

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

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UNPUBLISHED  
June 19, 2012

In the Matter of M. J. DOBSON, Minor.

No. 307478  
St. Clair Circuit Court  
Family Division  
LC No. 10-000202-NA

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Before: MURRAY, P.J., and WHITBECK and RIORDAN, JJ.

PER CURIAM.

In these consolidated appeals, respondents A. Dobson and C. Cataford each appeal as of right from a circuit court order terminating their parental rights to their minor child. The trial court terminated Dobson's and Cataford's parental rights under MCL 712A.19b(3)(c)(i) (the conditions that led to the adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (the child is reasonably likely to be harmed if returned to the parent's home). The trial court also terminated Dobson's parental rights under §§ 19b(3)(h) (parent's imprisonment will deprive the child of a normal home for more than two years). And the trial court also terminated Cataford's parental rights under §§ 19b(3)(c)(ii) (other conditions exist that bring the child under the court's jurisdiction and have not been rectified). We affirm in part, vacate in part, and remand for further proceedings consistent with this opinion.

**I. FACTS**

**A. BACKGROUND FACTS**

The Department of Human Services (DHS) filed a petition for temporary custody of the child in June 2010. It alleged that Dobson was serving prison sentences on drug and weapons charges, for which he had an early release date of May 2014 and a maximum discharge date of May 2029. In 2007, a trial court convicted Dobson of manufacturing methamphetamine,

possession with intent to deliver methamphetamine, maintaining a drug lab, maintaining a drug house, and felony-firearm. This Court affirmed the convictions on appeal.<sup>1</sup>

The petition further alleged that Cataford and the child had always lived with Cataford's parents, who recently confronted Cataford about her "unusual behaviors and attitudes," following which she and the child left and disappeared. It was discovered that Cataford stole \$30,000 from her parents, and drug paraphernalia found in the basement where she had been living suggested that she was using heroin or cocaine. The petition further alleged that the child's attendance at school had been sporadic. Following the preliminary hearing, the trial court authorized the petition and placed the child with Cataford's parents.

At the July 2010 pretrial hearing, Cataford consented to jurisdiction and entered a no-contest plea to an amended petition. The allegations that she had stolen money from her parents and that the child had missed school were deleted. The allegations regarding substance abuse were amended to read, "It has also been reported that Ms. Cataford is abusing marihuana and has a past history of drug abuse." It is unclear whether the allegation that Cataford had left her parents' house with the child and disappeared was included or excluded. The case proceeded directly to disposition. The July 22, 2010 initial order of disposition directed Cataford to participate in reunification services, including a psychological evaluation, a substance abuse assessment, random drug screens, counseling, maintaining suitable housing and a legal source of income, and family visits.

According to a September 2010 court report, Cataford tested positive for amphetamine and methamphetamine on July 2, 2010, and then terminated all contact with the agency until August 25, when she resurfaced and expressed a desire to participate in services. As of September 22, 2010, she had failed to follow through with scheduling the psychological and substance abuse evaluations. According to a hand-written notation, Cataford had an outstanding warrant "for leaving the scene of accident and fraud." Dobson indicated to the foster care worker that he wanted "what is best for" the child.

The trial court apparently held separate review hearings for the parents. According to an October 2010 order following review, Cataford was not present for her hearing. The trial court suspended her parenting time until she completed substance abuse and psychological evaluations and provided five consecutive negative drug screens. Dobson attended his November 2010 review hearing by telephone.

According to a January 2011 court report, Cataford had started participating in services. But she provided two drug screens, which were positive for opiates, benzodiazepines, and THC. She had begun counseling in December 2010, and had scheduled a psychological evaluation but not a substance abuse assessment. She did not have housing. Dobson was reported as having weekly contact with the child.

According to an April 2011 court report, Cataford again tested positive for THC on January 5 and 27, 2011, and admitted to smoking marijuana "to help relieve chronic back pain."

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<sup>1</sup> *People v Dobson*, unpublished opinion per curiam of the Court of Appeals, issued February 12, 2009 (Docket No. 280598), lv den 483 Mich 1114 (2009).

She had not submitted to any further drug screens. Cataford had met with an agent of the Family Resources Center and was able to obtain an apartment in March. Cataford had also completed her psychological evaluation and substance abuse assessment, but the results were not available. Dobson was still in contact with the child and was hopeful that Cataford would be able to regain custody of the child.

At an April 2011 review hearing, Cataford reported that she was trying to obtain unemployment and social security benefits and that she was “working for a man re-doing houses for the apartment I stay in.” Dobson asked the trial court to help Cataford so that she could resume visiting with the child.

According to a May 2011 court report, Cataford was attending AA/NA meetings and had been given a referral for counseling. However, Cataford was arrested on April 25 on charges of uttering and publishing, forgery, and receiving or concealing stolen property. Apparently, she was released on bond.

According to an August 2011 court report, Cataford’s March drug test was yet again positive for THC. Cataford had lost her apartment; Dobson said it was because she had used crystal meth, but Cataford said it was because “the people she was having issues with broke in and stole her rent money.” Cataford was now staying at Safe Horizons, a domestic violence shelter. Cataford had attended one counseling session but then dropped out. She also stopped attending AA/NA meetings and had failed to attend the parenting classes to which she had been referred. Regarding the criminal charges, Cataford had apparently been bound over for trial. She did not appear for a hearing in the circuit court, so the court issued a bench warrant for her arrest. Dobson was attending AA/NA meetings and working on his GED.

Dobson participated in the next review hearing, but Cataford did not attend because she was in the county jail. The trial court authorized the filing of a supplemental petition for termination. DHS filed the petition in September 2011. It alleged that Cataford had not participated in and benefited from services. It further alleged that Dobson had completed some services in prison, but he had been incarcerated since 2007 would remain incarcerated until 2014 at the earliest.

## B. TERMINATION HEARING

Melissa Gunn, the foster-care worker since June 21, 2010, testified before the hearing referee that the child entered care because Cataford was using drugs, had stolen money from her parents, and no one was able to contact her, and because Dobson was in prison.

Gunn testified that she did not provide any referrals for services to Dobson because the agency could only offer prisoners “what services are available at the correction facility.” However, she initiated contact with him in September 2010, and then spoke to him “every couple of months” thereafter. She encouraged him “to do whatever services were available to him” and he updated her on his situation. She testified that Dobson had consistently participated in AA/NA meetings. He provided proof that he was working on his GED. He later reported that he had obtained his GED, but had not provided the certificate of completion.

Gunn further testified that Dobson was allowed to speak with the child by telephone and that he called her up to “three or four times a day,” although the child preferred to speak to him just once a week “because it means that she has something to say.” He had also sent her some cards. Gunn admitted that Dobson and the child appeared to love one another and were bonded. But Gunn also testified that the child’s grandmother had reported that there were “several occasions” where the child became “extremely upset” upset after speaking to Dobson “to the point of throwing up,” and she would go to bed and not have contact with anyone for the rest of the evening.

Gunn testified that Cataford, who had been the custodial parent, was ordered to participate in reunification services. Cataford was required to obtain a psychological and substance abuse assessment. Cataford finally completed the assessment in March 2011, but only after receiving three referrals from Gunn. It was recommended that Cataford attend parenting classes, individual counseling for substance abuse, and 12-step meetings. However, Cataford failed to attend parenting classes, despite two referrals from Gunn. Gunn also referred Cataford to counseling, but Cataford only went to one session and then stopped attending. Cataford attended AA/NA meetings for three weeks. With respect to drug screens, Gunn testified she tested Cataford seven times at the agency office. In July 2010, Cataford was positive for THC and methamphetamine. In December 2010, January 2011, March 2011, and May 2011, she was positive for THC. Cataford admitted to smoking marijuana for back pain, which she felt was safer to use than pain medication. Gunn gave Cataford a referral for further screening, but Cataford never went.

Gunn further testified that Cataford was required to obtain a legal source of income, but Cataford was only doing “odd jobs for friends, mostly manual labor.” Cataford told Gunn that she was going to apply for social security disability benefits, but she never provided any verification of having filed for benefits. Gunn testified that Cataford was also required to obtain suitable housing. Cataford stayed with friends until she was able to obtain an apartment in March 2011. However, in July 2011, Gunn learned that Cataford was being evicted “for accusations of Methamphetamine use[.]” After that Cataford reported that she was staying at the domestic violence shelter. Gunn did not know how long Cataford stayed at the shelter because “that was the last contact I had with” Cataford.

Gunn testified that Cataford was afforded family visits. But she did not attend any visits after July 2010, and her family visits were suspended in October 2010 due to her “lack of follow through, staying in contact[.]” In late 2010 or early 2011, Cataford inquired about reinstating parenting time. But Gunn told her she would have to complete her psychological evaluation, her substance abuse assessment, and provide five consecutive clean drug screens. Cataford completed the psychological and substance abuse assessment in March 2011, but never provided five consecutive clean drug screens.

Gunn recommended termination of each respondent’s parental rights as being in the child’s best interests. With respect to Cataford, Gunn opined that, despite being provided with services and support, Cataford “demonstrated an inability of emotional stability and physical stability. And, given [the child’s] age, that’s something is [sic] in her best interest is to have a stable home.” Regarding Dobson, Gunn opined that, given his incarceration since 2007 and his earliest release date of 2014, she did “not feel that it would be fair to [the child] to introduce a new caregiver who hasn’t been there for a minimum of seven years.”

Gunn testified that the child had lived with her maternal grandparents “off and on for her entire life” and was placed with them when the wardship case was opened. Gunn had not spoken to the grandparents about the possibility of a guardianship. But Gunn recommended against a guardianship in lieu of termination and adoption, saying, “The difference is the sense of security that she’s not going to be pulled out any moment and put into a new situation.” She added that she had spoken to the child about adoption and “she felt that it would be great.”

The referee issued a written opinion recommending termination of Cataford’s parental rights under §§ 19b(3)(c), (g), and (j), and termination of Dobson’s parental rights under §§ 19b(3)(c)(i), (g), (h), and (j). The referee also stated that the evidence was clear and convincing that termination of Dobson’s and Cataford’s parental rights was in the child’s best interests. The trial court later issued an order adopting the referee’s findings and terminating Dobson’s and Cataford’s parental rights.

Dobson and Cataford now each challenge the trial court’s findings regarding the statutory grounds for termination and the trial court’s determination regarding the child’s best interests. (We note that Dobson has also raised other issues regarding DHS’s and the trial court’s obligations to ensure his participation in various court hearings<sup>2</sup> and regarding DHS’s obligation to provide him with reunification services. However, Dobson did not properly present these issues for our review because he did not include them in his statement of questions presented. Therefore, we decline to address them.<sup>3</sup>)

## II. STATUTORY GROUNDS FOR TERMINATION

### A. STANDARD OF REVIEW

To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.<sup>4</sup> We review for clear error a trial court’s decision terminating parental rights.<sup>5</sup> 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.<sup>6</sup> We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.<sup>7</sup>

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<sup>2</sup> See MCR 2.004.

<sup>3</sup> *Mich Farm Bureau v Dep’t of Environmental Quality*, 292 Mich App 106, 146; 807 NW2d 866 (2011); *Mich Ed Ass’n v Secretary of State*, 280 Mich App 477, 488; 761 NW2d 234 (2008), aff’d on reh 489 Mich 194 (2011).

<sup>4</sup> MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

<sup>5</sup> MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

<sup>6</sup> *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

<sup>7</sup> MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

### B. MCL 712A.19b(3)(c)(i)

We first note that, contrary to Dobson's contention, termination under § 19b(3)(c)(i) (or any other of the statutory grounds for termination) does not require proof of long-term future neglect. At one time, former MCL 712A.19a(e) authorized termination of parental rights if the parent was "unable to provide a fit home for the child by reason of neglect." In *Fritts v Krugh*,<sup>8</sup> the Michigan Supreme Court stated that while evidence of temporary neglect was sufficient to allow a court to take jurisdiction over a child, "the entry of an order for permanent custody due to neglect must be based upon testimony of such a nature as to establish or seriously threaten neglect of the child for the long-run future." However, § 19b(3), enacted 30 years after *Fritts* was decided, now governs termination.

Subsection 19b(3)(c)(i) permits termination of a parent's parental rights upon proof that

182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds [that] . . . [t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Here, the conditions that led to adjudication were Cataford's criminal behavior and drug use, and Dobson's incarceration since 2007. The supplemental petition alleged that Cataford had not participated in and benefited from services. At the time of the termination trial, well over 182 days had elapsed since the issuance of an initial dispositional order, and the conditions that led to adjudication continued to exist. Cataford had made little progress in rectifying her drug use and, given her failure to participate in most of the services offered to her, there was no reasonable likelihood that her drug use would be rectified within a reasonable time considering the child's age. Further, Dobson was still in prison, and will remain there until at least May 2014. Therefore, we conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of Dobson's and Cataford's parental rights under § 19b(3)(c)(i).

### C. MCL 712A.19b(3)(h)

Subsection 19b(3)(h) permits termination of a parent's parental rights upon proof that

[t]he parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

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<sup>8</sup> *Fritts v Krugh*, 354 Mich 97, 114; 92 NW2d 604 (1958), overruled on other grounds by *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993).

Here, at the time of termination, Dobson had already been in prison for more than two years, and he had not provided for the child's proper care and custody during that time. The facts showed that the child had always lived with Cataford's parents, and while an incarcerated parent may achieve proper care and custody through placement with a relative,<sup>9</sup> the continuation of the circumstances that predated Dobson's incarceration does not support that he was providing for the child's proper care and custody. Further, because the facts showed that Dobson's earliest release date is still two years from now, there is no expectation, reasonable or otherwise, that he will be able to provide proper care and custody within a reasonable time considering the child's age. Therefore, we conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of Dobson's parental rights under § 19b(3)(h).

#### D. MCL 712A.19b(3)(g)

Subsection § 19b(3)(g) permits termination of a parent's parental rights upon proof that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

For the same reasons that support the trial court's finding under § 19b(3)(h), we also conclude that trial court did not clearly err in finding that termination of Dobson's parental rights was warranted under § 19b(3)(g).

With respect to Cataford, the record established that she had a history of substance abuse and was using drugs again. Cataford did not make herself available for services for approximately six months. Once she made herself available, she was given referrals for reunification services, but she did not attend parenting classes, did not complete substance abuse treatment, and continually tested positive for marijuana. Although Cataford obtained an apartment, she lost it within four months. She thereafter stayed at a shelter and was incarcerated the month before the supplemental petition was filed. Further, Cataford admittedly did not have suitable housing that would be available to her upon release. She also lacked a source of income with which to support herself and the child. Given that the child had been in foster care for more than a year and that Cataford had not visited the child during that time due to her continued substance abuse and subsequent incarceration, the trial court could properly find that Cataford was not reasonably likely to overcome her substance abuse problem and be able to provide proper care and custody within a reasonable time given the age of the child, and that the child was reasonably likely to be harmed if returned to Cataford's custody. Therefore, we conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of Cataford's parental rights under § 19b(3)(g).

#### E. MCL 712A.19b(3)(j)

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<sup>9</sup> *In re Mason*, 486 Mich 142, 161 n 11; 782 NW2d 747 (2010).

For the same reasons that support the trial court's finding under § 19b(3)(g), we also conclude that trial court did not clearly err in finding that termination of Cataford's parental rights was warranted under § 19b(3)(j).

Because only one statutory ground for termination need be established,<sup>10</sup> and the trial court did not clearly err in finding that §§ 19b(3)(c)(i), (g), and (h) were each established by clear and convincing evidence with respect to Dobson, any error in relying on § 19b(3)(j) as an additional statutory ground for termination was harmless.<sup>11</sup>

#### F. MCL 712A.19b(3)(c)(ii)

Again, because only one statutory ground for termination need be established,<sup>12</sup> and the trial court did not clearly err in finding that §§ 19b(3)(c)(i), (g), and (j) were each established by clear and convincing evidence with respect to Cataford, any error in relying on § 19b(3)(c)(ii) as an additional statutory ground for termination was harmless.<sup>13</sup>

### III. BEST INTERESTS DETERMINATION

#### A. STANDARD OF REVIEW

Once DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is in the child's best interests, then the trial court is required to order termination of parental rights.<sup>14</sup> There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.<sup>15</sup> We review for clear error the trial court's decision regarding the child's best interests.<sup>16</sup>

#### B. ANALYSIS

The record shows that the child had been placed with her maternal grandparents. If a child is living with relatives when the case proceeds to termination, the trial court must consider that factor in determining whether termination of the natural parent's parental rights is in the child's best interests.<sup>17</sup> However, the referee's opinion does not reflect that he considered the

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<sup>10</sup> *In re CR*, 250 Mich App 185, 207; 646 NW2d 506 (2002).

<sup>11</sup> *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

<sup>12</sup> *In re CR*, 250 Mich App at 207.

<sup>13</sup> *In re Powers*, 244 Mich App at 118.

<sup>14</sup> MCL 712A.19b(5); MCR 3.977(H)(4); *In re Trejo Minors*, 462 Mich at 351.

<sup>15</sup> *In re Trejo Minors*, 462 Mich at 353.

<sup>16</sup> *Id.* at 356-357.

<sup>17</sup> *In re Mason*, 486 Mich at 164. See also *In re Mays*, 490 Mich 993, 994; 807 NW2d 304 (2012), and *In re Mays*, 490 Mich 997; 807 NW2d 304 (2012) (reversing a decision terminating



child's placement with Cataford's parents in determining whether termination was in the child's best interests.

Here, the trial court found that termination was in the child's best interests because Dobson was incarcerated and could not meet the child's immediate need for a stable and secure home. In addition, he will have been incarcerated for more than half the child's life by the time he is released (assuming he is released in May 2014). While Dobson's lengthy incarceration and present inability to meet the child's needs merit consideration, those factors were counterbalanced by the fact that despite Dobson's incarceration, he had maintained a relationship with the child through personal visits, some correspondence, and telephone calls, and the two were still bonded. Further, while Gunn testified that the child liked the idea of being adopted by her grandparents, there was no evidence that she wanted to cease all contact with her father. Moreover, although it was not clear that Cataford and the child had any relationship worth preserving, given that Cataford had not visited the child for more than a year because she would not give up her drug habit, in light of *In re Mason* and *In re Mays*, the trial court's failure to expressly consider the fact that the child had been placed with relatives requires remand for further findings on the best-interests issue. Therefore, we conclude that the trial court clearly erred in determining that termination was in the child's best interests without considering the child's placement with relatives. Accordingly, we vacate the trial court's best-interests determination and remand for reconsideration of the child's best interests in accordance with *In re Mason* and *In re Mays*.

#### IV. CONCLUSION

We affirm the trial court's findings that DHS established by clear and convincing evidence sufficient statutory grounds for termination of Dobson's and Cataford's parental rights. However, we vacate in part the trial court's decision to the extent that it found that termination of the parental rights of Dobson and Cataford was in the child's best interests and remand for reconsideration of the child's best interests in accordance with this opinion.

We affirm in part and vacate in part, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ William C. Whitbeck

/s/ Michael J. Riordan

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parental rights where the factual record was incomplete and did not show "that the trial court considered whether termination of the respondent's parental rights was appropriate given the children's placement with their maternal grandmother").