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STATE OF MICHIGAN

COURT OF APPEALS

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In re MISNER, Minors.

No. 380291
Clinton Circuit Court
Family Division
LC No. 2025-032622-NA

Before: M. J. KELLY, P.J., and RIORDAN and RICK, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court's order terminating his parental rights to the minor children, IM and RM, at the initial dispositional hearing under MCL 712A.19b(3)(b)(*i*), (g), (j), and (k)(*iii*). Father challenges the absence of reunification services, the sufficiency of the statutory grounds for termination, and the trial court's best-interests determination. RM sustained serious injuries while in father's care. The evidence supports the trial court's determination that aggravated circumstances excused reunification efforts. Both children remained safely in their mother's care while petitioner, the Department of Health and Human Services (DHHS), pursued termination at initial disposition. While the record supports a statutory ground for termination, the trial court did not adequately address how the maternal placement weighed against permanently severing father's rights in its best-interests analysis. We therefore vacate the termination order and remand for reconsideration of the children's best interests.

I. FACTUAL BACKGROUND

Respondent is the father of IM, born in July 2022, and RM, born in June 2025. Before the proceedings began, father lived with the children and their mother. In October 2025, approximately four-month-old RM was taken to a hospital with bruising and a fractured femur. A skeletal survey also revealed multiple rib fractures in different stages of healing. Dr. Chelsey Yurkovich, an emergency physician, testified that RM had a spiral femur fracture that was consistent with twisting force. She further testified that the rib fractures appeared to have occurred on different days, approximately two to three weeks before the hospital visit. Testing did not reveal that any

medical condition caused the fractures. In the physician's opinion, RM's injuries resulted from child abuse.

When interviewed, father offered differing explanations for the femur fracture, including that he may have fallen on RM, that RM fell from an infant swing, and that IM pulled RM from the swing. He later acknowledged that his account of the swing incident was untrue. Father also admitted that, during disagreements with mother, he sometimes picked RM up roughly around her torso, causing her to cry. Father believed his handling might have caused the rib fractures. Mother had previously expressed concern about how he handled RM. Father told an investigating officer that he had been trying to change his behavior because he wanted to be a good father, but had "slipped up." Mother testified that father helped care for the children when he returned from work and agreed that he was a good father.

In October 2025, DHHS petitioned for jurisdiction over both children and termination of father's parental rights at the initial dispositional hearing. Father voluntarily left the family home and began staying with his brother. Both children remained in their mother's care under DHHS supervision. At the October 2025 preliminary hearing, the court suspended father's parenting time in light of a pending criminal investigation into RM's injuries. The court directed reasonable reunification efforts at that time. At the November 2025 pretrial hearing, the court continued the suspension and again directed reasonable efforts. A caseworker reported that a service plan had been prepared and was available to provide to father. Father was subsequently incarcerated during much of the period preceding disposition.

Following a February 2026 adjudication trial, the court exercised jurisdiction over the children. The court credited the medical testimony, noted the inconsistency of father's explanations for RM's injuries, and considered his admissions concerning his handling of RM. It also determined that reasonable efforts were unnecessary because father had subjected a child to aggravated circumstances under MCL 722.638(1) and (2). The written adjudication order checked the box dispensing with reasonable efforts but did not specify the circumstances in the space provided.

At a March 2026 termination hearing, the court found statutory grounds for termination under MCL 712A.19b(3)(b)(*i*), (g), (j), and (k)(*iii*) by clear and convincing evidence. With respect to best interests, the court found that the children were too young to protect themselves, that father had no current bond with them, and that they needed permanency, finality, safety, and security. The court observed that the children's mother had followed medical and therapeutic recommendations and that the children were doing well in her care. The court further observed that the children had sustained no further injuries since October 2025. It concluded that termination was in their best interests. This appeal followed.

II. ANALYSIS

A. REASONABLE EFFORTS

Father argues that the trial court erred by excusing DHHS from providing reasonable reunification efforts despite its earlier orders requiring those efforts and its procedurally and

substantively deficient aggravated-circumstances determination under MCL 722.638. We conclude that father has not established plain error warranting relief.

Because father did not object to the absence of reasonable efforts below, we review this claim for plain error affecting substantial rights. *In re Ferranti*, 504 Mich 1, 29; 934 NW2d 610 (2019). Under this standard, "[t]he respondent[] must establish that (1) error occurred; (2) the error was 'plain,' i.e., clear or obvious; and (3) the plain error affected their substantial rights." *Id.* The error must also have "'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings[ ] . . . .' " *Id.* (quotation marks and citation omitted; alteration in original). Statutory interpretation is reviewed de novo. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

MCL 712A.19a(2) requires "[r]easonable efforts to reunify the child and family" unless a statutory exception applies. Under MCL 712A.19a(2)(a), reasonable efforts are unnecessary when "[t]here is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law[.]" A petition requesting termination at initial disposition does not itself establish this exception; the court must find aggravated circumstances by clear and convincing evidence. *In re Barber/Espinoza*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 167745); slip op at 4.

As our Supreme Court explained, "a trial court must make findings consistent with both MCL 722.638(1) and MCL 722.638(2)." *Id.* at ___; slip op at 9. Under subsection (1), the court must determine whether a statutorily identified person abused the child or a sibling and whether the abuse involved an enumerated circumstance, including "[b]attering, torture, or other serious physical harm." MCL 722.638(1)(a)(*iii*); *In re Barber/Espinoza*, ___ Mich at ___; slip op at 9-11. Subsection (2) separately requires that the 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). Although these inquiries are distinct, overlapping evidence may satisfy both. See *In re Barber/Espinoza*, ___ Mich at ___; slip op at 12.

Father first challenges the aggravated-circumstances determination because the written adjudication order did not identify the particular circumstances in the space provided. Although the order indicated that aggravated circumstances excused reasonable efforts, the court's oral findings supplied the basis for that determination. See *In re KV*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 374236); slip op at 5-6 (recognizing that oral findings may clarify a ruling when the written order leaves relevant findings unspecified). The court considered medical testimony attributing RM's injuries to child abuse, multiple rib fractures in different stages of healing, father's inconsistent explanations, and his admissions concerning rough handling. It expressly found aggravated circumstances under MCL 722.638(1) and (2) because RM sustained severe physical injury. Considered in context, these findings identified both serious physical harm resulting from abuse and father as the suspected perpetrator, notwithstanding the court's failure to separately organize its findings under each subsection.

Father also correctly observes that the court did not expressly identify the clear-and-convincing-evidence standard when determining aggravated circumstances at adjudication, where it referenced the preponderance standard applicable to jurisdiction. Findings sufficient to establish jurisdiction do not necessarily satisfy the heightened burden applicable to aggravated circumstances. *In re Barber/Espinoza*, ___ Mich at ___; slip op at 4. At the termination hearing,

however, the court expressly found clear and convincing evidence supporting the statutory grounds, reviewed the medical evidence and father's admissions, and again characterized RM's injuries as severe physical abuse excusing reasonable efforts. Although the statutory-grounds determination does not substitute for the separate aggravated-circumstances inquiry, the dispositional ruling, considered alongside the court's earlier findings, supports the conclusion that the court evaluated aggravated circumstances under the heightened standard. Father has not established plain error warranting relief on this basis.

Father next argues that his handling of RM was accidental and did not constitute child abuse. MCL 722.622(g) defines child abuse, in relevant part, as "harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent . . . ." The court credited medical testimony attributing RM's injuries to child abuse and considered father's inconsistent explanations and admissions concerning rough handling. His assertion that he did not intend to injure RM did not require the court to accept his characterization of the injuries as accidental. See *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011) ("[R]egard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it."). The aggravated-circumstances finding thus rested on evidence of nonaccidental abuse, not merely the severity of RM's injuries.

Father further contends that RM's injuries did not constitute serious physical harm under MCL 722.638(1)(a)(*iii*). MCL 722.622(ee) incorporates the definition of "serious physical harm" in MCL 750.136b, which includes a bone fracture. MCL 750.136b(1)(f). RM sustained multiple rib fractures and a spiral femur fracture while only a few months old. Neither permanent injury nor a separately established malicious purpose was required, and the evidence supported the finding of serious physical harm resulting from abuse.

Finally, father argues that DHHS failed to provide reasonable reunification efforts while the preliminary and pretrial orders requiring those efforts remained in effect. Although the petition sought termination at initial disposition, that request alone did not excuse reasonable efforts. In November 2025, a caseworker testified that a case service plan was ready for father. A later-filed DHHS plan documented caseworker contacts during his incarceration and the delivery of introductory parenting materials to the jail. These limited measures did not necessarily constitute meaningful reunification efforts, nor did the children's continued placement with mother satisfy the obligation to provide efforts directed toward father. The subsequent aggravated-circumstances determination also did not retroactively establish compliance with the earlier orders.

Nevertheless, even assuming DHHS failed to provide reasonable efforts before adjudication, father has not established plain error affecting his substantial rights. The supported aggravated-circumstances determination excused further efforts, and father has not shown that additional efforts during the preceding months would have changed the disposition. Although his willingness to improve and limited opportunity to demonstrate progress warrant acknowledgment, those circumstances do not establish the prejudice necessary to obtain relief on this unpreserved claim.

B. STATUTORY GROUNDS

Father challenges the four statutory grounds on which the trial court relied, arguing principally that the court focused on past injuries without making the forward-looking findings required to support termination. Only one statutory ground must be established by clear and convincing evidence as to each child. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2001). Because MCL 712A.19b(3)(b)(*i*) supports the determination as to both children, we need not reach the remaining grounds.

"Challenges to a court's finding that a statutory ground for termination has been established are reviewed for clear error." *In re Baham*, 331 Mich App 737, 751; 954 NW2d 529 (2020). "Clear error exists when some evidence supports a finding, but a review of the entire record leaves the reviewing court with the definite and firm conviction that the lower court made a mistake." *Id*. (quotation marks and citation omitted).

MCL 712A.19b(3)(b)(*i*) permits termination when "[t]he child or a sibling of the child has suffered physical injury or physical or sexual abuse," the parent's act caused that injury or abuse, and "there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home." The first element encompasses injury to a sibling; the second requires a prospective assessment of the risk to the particular child. Father does not dispute that RM sustained injuries, but contends that the trial court failed to make the requisite finding concerning future harm.

The record supports the finding that father's conduct caused RM's injuries. The medical testimony attributed the spiral femur fracture and multiple rib fractures to child abuse. The trial court found father's various explanations inconsistent with that evidence. Father admitted repeatedly handling RM roughly during disagreements with mother and acknowledged that his conduct might have caused the rib fractures. The court was entitled to credit the medical testimony and those admissions in finding that father's conduct caused physical injury or abuse. Because subsection (b)(*i*) expressly encompasses injury to a sibling, the historical-injury element applies to IM as well as RM.

The remaining inquiry is prospective. RM sustained serious injuries on more than one occasion, and father acknowledged that he had already been trying to change the behavior that put her at risk. The recurrence of injuries despite that recognition supported the conclusion that RM faced a reasonable likelihood of injury or abuse if placed in his care. We do not discount father's expressed desire to improve or the limited opportunity he had to demonstrate progress through services. But those circumstances did not require the court to disregard the seriousness and recurrence of RM's injuries in evaluating future risk.

The determination concerning IM likewise finds support in the statute and the record. Subsection (b)(*i*) expressly contemplates termination when a sibling suffered the injury; IM therefore need not have sustained an injury herself. See *In re Ledee*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 371631); slip op at 9-10 (affirming termination under subsection (b)(*i*) on the basis of physical abuse of the child's sibling and evidence supporting a reasonable likelihood of future injury or abuse). The prospective inquiry remains necessary, however. IM was approximately three years old when this case began and depended on adults for her safety. Father's

repeated rough handling of RM during disagreements with mother, the serious injuries occurring on multiple occasions, and both children's vulnerability supported the trial court's determination that IM also faced a reasonable likelihood of injury or abuse if placed in father's home.

The court did not expressly repeat the statutory prospective-risk language for each child. Nevertheless, it identified repeated nonaccidental injuries and considered father's admissions concerning his handling of RM. It likewise expressly recognized both children's vulnerability. These findings disclosed a factual basis for its determination that the risks arising from father's conduct extended to both children. On this record, the absence of separately labeled future-risk findings does not leave us with a definite and firm conviction that the court made a mistake. Accordingly, the trial court did not clearly err by finding that MCL 712A.19b(3)(b)(*i*) was established by clear and convincing evidence as to both RM and IM. Because one statutory ground is sufficient, we need not address the additional grounds under subsections (g), (j), and (k)(*iii*). See *In re Powers Minors*, 244 Mich App at 118.

C. BEST INTERESTS

Father also argues that the trial court failed to meaningfully consider that the children were already safely placed with their mother and that this placement provided stability and permanency without terminating his parental rights. We agree that the trial court's analysis was insufficient.

"We review for clear error the trial court's determination regarding the children's best interests." *In re Rippy*, 330 Mich App 350, 360; 948 NW2d 131 (2019) (quotation marks and citation omitted). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

MCL 712A.19b(5) provides that, "[i]f the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights." Relevant considerations 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 White*, 303 Mich App 701, 713; 846 NW2d 61 (2014) (quotation marks and citation omitted). The court may also consider the parent's compliance with a service plan, visitation history, and the children's well-being while in care. *Id.* at 714.

Placement with a relative is an express consideration that weighs against termination. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). The amended definition of "relative" in MCL 712A.13a(1)(j) includes a biological parent. *In re Boshell/Shelton*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 371973); slip op at 10. Accordingly, the trial court was required to explicitly consider the children's placement with their mother when determining whether termination served their best interests. See *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). Although relative placement does not preclude termination, the court's findings must adequately disclose its consideration of that placement. See *In re Gentry*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 376583); slip op at 4-5.

Here, the trial court acknowledged that the children were doing well in their mother's care and had sustained no additional injuries. The children were thus already residing with a parent who provided safety, stability, and appropriate care, while father had left the family home and his parenting time remained suspended. The court emphasized the children's need for safety, permanency, and finality without adequately addressing the significance of their existing maternal placement as a factor weighing against termination. Although the court's findings need not be extensive or formulaic, they must demonstrate that it meaningfully considered whether permanently severing father's parental rights served each child's best interests notwithstanding the stability and protection that mother already provided. The findings here do not adequately disclose that assessment.

The circumstances surrounding father's relationship with the children also warranted consideration. Father had helped care for the children and expressed a desire to improve, but his parenting time was suspended from the outset, he was incarcerated during much of the proceedings, and he received only limited services before the aggravated-circumstances determination. Notably, even mother acknowledged that father helped with care of the children when he lived in the family home, and that he was a good father. Although these circumstances neither entitled father to additional services nor established that he could safely resume parenting, they provided relevant context for evaluating his bond with the children and his opportunity to demonstrate improvement.

We recognize the severity of RM's injuries and the substantial concerns regarding father's ability to safely parent the children. Nevertheless, those circumstances did not relieve the trial court of its obligation to consider the children's placement with their mother in determining whether termination served each child's best interests. On remand, the trial court must expressly consider that placement as a factor weighing against termination, assess father's relationship with each child, and make findings sufficient to explain whether termination serves each child's best interests notwithstanding the existing placement. The court may receive additional evidence and make additional findings as necessary.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Michael J. Riordan
/s/ Michelle M. Rick