

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
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In re KAISER, Minors.

No. 377179
Mason Circuit Court
Family Division
LC No. 22-000008-NA

Before: MARIANI, P.J., and FEENEY and TREBILCOCK, JJ.

PER CURIAM.

Respondent appeals by right the order terminating his parental rights to his two minor children, KK and AK, pursuant to MCL 712A.19b(3)(j) (reasonable likelihood of harm if returned to parent) and MCL 712A.19b(3)(m)(ii) (parent convicted of violation of criminal statute that involves use of force or threat of force and that subjects the parent to sentencing under MCL 769.11, and continuing parent-child relationship would be harmful to child). We affirm.

I. BACKGROUND

The Department of Health and Human Services (DHHS) became heavily involved in respondent’s life in December 2021 after his then-girlfriend’s two-year-old child, JT, suffered life-threatening injuries while in his mother’s and respondent’s care. Following an investigation, DHHS determined that JT’s injuries were nonaccidental and the result of a severe beating by either JT’s mother or respondent, or both, as they were the only two individuals in the home at the time that JT sustained his injuries.¹ DHHS thereafter filed a petition seeking removal of JT and his siblings from their mother’s care and requesting termination of parental rights at initial disposition due to the severity of the abuse JT had suffered; the petition also named respondent as a nonparent-respondent due to his involvement in JT’s abuse. Both JT’s mother and respondent were also criminally charged for JT’s injuries.

¹ One of JT’s sisters was also in the home at that time, but she was close in age to JT and incapable of inflicting the severe injuries that JT had sustained.

At the time of JT's abuse, respondent had two children of his own, KK and AK, with his ex-wife (the children's mother); the children lived with their mother, who had sole legal and primary physical custody of them, but would occasionally visit or stay the night with respondent. Respondent's alleged perpetration of severe child abuse against JT—and several instances of domestic violence against the children's mother, which DHHS had also substantiated²—prompted DHHS to file a petition in this case in January 2022, seeking jurisdiction over KK and AK and termination of respondent's parental rights at initial disposition. In February 2022, at the preliminary hearing, respondent waived probable cause, stipulated to the court's assumption of jurisdiction, and supported leaving the children in their mother's care.³ The trial court thereafter authorized the petition, ordered that the children remain in their mother's care, and awarded respondent supervised parenting time. The court also found that reasonable efforts toward reunification were not required because the serious physical abuse of JT constituted an aggravated circumstance under MCL 722.638(1) and (2) that excused DHHS from making such efforts.

At a subsequent pretrial hearing, the trial court learned that respondent was incarcerated and had two pending criminal matters at that time: one for JT's abuse, and one for stabbing an individual in December 2021 while JT and his siblings were present. In light of this, the court concluded that returning KK and AK to respondent's care and having in-person parenting times between the children and respondent would pose a substantial risk of harm to the children's wellbeing, and that remaining in their mother's care was the most suitable permanency plan. The court, however, still permitted respondent parenting time via phone calls, video calls, and letters. At the August 2022 adjudication trial, respondent pleaded to jurisdiction, admitting that he was the legal father of KK and AK, was currently incarcerated, and was unable to properly care for his children because he lacked adequate housing.

As this case progressed, so did respondent's criminal matters. This raised self-incrimination concerns for respondent, who made clear that he would not communicate or cooperate with DHHS in this case until after a resolution had been reached in his criminal matters. Additionally, all parties expressed their belief that resolution of respondent's criminal cases first would lead to a more efficient resolution in this case. Thus, although the parties first began the initial dispositional hearing—which simultaneously acted as a termination hearing because DHHS had petitioned for termination at initial disposition—in December 2022, the trial court adjourned the hearing pursuant to the parties' agreement until after respondent's criminal proceedings concluded. As respondent's criminal cases progressed, the court held regular review hearings in this case to check on the children's wellbeing and on the progress of the criminal cases. At each hearing, the court reiterated that services were not being provided because DHHS was not required to make reasonable efforts toward reunification, and respondent asked the court to continue the

² Respondent and the children's mother were married from 2017 to 2021, during which time the children were born. The marriage, however, was plagued by domestic violence perpetrated by respondent, often in front of the children, which led not only to the couple's divorce but also to respondent being convicted of and incarcerated for misdemeanor domestic violence, aggravated stalking, and two counts of resisting and obstructing a police officer. The children's mother was never named a respondent in this case.

³ The children remained in their mother's care throughout the proceedings.

adjournment and to maintain the “status quo”—namely, the children remaining in their mother’s care while being permitted to participate in parenting time with respondent at their mother’s discretion. The court entered an order to that effect after each hearing. Respondent’s criminal cases ultimately took much longer than anticipated, and this pattern of review hearings and maintenance of the “status quo” correspondingly continued for nearly two years.

Midway through one of his criminal trials, respondent accepted a plea agreement. Per the agreement, respondent pleaded guilty as a third-offense habitual offender to assault with intent to do great bodily harm less than murder for the stabbing and was sentenced to a minimum of 65 months’ imprisonment; in exchange, the remaining charges in that case and the charges in his other case related to JT’s abuse were dismissed.

Shortly thereafter, DHHS filed two supplemental petitions within a few weeks of each other, both of which continued to seek termination of respondent’s parental rights at initial disposition. The first supplemental petition added allegations detailing the outcome of respondent’s criminal cases. The second supplemental petition added factual allegations regarding respondent’s extensive criminal history, which included several violent misdemeanors and felonies, repeated substance use, and numerous parole and probation violations. The petition also added MCL 712A.19b(3)(m)(ii) as another statutory basis for termination due to respondent’s numerous violent criminal convictions that involved use of force or threat of force, including a 2011 conviction for third-degree criminal sexual conduct (CSC-III) involving a minor that required respondent to register as a sex offender for the rest of his life.

The trial court thereafter conducted a five-day initial dispositional hearing that, as noted, also served as a termination hearing; the first day occurred in early January 2025, and the final day in late February 2025. During the hearing, the court received voluminous documentary evidence and testimony from numerous witnesses regarding the alleged facts that gave rise to DHHS’s petition. After considering all the parties’ proofs and arguments, the court issued a 16-page written opinion detailing its factual findings and legal conclusions regarding termination, explaining that it had found that clear and convincing evidence established (1) grounds for termination of respondent’s parental rights under MCL 712A.19b(3)(j) and (m)(ii), and (2) that termination was in the children’s best interests. The court then issued an order terminating respondent’s parental rights as previously described. This appeal followed.

II. REASONABLE EFFORTS

On appeal, respondent first argues that the trial court reversibly erred when it found that DHHS was not required to make reasonable efforts toward reunification based on respondent’s role in JT’s life-threatening injuries.

“In most circumstances, DHHS has an affirmative duty to make reasonable efforts to achieve reunification before a court may terminate parental rights, and it is only in rare circumstances provided by statute that a court may hold a combined adjudicative and dispositional hearing in which parental rights may be terminated at the initial dispositional hearing.” *In re Berryman/Hurd/Morgan/Morgan-Hurd*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket Nos. 374775; 374776); slip op at 4 (cleaned up). Those circumstances include when “[t]here is a judicial determination that the parent has subjected the child to aggravated circumstances as

provided in [MCL 722.638(1) and (2)].” MCL 712A.19a(2)(a). As is relevant here, such aggravated circumstances exist when DHHS determines that (1) “a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child’s home, has abused the child or a sibling of the child,” MCL 722.638(1)(a), and (2) the respondent-parent “is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent’s failure to take reasonable steps to intervene to eliminate that risk,” MCL 722.638(2). DHHS is also excused from making reasonable efforts and may seek termination at initial disposition if “[t]he parent is required by court order to register under the sex offenders registration act [(SORA), MCL 28.721 *et seq.*]” MCL 712A.19a(2)(d).

Following the preliminary hearing in February 2022, the trial court in this case found that DHHS was excused from making reasonable efforts toward reunification because of aggravated circumstances—the “serious physical abuse” that JT had suffered while in his mother’s and respondent’s care. Thus, consistent with the requirements of MCL 712A.19a(2)(a), the trial court made a “judicial determination” that aggravated circumstances under MCL 722.638(1) and (2) existed and excused DHHS from its obligation to make reasonable efforts toward reunification. As the trial court acknowledged in its June 2025 written opinion regarding termination, however, the abuse that JT suffered was an erroneous basis for this conclusion. MCL 722.638(1)(a)(iii) provides that “severe physical abuse” constitutes an aggravated circumstance, but that abuse must have been inflicted on “*the* child or a sibling of *the* child” subject to DHHS’s petition, rather than simply *a* child as the court had initially found. (Emphasis added.) And here, JT was neither subject to DHHS’s petition in this case nor KK’s or AK’s sibling, and thus did not fall within the scope of MCL 722.638(1)(a)(iii) for purposes of these proceedings.

In its June 2025 opinion, the trial court recognized that it had erred in its determination that the abuse of JT constituted an aggravated circumstance excusing DHHS from making reasonable efforts in this case. The court concluded, however, that the error was harmless because reasonable efforts were also excused under MCL 712A.19a(2)(d), as respondent had been ordered to register as a sex offender following his CSC-III conviction in 2011. We see no reversible error in the trial court’s conclusion.

Respondent does not dispute that he was convicted of CSC-III in 2011 or that, as a result, he was ordered to register as a sex offender—and indeed, there was ample record evidence presented to that effect.⁴ He also does not dispute that this circumstance existed at the time the court made its initial determination that reasonable efforts were not required. Nor does he dispute that this circumstance falls within the scope of MCL 712A.19a(2)(d) and would excuse DHHS from making reasonable efforts. Respondent instead takes issue with the fact that the court did not expressly find that reasonable efforts were excused under this particular provision until approximately two years after the court had first (and erroneously) reached that conclusion under

⁴ This evidence included a copy of respondent’s judgment of sentence for his CSC-III conviction, which indicated that respondent was required to register as a sex offender; the testimony of an officer at the local police department that respondent was registered as a tier III sex offender and was required to report every quarter for life due to his status as a tier III offender; and respondent’s own testimony detailing his CSC-III conviction and registration requirements.

MCL 712A.19a(2)(a)—which, according to respondent, meant that he was impermissibly deprived of two-years’ worth of services. But respondent has failed to show how the record and law support that latter point.

As noted, there is no dispute that respondent was required to register as a sex offender, and thus that MCL 712A.19a(2)(d) was met, throughout the entirety of these proceedings. Unlike MCL 712A.19a(2)(a), which specifically requires a “judicial determination that the parent has subjected the child to aggravated circumstances” as provided in MCL 722.638(1) and (2) “before [DHHS] is excused from making reasonable efforts,” *In re Smith-Taylor*, 509 Mich 935, 935 (2022) (quotation marks omitted), MCL 712A.19a(2)(d) simply requires that there be a “court order” in place requiring respondent to register as a sex offender—which there undisputedly was. And, as discussed, the court made clear that reasonable efforts were not required under MCL 712A.19a(2)(d) at the initial-dispositional hearing prior to terminating respondent’s parental rights, as it was required to do. See *In re Barber/Espinoza*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 167745); slip op at 3-4.

Furthermore, as the trial court found, the record shows that a few months after respondent’s adjudication hearing, the parties stipulated to adjourn the initial dispositional hearing until after respondent’s criminal proceedings were resolved, so as to avoid any self-incrimination issues for respondent and in hopes of proceeding through this case more efficiently. And respondent made clear at that time that he had no intention of communicating or cooperating with DHHS or potential service providers in this case until after his criminal proceedings concluded. Correspondingly, throughout the various hearings the court thereafter held to check in with the parties about this case and the pending criminal proceedings, the court repeatedly confirmed that no services other than parenting time were being provided and respondent at no point objected to the lack of services or requested additional services. Instead, he consistently indicated that he wished to maintain the established “status quo” until his criminal proceedings were resolved.

The burden is ultimately on the parent “challenging the services [being] offered” to identify other “services that would have been appropriate” or “how the services that were offered were deficient,” and to demonstrate that “he or she would have fared better if other services had been offered.” *In re Sanborn*, 337 Mich App 252, 264, 266-267; 976 NW2d 44 (2021). But respondent never did so when raising his reasonable-efforts argument for the first time at the conclusion of the termination hearing, and he still has not done so when raising the issue on appeal. Accordingly, and given the particular facts and circumstances presented by this case, respondent has not shown reversible error in the trial court’s reasonable-efforts determination.

III. BEST INTERESTS

Respondent next argues that the trial court clearly erred in its determination that termination of his parental rights was in the children’s best interests. We review for clear error a court’s determination regarding a child’s best interests. *Id.* at 276. “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.” *Id.* (quotation marks and citation omitted).

When determining whether termination is in the best interests of the child, the court should place its “focus on the child rather than the parent.” *In re Mota*, 334 Mich App 300, 321; 964 NW2d 881 (2020). “The trial court should weigh all the evidence available to determine the child’s best interests,” and it should consider a variety of factors, including “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 Simpson*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 368248); slip op at 5 (cleaned up). “Other factors that the court may consider include the parent’s history, the parent’s psychological evaluation, the age of the child, and a parent’s substance-abuse history.” *In re MJC*, 349 Mich App 42, 62; 27 NW3d 122 (2023) (citations omitted). The court may also consider the parent’s ability to provide the child a safe and permanent home, “the parent’s visitation history with the child, the child’s well-being while in care, and the possibility of adoption,” *id.* (cleaned up), as well as “how long the child was in foster care or placed with relatives, along with the likelihood that the child could be returned to the parents’ home within the foreseeable future, if at all,” *In re CJM*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 367565); slip op at 4 (quotation marks and citation omitted). The court must also expressly consider a child’s placement with a relative, which ordinarily weighs against termination. *Id.* at ___; slip op at 4.

On appeal, respondent argues that the trial court failed to expressly consider the children’s relative placement with their mother as weighing against termination when making its best-interests determination. According to respondent, the court should have simply modified the mother’s custody order regarding the children to address any concerns it may have had about his relationship with them, rather than terminating his parental rights. The record before us, however, belies this claim and shows no reversible error in the trial court’s conclusion that termination of respondent’s parental rights was in the children’s best interests.

In its written opinion following the termination hearing, the trial court expressly recognized that it “must consider” a child’s relative placement “as an explicit factor in determining whether termination of parental rights will serve the child’s best interests” and that “[g]enerally, a child’s placement with a relative weighs against termination.” The court then noted that the children were “placed with their mother” and were “doing well” there. The court concluded, however, that “the safety considerations that ha[d] been highlighted in this case” and discussed throughout the opinion—namely, respondent’s continued involvement in violent crimes and substance use, his mistreatment of and unsafe behavior around children with whom he had contact, and his role in the serious physical abuse of JT—“substantially outweigh[ed]” that relative placement.⁵ Indeed, the court emphasized that it found by clear and convincing evidence, rather than the required preponderance of the evidence, see *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013), that

⁵ The trial court also duly considered the parent-child bond between respondent and the children, noting that there appeared to be some bond between them, but found that the evidence as a whole—particularly the safety concerns discussed by the court at length throughout its opinion—demonstrated that termination of respondent’s parental rights was in the children’s best interests. See *Simpson*, ___ Mich App at ___; slip op at 5; *MJC*, 349 Mich App at 62.

termination was in the children's best interests even in light of their relative placement with their mother.

The record evidence supported this conclusion. Testimony and documentary evidence established that respondent has been convicted of several violent misdemeanors and felonies, including convictions for domestic violence and aggravated stalking involving the children's mother, and a conviction for assault with intent to commit great bodily harm for stabbing an individual while in the presence of his then-girlfriend's children. Testimony and documentary evidence also established that respondent had committed numerous violations while on probation for various offenses, was on probation at the time of the stabbing, had been incarcerated since 2022 due to that incident, and would remain incarcerated until at least February 2028. Due to this criminal history, respondent had correspondingly been incarcerated for a majority of KK's and AK's young lives, which substantially diminished his opportunity to interact and bond with them. In addition, testimony from respondent and the children's mother established that respondent had also previously been arrested in front of KK after he had driven the two to the probation office and tested positive for methamphetamine. And numerous witnesses testified that respondent frequently used substances in the presence of his children or the children of his then-girlfriend, even after he had been offered—and had participated in—several different substance-use services provided through his probation.

There was also a substantial amount of documentary evidence and testimony, including from respondent, demonstrating that respondent treated JT, JT's siblings, and KK and AK poorly, and that he was involved in JT's abuse. According to testimony from some of JT's siblings, respondent often yelled at all of the children and laughed at them when they got hurt, including KK and AK; called KK and AK derogatory names; and got physical with all of the children, albeit more so with JT and his siblings than with KK and AK. JT's eldest sister also testified that, when she was 15 years old, respondent had given her marijuana to use and had asked her to sell marijuana for him. Regarding JT's abuse, documentary evidence and the testimony of numerous witnesses established that JT had suffered a life-threatening beating while in his mother's and respondent's care and that his mother and respondent were the only adults with him at the time of the incident. Respondent's lengthy testimony on the topic contained numerous inconsistencies, which led the trial court to conclude that it was not credible—an assessment we see no reason to disrupt, given the record evidence before us. See *Sanborn*, 337 Mich App at 276. And as the trial court noted, while the full extent of respondent's involvement in JT's abuse may never be known, he, at minimum, admitted to being in the home around the time the abuse occurred, returning to the home to hide and destroy evidence, and “cover[ing] for” JT's mother during and after the abuse.

In sum, the record reflects that the trial court expressly considered the children's relative placement with their mother as weighing against termination, see *CJM*, ___ Mich App at ___; slip op at 4, but found that even when considering that relative placement, the evidence as a whole demonstrated that termination of respondent's parental rights was in the children's best interests, see *id.*; *Simpson*, ___ Mich App at ___; slip op at 5. We see no clear error in the court's findings. *Simpson*, ___ Mich App at ___; slip op at 3.

Affirmed.

/s/ Philip P. Mariani
/s/ Kathleen A. Feeney
/s/ Christopher M. Trebilcock