STATE OF MICHIGAN

COURT OF APPEALS

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In re K. K. HICKS, Minor.

Nos. 376900; 376901
Wayne Circuit Court
Family Division
LC No. 2015-519120-NA

Before: BORRELLO, P.J., and M. J. KELLY and ACKERMAN , JJ.

PER CURIAM.

In these consolidated appeals,[1] respondents appeal as of right the order terminating their parental rights to KH under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), and (j). We affirm.

I. BASIC FACTS

In June 2022, petitioner, the Department of Health and Human Services, received a complaint stating that respondent-mother had been seen lying in the middle of traffic, with KH in his stroller beside her, declaring that she wanted to die. In light of respondent-mother's circumstances, respondent-father was asked to care for KH, but he responded that he "wouldn't do it and couldn't do it." Respondent-father reported that he had been diagnosed in the past with schizophrenia, depression, and anxiety. According to respondent-father, he could not take care of KH both because his prescribed medication made him very sleepy, and because of the condition of his home, which lacked a working kitchen and bathroom. The trial court authorized the petition, and KH was subsequently placed with his paternal aunt.

In January 2023, the trial court found that the preponderance of the evidence established that KH was within the trial court's jurisdiction with respect to both respondents and that petitioner had established two statutory grounds for termination of respondent-mother's parental rights, but

[1] *In re K K Hicks Minor*, unpublished order of the Court of Appeals, entered August 20, 2025 (Docket Nos. 376900 and 376901).

it did not find that termination of her parental rights was in KH's best interests. As for respondent-father, the trial court declined to find statutory grounds for termination, stating that respondent-father should be given an opportunity "to plan." Thereafter, the court ordered respondents to comply with a treatment plan that included infant mental health services, supportive visitation, psychological and psychiatric evaluations, and individual therapy. Respondents were further directed to take their medications as prescribed, keep in contact with assigned foster-care workers, attend court hearings, obtain suitable income and housing, and participate in a parent-partner program.

Over the next two years, respondent-mother made some progress on her treatment plan. She began attending weekly individual therapy sessions and monthly psychiatric assessments. She started taking her prescribed medication in the manner prescribed. She also retained a source of income and secured a suitable one-bedroom apartment. She was present for all proceedings. And although her supervised visits with KH were at times inconsistent, she was eventually permitted unsupervised visitation and overnight stays. Despite that progress, there were setbacks toward reunification. For instance, respondent-mother moved out of her apartment and struggled to subsequently obtain suitable housing. Further, visitation vacillated between supervised and unsupervised visitation. Then, in March 2025, respondent-mother was arrested after an altercation with respondent-father and briefly incarcerated. A few months later she reportedly attempted to kick in respondent-father's front door.

Respondent-father, on the other hand, barely participated in the proceedings. According to the caseworkers, he did not complete "any aspect" of his treatment plan during the nearly two-year dispositional review and permanency planning period. He did not respond to communications from the caseworkers or attend any court hearings. As a result, his caseworkers were unable to verify his source of income, conduct a housing assessment, or supervise visits with KH. Indeed, respondent-father attended just 3 out of 143 weekly supervised visits. Respondent-father did not give an answer when asked why he was refusing services.

Based upon the foregoing, the trial court ordered petitioner to file a supplemental petition to terminate respondents' parental rights. Following a hearing on the petition, the court found that statutory grounds for termination had been established under MCL 712A.19(b)(3)(c)(*i*), (c)(*ii*), and (j). With respect to respondent-father, the trial court stated that he was "just absent," noting that "[t]his is my first time ever seeing you at a court hearing. I remember I did the bench trial when this case first came in. The child got placed with your sister and you just did not step up." With respect to respondent-mother, the trial court acknowledged that, although she had been "way more compliant with services than father," respondent-mother's recent behavior was a cause for concern, especially in light of how KH first came into care.

At the best-interest hearing, the trial court ultimately determined that termination of respondent-father's parental rights would be in the best interests of KH, once again noting that "the trial was the first time that I have ever seen the father." KH, meanwhile, was now four years of age, and respondent-father had reportedly visited him a total of 15 times. This suggested to the court that respondent-father "doesn't want to be the parent to provide permanency and stability for this child." The trial court likewise found that termination of respondent-mother's parental rights would be in the best interests of KH. The court acknowledged respondent-mother's consistent progress but noted recurring issues with her mental health, which demonstrated respondent-

mother's failure to benefit from the services offered to her. The trial court expressly acknowledged that KH had been placed with a relative but emphasized that he needed the kind of stability and permanency that only a home could provide.

In a written order, the trial court further found that respondent-father had no bond with KH and specifically noted respondent-father's failure to visit or support KH, participate in services, or even appear for the best-interest assessment. As for respondent-mother, the trial court noted that the Clinic for Child Study recommended that respondent-mother's parental rights be terminated. The trial court further found that respondent-mother failed to benefit from services, as demonstrated by her recurring mental health issues and recent noncompliance with mental health services. Although respondent-mother and KH had a bond, the trial court nonetheless found that respondent-mother has failed to rectify the conditions that led to removal.

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

Respondents argue that the trial court erred by finding statutory grounds to terminate their parental rights. "This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination. The trial court's factual findings are clearly erroneous if the evidence supports them, but [this Court is] definitely and firmly convinced that it made a mistake." *In re White*, 303 Mich App 701, 709-710; 846 NW2d 61 (2014).

B. ANALYSIS

The court terminated respondents rights under MCL 712A.19b(3)(c)(*i*), which provides that a trial court may terminate a parent's rights to a child if the court finds by clear and convincing evidence that "182 or more days have elapsed since the issuance of an initial dispositional order" *and* the court also 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." *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010) (quotation marks and citation omitted). "This statutory ground exists when the conditions that brought the children into foster care continue to exist despite time to make changes and the opportunity to take advantage of a variety of services . . . ." *In re White*, 303 Mich App at 710 (quotation marks and citation omitted).

Based upon the record before this Court, the trial court did not clearly err by finding that termination of respondent-mother's parental rights was warranted under MCL 712A.19b(3)(c)(*i*). Over two years elapsed between the initial dispositional order and the termination order. During that substantial period of time, respondent-mother made progress on rectifying the conditions that led to adjudication by addressing her untreated mental health condition. She attended weekly individual therapy and monthly psychiatric appointments. She began taking her prescribed medication as instructed. She consistently attended court hearings; she obtained suitable housing; she completed a fourteen-week parenting curriculum; and, although her visitation with KH was inconsistent at times, she was nonetheless permitted, because of her significant progress, to begin unsupervised, overnight visitation with him.

This progress was remarkable given respondent-mother's history with CPS and foster care. Yet, KH was removed from respondent-mother's care in 2021 in light of similar concerns about her mental health. After completing her treatment plan, she was reunited with KH. Less than one year later, concerns about respondent-mother's mental health resurfaced, and KH was again removed from her care and custody. And, despite her progress with services, concerns about respondent-mother's mental health status had resurfaced yet again. Respondent-mother would, for "a majority" of unsupervised visits, call foster-care workers after hours "in a panic," report that she was feeling "overwhelmed and stressed out," and request that KH be picked up. On one such occasion, the on-call supervisor who picked up KH reported that respondent-mother smelled of alcohol and that KH had a mark on his chin. KH reported that respondent-mother had hit him. Then respondent-mother was incarcerated for three days following an altercation with respondent-father. On another occasion, respondent-mother was reported to have attempted to kick in respondent-father's front door, after which she walked with a limp for a week or two.

In light of the foregoing, the trial court did not clearly err by finding that the conditions which led to adjudication continued to exist. At the time of termination, KH was four years of age, and, despite two years of services, respondent-mother's mental-health issues continued to interfere with her ability to provide KH with proper care and custody. For these reasons, the trial court did not clearly err by terminating respondent-mother's parental rights under MCL 712A.19b(3)(c)(*i*).

Respondent-father argues that the trial court erred by concluding that reasonable efforts toward reunification had been made because petitioner failed to create a service plan that reasonably accommodated respondent-father's physical disability. "The time for asserting the need for accommodation in services is when the court adopts a service plan." *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012) (quotation marks and citation omitted). "However, even if a parent does not object or otherwise indicate that the services provided were inadequate when the initial case services plan is adopted, such an objection or challenge may also be timely if raised later during the proceedings." *In re Atchley*, 341 Mich App 332, 337; 990 NW2d 685 (2022). Respondent-father at no point contested the adequacy of reunification efforts on the basis of his disability, or otherwise. Therefore, the issue is unpreserved.

Absent a number of statutory exceptions not applicable here, petitioner is required "to make reasonable efforts to reunify families and to rectify the conditions that led to the initial removal." *In re Smith*, 324 Mich App 28, 43; 919 NW2d 427 (2018). See also MCL 712A.18f(3)(b) and (c); MCL 712A.19a(2). "As part of these reasonable efforts, [petitioner] 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." *In re Hicks/Brown*, 500 Mich 79, 85-86; 893 NW2d 637 (2017), citing MCL 712A.18f(3)(d). "The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.).

Under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*., "public entities such as [petitioner] 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." *In re Hicks/Brown*, 500 Mich at 86 (citation omitted). Therefore, "efforts at reunification cannot be reasonable under the Probate

Code[, MCL 710.21 *et seq*.,] if the Department has failed to modify its standard procedures in ways that are reasonably necessary to accommodate a disability under the ADA." *Id*. Conversely, "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 parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody." *In re White*, 303 Mich App at 710. "Similarly, a parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home." *Id*. at 711.

Respondent-father was first ordered to comply with a treatment plan on May 17, 2023. Respondent-father was required to take his medication as prescribed, participate in supportive visitation, keep in contact with foster-care workers, attend court hearings, complete psychological and psychiatric evaluations, participate in individual therapy, have a legal source of income, obtain suitable housing, and participate in visitation with KH. Respondent-father never objected to his treatment plan at that time.

Caseworkers assigned to the case repeatedly reported difficulty in contacting respondent-father. Despite failing to reach respondent-father, they continued to write to and call him on a monthly basis. Respondent-father confirmed that he was in fact receiving these communications, that he read them, and that he knew they requested return correspondence. However, respondent-father explained that he would respond only "when I can, when it's convenient for me." When the caseworkers did manage to get in contact with respondent-father and offer services, he simply refused without explanation.

Respondent-father now objects to his court-ordered treatment plan on the basis that it did not reasonably accommodate his disability. However, respondent-father makes no effort to explain how and why petitioner's efforts were not reasonably accommodating. Consequently, he has failed to demonstrate how the alleged error has affected his substantial rights. Ultimately, respondent-father's reliance on *In re Matamoros*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 371544), is unpersuasive. There, the petitioner's failure to reasonably accommodate the respondent-parent was self-evident because the petitioner failed to formulate a treatment plan altogether, thereby depriving the respondent-parent of the opportunity to object to services. *Id*. at ___; slip op at 3. Here, respondent-father was ordered to comply with a treatment plan that he did not object to over the course of approximately two years of proceedings. On this record, respondent-father cannot establish plain error affecting his substantial rights with regard to petitioner's alleged failure to accommodate his mental-health related disability.

Moreover, the court did not clearly err by finding statutory grounds to terminate respondent-father's parental rights under MCL 712A.19b(3)(c)(*i*). In the roughly two-year period between the dispositional order imposing respondent-father's service plan and the termination of his parental rights, respondent-father's lack of participation in KH's life—one of the conditions that led to his removal—remained constant. In that period of time, respondent-father had visited KH just three times out of a possible 143 weekly visits. The trial court therefore did not clearly

err by finding that the evidence clearly and convincingly established statutory grounds for respondent-father's parental rights under MCL 712A.19b(3)(c)(*i*).[2]

III. BEST INTERESTS

A. STANDARD OF REVIEW

Respondent-father also argues that the trial court clearly erred by finding that termination of his parental rights was in KH's best interests. A trial court's decision regarding the child's best interests is reviewed for clear error. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

B. ANALYSIS

Once the petitioner has presented clear and convincing evidence that persuades the court that a statutory ground for termination is established, the court must determine whether termination is in the child's best interests. *In re Keillor*, 325 Mich App 80, 93; 923 NW2d 617 (2018). "The trial court should weigh all the evidence available to determine the [child's] best interests." *In re White*, 303 Mich App at 713. Factors that a court may consider 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." *In re Olive/Metts*, 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. Because "a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a)," the fact that a child is living with relatives when the case proceeds to termination is a factor that *must* be considered in determining whether termination is in the child's best interests. *In re Mason*, 486 Mich at 164. However, although placement with a relative weighs against termination, that fact is "not dispositive." *In re MJC*, 349 Mich App 42, 66; 27 NW3d 122 (2023).

Respondent-father does not argue that the trial court failed to consider relative placement or guardianship when it made its best-interest determination; rather, he argues only that relative placement and guardianship were not "properly weigh[ed]" "as Michigan law requires." In support of his argument, he directs this Court to our Supreme Court's order *In re JMG/JGG/JMG*, ___ Mich ___ (2025) (Docket No. 167535). In that case, the Supreme Court held that trial courts should consider, when making a best-interest determination, whether "retaining the parent-child relationship, in some form, is in each child's best interests." Respondent-father notes that guardianship is a mechanism for retaining the parent-child relationship. Therefore, he contends that the trial court erred when it did not consider whether guardianship with KH's relative was in KH's best interests because it would be a means of retaining the parent-child relationship.

[2] Because only one ground for termination need be established, we decline to consider the additional grounds for termination upon which the trial court based its decision. See *In re Jenks*, 281 Mich App 514, 518 n 3; 760 NW2d 297 (2008).

Here, the caseworker explained that guardianship was not in KH's best interests given his tender age and his need for permanence. Further, the court found that there was no bond between KH and respondent-father. Prior to the incident that brought KH into care, respondent-father had minimal contact with his child. And, for the two years after KH came into care, respondent-father's minimal contact persisted. As noted above, respondent-father's lack of participation in all aspects of the case included parenting time. Under such circumstances, it would be surprising if KH, who was only four years of age at the time of the termination hearing, had any bond whatsoever with respondent-father. Thus, notwithstanding that a guardianship can be a vehicle to maintain a bond between a child and a parent, considering that there was no bond to maintain, there is nothing to suggest that it would be an effective vehicle in this case. Indeed, given respondent-father's lack of contact with his child for the two years that the child has been placed with his paternal aunt, there is nothing to suggest that a formal guardianship would lead to better contact between respondent-father and KH.

Moreover, it is worth noting that the trial court ordered a clinic to determine KH's best interests as they related to respondent-father. Respondent-father did not attend, nor did he attend the best-interests hearing. Although he now faults the trial court for continuing to termination without the clinic, we conclude that his lack of participation in the clinic is only further support for the court's finding that termination of respondent-father's parental rights is in KH's best interests.

Considering the record in this case, we conclude that the trial court properly weighed KH's relative placement against termination of respondent-father's parental rights. In doing so, the trial court placed on the other side of the scales KH's need for stability, permanency, and a safe home environment. That finding was not clearly erroneous.

Affirmed.

/s/ Stephen L. Borrello
/s/ Michael J. Kelly
/s/ Matthew S. Ackerman