & Adoption Proceedings in Favor of Custody and Parenting Time Proceedings

We first address the Helmlingers' contention that the circuit court unlawfully ignored MCL 710.25 when it neglected to determine the merits of their termination and adoption petition before commencing the custody and parenting time hearing. The Helmlingers aver that by proceeding with the custody and parenting time hearing, the circuit court "negated" their claims against Juncaj in the termination case. To the extent that this issue raises a claim involving statutory interpretation, we consider de novo such questions of law. *Henry v Dow Chem Co*, 484 Mich 483, 495; ___ NW2d ___ (2009); *Bloomfield Charter Twp v Oakland Co Clerk*, 253 Mich App 1, 9; 654 NW2d 610 (2002).

The Michigan Adoption Code contemplates that proceedings related to adoption must take priority over all other matters. Pursuant to MCL 710.25,

> (1) All proceedings under this chapter shall be considered to have the highest priority and shall be advanced on the court docket so as to provide for their earliest practicable disposition.
>
> (2) An adjournment or continuance of a proceeding under this chapter shall not be granted without a showing of good cause.

Similarly, MCR 3.977(C)(2) dictates that "[h]earings on petitions seeking termination of parental rights shall be given the highest possible priority consistent with the orderly conduct of the court's caseload."

The record here reveals that after filing the adoption and termination petition in May 2008, the Helmlingers on July 1, 2008 also filed a motion to terminate Juncaj's parental rights. After an August 4, 2008 motion hearing, the circuit court ruled that a Friend of the Court (FOC) inquiry "regarding custody, support and parenting time shall be heard as soon as possible prior to the date of September 25th," and denied the Helmlingers' request to stay the custody matter until the termination hearing concluded. This Court declined to disturb the circuit court's ruling on an interlocutory basis. *In re JDH, Adoptee*, unpublished order of the Court of Appeals, entered September 3, 2008 (Docket No. 287358).

[1] In the interest of clarity, we refer to the parties by name rather than by party alignment throughout this opinion. Where utilized, the singular term "Helmlinger" refers to Sheri Helmlinger.

In essence, the question now presented by the Helmlingers is whether good cause supported the circuit court's adjournment of the termination hearing. We review for an abuse of discretion a circuit court's decision to adjourn a termination hearing. *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993). The Legislature expressly recognized the potential that "[a]n adjournment or continuance of a proceeding under" the Michigan Adoption Code may be granted if the moving party "show[s] . . . good cause," MCL 710.25(2), and the court rules envision that a court should hold a termination hearing within 42 days of the filing of a petition, although a court "may, for good cause shown, extend" this period, MCR 3.977(F)(2). See also *In re MKK*, ___ Mich App ___; ___ NW2d ___ (Docket No. 292065, issued December 22, 2009), slip op at 9 (citing MCL 710.25(2) in support of the proposition that "there may be circumstances in which a putative father makes a showing of good cause to stay adoption proceedings in favor of a paternity action"). "Good cause" signifies "a legally sufficient or substantial reason." *In re Utrera*, 281 Mich App 1, 11; 761 NW2d 253 (2008), quoting *In re FG*, 264 Mich App 413, 419; 691 NW2d 465 (2004). The circuit court explained in this case that "the final determination" in both the termination and custody matters "is what is in the minor child's best interests." The circuit court then expressed its view that the custody case "took time and precedence over this Petition for Termination of Parental Rights[.]"

The circuit court erred by concluding that the custody case "took precedence" simply because Juncaj filed it first. Pursuant to the language of MCL 710.25, and as a matter of logic, the circuit court should have first considered whether the Helmlingers established a ground for terminating Juncaj's parental rights before considering Juncaj's request for parenting time. However, the circuit court's reasoning in support of postponing the termination hearing, that the FOC hearing regarding custody and parenting time would supply evidence directly relevant to a central issue in the termination proceeding, constitutes "a legally sufficient or substantial reason" for delaying the termination hearing. *In re Utrera*, 281 Mich App at 11. The circuit court thus did not abuse its discretion by adjourning the termination hearing pending the referee's gathering of evidence relevant to that proceeding. See also *In re Barlow*, 404 Mich 216, 236; 273 NW2d 35 (1978):

> We find the factors comprising the best interests of the child contained in the Child Custody Act to be ones which the Legislature, case law and common sense would indicate ought likewise to be relevant in cases arising under § 39(1) of the Adoption Code. Accordingly, we find that the trial court properly looked for guidance in evaluating the best interests of the child in the case at bar.[2]

Furthermore, the Helmlingers have failed to demonstrate that they suffered any prejudice occasioned by the circuit court's consolidation approach. The Helmlingers assert that the circuit court's order permitting Juncaj to exercise parenting time defeated their claim that he had "regularly and substantially failed or neglected" to visit the child. But the Helmlingers ignore

[2] When the Supreme Court decided *In re Barlow*, the Michigan Adoption Code did not specifically delineate the "best interests of the adoptee" now codified at MCL 710.22(g). The best interest factors of the Michigan Adoption Code closely track those outlined in the Child Custody Act, MCL 722.23.

that the statutory ground for termination focuses on whether the parent "regularly and substantially failed or neglected to do so [visit, contact or communicate with the child] for a period of 2 years or more *before* the filing of the petition." MCL 710.51(6)(b) (emphasis added). Parenting time awarded after the Helmlingers filed their termination and adoption petition simply has no relevance to the termination criteria, and nothing in the record suggests that the circuit court engaged in "bootstrap[ing]" by denying the termination and adoption petition on the basis of Juncaj's contacts with JDH *after* the Helmlingers filed their petition.

In summary, the circuit court committed legal error when it afforded Juncaj's custody and parenting time proceeding priority over the termination and adoption proceeding. In the future, the circuit court should remain cognizant that the preferred method of handling similar situations would be to proceed forthwith to a termination hearing, at which evidence relevant to a child's best interests could be presented and preserved for employment in a subsequent custody proceeding. However, the circuit court did not abuse its discretion by adjourning the termination hearing pending the referee's gathering of evidence relevant to that proceeding and referring both the custody and termination cases to the referee for factfinding on an expedited basis. Moreover, any error inherent in the circuit court's method of proceeding here qualifies as harmless because the Helmlingers have failed to demonstrate that the circuit court would have decided the termination action differently if it had first considered termination separately from custody, or that the court's combination of the two matters otherwise caused the Helmlingers substantial prejudice. MCR 2.613(A).[3]

B. Legal Standard Applied by Circuit Court in Considering Termination

The Helmlingers next submit that the circuit court erred by considering termination of Juncaj's parental rights according to the standards governing acknowledged fathers set forth in MCL 710.51(6), rather than those pertaining to putative fathers in MCL 710.39. The Helmlingers emphasize that on May 1, 2008, the date they presented their termination petition, the court had not yet formally adjudicated Juncaj as JDH's biological father. The Helmlingers theorize that (1) because the circuit court did not enter an order of filiation until the next day, May 2, 2008, on May 1, 2008 Juncaj qualified as a putative father under MCL 710.39, which requires that a putative father must request custody to avoid termination of his parental rights, and (2) because Juncaj never requested custody of JDH, the circuit court should have terminated his parental rights.

The Helmlingers have waived appellate review of this issue. At an August 2008 motion hearing, their counsel advised the circuit court that "we're willing to proceed under the termination statutes, either 710.39, which is the Best Interest Standards, or 710.51, which is the Two Year Standard." "Petitioner cannot attempt to have respondent's parental rights terminated under § 51(6) and at the same time argue that respondent does not have standing to oppose termination under the same section." *In re Hill*, 221 Mich App 683, 691; 562 NW2d 254 (1997). Additionally, "[a] party may not take a position in the trial court and subsequently seek redress in

[3] The Helmlingers' argument concerning this issue also challenges the substance of the circuit court's termination ruling. These arguments are discussed in Issue I(C), *infra*.

an appellate court that is based on a position contrary to that taken in the trial court." *Czymbor's Timber, Inc v City of Saginaw*, 269 Mich App 551, 556; 711 NW2d 442 (2006) (internal quotation omitted), aff'd 478 Mich 348; 733 NW2d 1 (2007); see also *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001) (observing that "[a] party cannot stipulate a matter and then argue on appeal that the resultant action was error").

Furthermore, the circuit court did not apply an incorrect legal standard in ruling on whether to terminate Juncaj's parental rights. A court may terminate a father's parental rights under any of three statutes: MCL 710.37 (uninterested putative fathers), MCL 710.39 (interested putative fathers), or MCL 710.51(6) (stepparent adoptions). The Helmlingers' petition to terminate Juncaj's parental rights invoked only the stepparent adoption provision, MCL 710.51(6). Thus, notwithstanding that the circuit court may not yet have entered an order of filiation when the Helmlingers prepared their petition, they initially assumed that MCL 710.51(6) governed the termination of Juncaj's parental rights.[4] Moreover, by the time the circuit court first considered the Helmlingers' termination petition, Juncaj did not qualify as a "putative father," rendering MCL 710.39 inapplicable.

C. Circuit Court's Termination Ruling under MCL 710.51(6)

The Helmlingers next challenge the circuit court's finding that Helmlinger resisted Juncaj's attempts to visit and communicate with JDH, and the circuit court's reliance on *In re ALZ*, 247 Mich App 264; 636 NW2d 284 (2001), in which this Court affirmed the denial of a termination petition on the basis that the father's inability to contact his child resulted from the mother's resistance to visitation or communication.

The petitioner bears the burden of proving by clear and convincing evidence that termination of a noncustodial parent's rights is warranted under MCL 710.51(6). *In re ALZ*, 247 Mich App at 272. "In order to terminate parental rights under the statute, the court must determine that the requirements of subsections a and b are both satisfied." *Id*. Even where the petitioner proves the required statutory basis for termination under the Michigan Adoption Code, a court need not order termination if it finds that termination would not enhance the best interests of the child. *Id*. at 273. When determining whether the noncustodial parent had the ability to visit, contact, or communicate with the child under §51(6)(b), a court may consider the custodial parent's acts deterring the noncustodial parent's attempts to visit or communicate with the child. *Id*.

In a termination of parental rights action, this Court reviews a circuit court's findings of fact under the "clearly erroneous" standard. *In re Hill*, 221 Mich App at 691-692. A finding is clearly erroneous if, although some evidence supports it, a review of the whole record leaves this Court with the definite and firm conviction that a mistake has been made. *Id*. at 692. The court rules codify this standard at MCR 3.977(J) ("The clearly erroneous standard shall be used in reviewing the court's findings on appeal from an order terminating parental rights."). The court

[4] The lower court record's docket sheet reflects that the court "received" the Helmlingers' adoption petition on May 1, 2008, but that it was not officially "filed" until May 21, 2008.

rules further instruct that in applying this principle, "regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). In *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), our Supreme Court observed that "[t]he deference required by MCR 2.613(C) can make a critical difference in difficult cases . . . . In contrast to the reviewing court, the trier of fact has the advantage of being able to consider the demeanor of the witnesses in determining how much weight and credibility to accord their testimony."

The Helmlingers submit that the circuit court clearly erred by finding that (1) "plaintiff [Juncaj] did not have the ability to visit, contact, or communicate with the minor child because of defendant's [Helmlinger's] refusal to allow plaintiff to establish paternity and have contact with the child," (2) "[p]laintiff reasonably did not know whether the minor child was his son due to defendant's failure to place plaintiff on the birth certificate, defendant's denial that plaintiff was the father of the minor child on repeated occasions, the parties [sic] failure to establish paternity, defendant's failure to request any support, and essentially no contact between the parties over the past twelve years," and (3) "plaintiff's January 2008 visits, phone calls, and February 2008 complaint constitutes [an] ongoing request for contact with the minor child, but defendant's resistance to these requests and failure to establish paternity resulted in plaintiff's inability to visit, contact, and communicate with the minor child." The Helmlingers complain that in making these findings the court improperly placed on Helmlinger the burden of facilitating Juncaj's relationship with the child, rather than recognizing that Juncaj bore responsibility for promptly taking steps to either acknowledge or establish his paternity of JDH.

In *In re LE*, 278 Mich App 1, 23; 747 NW2d 883 (2008), this Court held that "a father's conduct before perfecting paternity *can* provide a basis for termination." (Emphasis in original). The Court explained that the putative father in that case "should have more promptly taken steps to formally acknowledge paternity," and held "that his failure to do so *may* be used against him as evidence of his failure to provide care and custody." *Id*. at 24 (internal quotation omitted, emphasis added). Here, the circuit court expressed that it would not "use against" Juncaj his infrequent and half-hearted attempts to determine whether he fathered JDH.

The record reflects that the Helmlingers failed to establish by clear and convincing evidence the requisite criteria under MCL 710.51(6) that Juncaj did not "regularly and substantially" "visit, contact or communicate with" JDH during the two years before the Helmlingers filed their termination petition.[5] MCL 710.51(6)(b). In January 2008, Juncaj initiated a visit with JDH and expressed his intent to continue visiting, despite his professed uncertainty regarding JDH's paternity. At that point, Helmlinger forbade Juncaj further contact with the child. In light of this evidence, the circuit court did not clearly err by finding that Juncaj's "January 2008 visits, phone calls, and February 2008 complaint constitutes [an] ongoing request for contact with the minor child, but [Helmlinger]'s resistance to these requests and failure to establish paternity resulted in [Juncaj]'s inability to visit, contact, and communicate with the minor child." Furthermore, the Helmlingers' position on appeal would require this

[5] Juncaj conceded that he failed to support JDH as required under MCL 710.51(6)(a). The statute permits termination only if "both" the requirements of subsections (a) and (b) are met.

Court to read into the Michigan Adoption Code the condition that a court must *always* penalize a dilatory father for his delayed efforts to establish paternity, and that a court *must* consider the father's conduct for a period longer than the two years preceding the filing of a termination petition. If the Legislature had intended to make these considerations mandatory, it would have done so expressly.[6]

The Helmlingers further contend that the circuit court erred by relying on *In re ALZ*, 247 Mich App 264, because Juncaj "deliberately neglected and avoided his responsibilities," while in that case the child's mother refused to allow the father to establish contact with his child. *Id*. at 273. Here, however, the circuit court found that Helmlinger had refused to permit Juncaj to establish his paternity of JDH, and that she repeatedly denied that he had fathered JDH. Although Helmlinger's conduct did not rise to the same level of egregiousness as the conduct of the mother in *In re ALZ*, some evidence reasonably proves that Helmlinger's actions impeded Juncaj's ability to establish a relationship with JDH. Under the clear error standard, a reviewing court may not "substitute its judgment for that of the trial court; if the trial court's view of the evidence is plausible, the reviewing court may not reverse." *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). Because portions of the record support the circuit court's factual determinations, we simply do not possess "a definite and firm conviction that a mistake was made." *In re Hill*, 221 Mich App at 692.

Finally concerning this issue, the Helmlingers assert that because Juncaj neglected to timely attempt to determine whether he had fathered JDH, the circuit court erred by affording him the benefit of any constitutionally required standards. "The United States Supreme Court has held that the father of an illegitimate child, who has taken steps to establish a custodial or supportive relationship with the child has a constitutionally protected interest in continuing that relationship." *In re BKD*, 246 Mich App 212, 221-222; 631 NW2d 353 (2001), citing *Caban v Mohammed*, 441 US 380; 99 S Ct 1760; 60 L Ed 2d 297 (1979), and *Stanley v Illinois*, 405 US 645; 92 S Ct 1208; 31 L Ed 2d 551 (1972). "However, where the father of an illegitimate child has not taken steps to establish a custodial or supportive relationship, the state may constitutionally terminate his parental rights through procedures and standards that are less stringent than those required to terminate the parental rights of a mother or a married father." *Id*. at 222; see *Lehr v Robertson*, 463 US 248; 103 S Ct 2985; 77 L Ed 2d 614 (1983).

In *Lehr*, 463 US at 250, the child's mother and stepfather filed an adoption petition, and the trial court granted it. The putative father appealed, arguing that because he had no notice of the proceeding the adoption order lacked validity. *Id*. The putative father had never entered his name in the state's putative father registry, which would have entitled him to notice. *Id*. at 250-251. The mother did not place the putative father's name on the child's birth certificate and he was not adjudicated as the child's father, although he had visited the child in the hospital two

[6] The paternity act specifically permits a mother or the father to file a paternity action "at any time before the child reaches 18 years of age." MCL 722.714(1), (3). While the Legislature's intent in permitting actions until the child reaches the age of majority probably derives from considerations related to child support, no statute or case law supports that a dilatory father automatically forfeits his constitutional right to custody of his child.

years earlier after her birth. *Id*. at 251-252. The putative father also never lived with the child, gave any support, or offered to marry the mother. *Id*. at 252. However, a month after the adoption petition was filed, the putative father filed a "visitation and paternity petition." *Id*. The trial court knew about the paternity action, but nonetheless signed the adoption order without giving the putative father notice. *Id*. at 253. The trial court then dismissed the paternity action as moot and denied the putative father's petition to set aside the adoption order. *Id*. at 253.

On appeal to the United States Supreme Court, the putative father argued "that a putative father's actual or *potential* relationship with a child born out of wedlock is an interest in liberty which may not be destroyed without due process of law" and, therefore, "he had a constitutional right to prior notice and an opportunity to be heard before he was deprived of that interest." *Id*. at 255 (emphasis added). The Supreme Court observed that "[p]arental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring." *Id*. at 260 (internal quotation and emphasis omitted). The Supreme Court explained that "[w]hen an unwed father demonstrates full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child, his interest in personal contact with his child acquires substantial protection under the Due Process Clause." *Id.* at 261 (internal quotation omitted). However, "the mere existence of a biological link does not merit equivalent constitutional protection"; if an unwed father fails to grasp an opportunity to develop a relationship with his child, "the Federal Constitution will not automatically compel the state to listen to his opinion of where the child's best interests lie." *Id*. at 261-262. The Supreme Court found that the putative father had never had a significant emotional, financial, or other relationship with the child, and that he did not seek to establish a legal tie with the child until a month after the adoption petition was filed. *Id*. at 252, 262. The Supreme Court's decision "concerned only . . . whether [the state] has adequately protected his opportunity to form such a relationship." *Id*. at 262-263.

Lehr is readily distinguishable from this case. Here, Juncaj established his paternity of JDH before the termination hearing, came "forward to participate in the rearing of his child," *Lehr*, 463 US at 261, and sought to establish a legal tie before the Helmlingers filed their adoption petition. The circuit court afforded Juncaj the procedural due process denied to the putative father in *Lehr*. Because Juncaj acknowledged his paternity of JDH, the circuit court did not err by affording him constitutionally required due process protections.

D. Helmlingers' Due Process Rights

The Helmlingers additionally suggest that the circuit court deprived them of due process and access to the courts by delaying the adoption matter while proceeding with the custody case. We review de novo these constitutional claims. *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005).

After reviewing the record, we find that the circuit court did not infringe on the Helmlingers' procedural due process rights. "[D]ue process is a flexible concept, the essence of which is to ensure fundamental fairness. Procedure in a particular case is constitutionally sufficient when there is notice of the nature of the proceedings and a meaningful opportunity to be heard by an impartial decision maker." *Reed*, 265 Mich App at 159. Here, notwithstanding that the circuit court adjourned the termination hearing, did not afford it priority, and awarded Juncaj parenting time, the court did not deprive the Helmlingers of notice of any of the

proceedings or a meaningful opportunity to be heard. The Helmlingers fully participated in all proceedings, have not demonstrated any partiality by the circuit court, and their procedural due process claim thus utterly lacks merit.

II. Docket No. 291850

A. Improperly Ordered Proceedings

In the custody action appeal, Helmlinger substantially reiterates the arguments she made in the termination case. She also asserts that in contravention of *Mason v Simmons*, 267 Mich App 188; 704 NW2d 104 (2005), the circuit court ordered that Juncaj have interim parenting time before determining whether Juncaj qualified as a fit parent. In Helmlinger's view, Juncaj's abandonment of JDH should have deprived him of any "protected parental interest" and required that the circuit court deem him "unfit."

As we have already discussed, the circuit court erred by failing to give the termination case priority over the custody matter. The circuit court should have determined whether it would terminate Juncaj's parental rights before granting him parenting time. But because the circuit court ultimately decided against terminating Juncaj's parental rights, the court did not err by considering whether to permit him parenting time. Helmlinger has not established that the limited interim parenting time ordered before the termination hearing (one hour a week at the office of JDH's counselor) altered or in any manner impacted the court's decision whether to terminate Juncaj's parental rights.

Nor is there any merit to Helmlinger's claim that the circuit court erroneously afforded Juncaj "parental deference." To the extent that Helmlinger supports this argument by relying on *Mason*, 267 Mich App 188, her reliance is misplaced. The Supreme Court overruled *Mason* in *Hunter v Hunter*, 484 Mich 247; 771 NW2d 694 (2009). Furthermore, *Mason* and *Hunter* involved *third-party custody* disputes, not a natural parent's request for parenting time. In light of the consent order of filiation establishing Juncaj's paternity of JDH, the circuit court did not err in treating Juncaj as the child's father when it considered his request for parenting time.

In summary, Helmlinger correctly maintains that the circuit court improperly granted Juncaj interim parenting time before considering whether to terminate his parental rights, but she has failed to identify any appropriate relief applicable to the custody case. That the circuit court considered the issues in the wrong order does not warrant reversal of the interim order, which is now moot, or the later parenting time ruling. We conclude that any error in the order of the instant proceedings qualifies as harmless under MCR 2.613(A).

B. Great Weight of Evidence Challenge to Parenting Time Award

With respect to the circuit court's ultimate award of parenting time to Juncaj, Helmlinger insists that the court's findings that Helmlinger avoided Juncaj and refused him contact with JDH went against the great weight of the evidence, given the overwhelming evidence that Juncaj did nothing to locate the child for nine years. Helmlinger adds that Juncaj's doubts about his paternity do not qualify as reasonable, and that his delay in establishing paternity should have stripped him of his constitutionally protected parental rights. Helmlinger also alleges that the

circuit court should have viewed or reviewed, but did not, the demeanor of the witnesses who testified at the evidentiary hearing before the referee.

We initially observe that Helmlinger's argument concerning the circuit court's use of transcripts from prior evidentiary hearings that the referee conducted lacks merit. The witnesses who testified at the evidentiary hearing conducted by the referee all testified before the circuit court. Adequate evidence supported the circuit court's decision not to terminate Juncaj's parental rights, as discussed in Issues I(A) and I(B), *supra*, and the court's decision to award him parenting time. Moreover, Helmlinger's challenge to the great weight of the evidence primarily addresses the facts found in the termination case, not the custody matter. To the extent that Helmlinger's argument addresses the circuit court's parenting time determination, we reject it.

"Parenting time is granted if it is in the best interest of the child and in a frequency, duration, and type reasonably calculated to promote strong parent-child relationships." *Brown v Loveman*, 260 Mich App 576, 595; 680 NW2d 432 (2004). "Orders concerning parenting time must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue." *Pickering v Pickering*, 268 Mich App 1, 5; 706 NW2d 835 (2005); see also MCL 722.28. "An abuse of discretion exists when the trial court's decision is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). A trial court commits clear legal error when it "incorrectly chooses, interprets, or applies the law." *Id*. at 706.

"The controlling factor in determining [parenting time] is the best interests of the child." *Deal v Deal*, 197 Mich App 739, 742; 496 NW2d 403 (1993); see also MCL 722.27a(1) (providing that "[i]t is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents"). Here, the circuit court weighed each of the best interest factors and determined that all favored Helmlinger except factors (g) (the mental and physical health of the involved parties), and (j) (the willingness and ability of each party to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent), regarding which the court found the parties "equal."[7] The circuit court reasoned as follows with respect to its decision to award Juncaj parenting time of a single, three-hour block each week:

> The Court has considered the age of the child, the reasonable likelihood of abuse or neglect of the child during parenting time, the reasonable likelihood of abuse of the custodial parent, whether a parent can reasonably be expected to exercise parenting time in accordance with the order, whether either parent has

[7] The circuit court found that it would not weigh factor (k), involving domestic violence, in favor of either party. Regarding factor (i), the child's preference, the court stated that it "did conduct an *in camera* interview with the child. The child was of sufficient age and maturity to express a custodial preference and the Court took that preference into consideration."

> failed to exercise court ordered parenting time, and any other factors the Court considers relevant. MCL 722.27a(6).
>
> [JDH] is 13 years old and defendant has expressed concern regarding the disruption of [JDH]'s stable and established environment if parenting time was awarded. Dr. Ryan initially testified the minor child was concerned his life would be disrupted and he was a nervous child. According to Dr. Ryan, parenting time with plaintiff would cause the minor child a high level of anxiety, could affect his school performance, and may cause stomach and headaches. However, Dr. Ryan re-interviewed [JDH] again on February 28, 2009, after [JDH] had several visitations with plaintiff, and stated he was doing well. Dr. Ryan indicated therapy with Mary Peterson was beneficial to the minor child.

Helmlinger's great weight of the evidence arguments do not address the circuit court's best interest findings or the facts specifically cited by the court with regard to parenting time. Because ample record evidence substantiates that limited parenting time with Juncaj will serve JDH's best interests, the circuit court did not abuse its discretion in awarding Juncaj parenting time.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder