

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

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UNPUBLISHED  
September 25, 2012

In the Matter of WILLIAMS, Minors.

No. 309113  
Oakland Circuit Court  
Family Division  
LC No. 09-766163-NA

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In the Matter of WILLIAMS, Minors.

No. 309120  
Oakland Circuit Court  
Family Division  
LC No. 09-766163-NA

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Before: JANSEN, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the order terminating their parental rights to the three minor children (SW, LW, and AW) under MCL 712A.19b(3)(c)(i) and (g). We affirm the trial court's order terminating respondents' parental rights with respect to SW and LW. With respect to AW, we affirm the trial court's determination that statutory grounds supported termination but vacate its best-interest determination and remand for further consideration of the issue.

Respondent-mother challenges the trial court's findings regarding the existence of statutory grounds for termination. Both respondents challenge the trial court's findings regarding the children's best interests. To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interests of the children. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). We review for clear error a trial court's decision terminating parental rights. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *Sours*, 459 Mich at 632-633.

We conclude that termination of respondent-mother's parental rights to all of the children was proper under MCL 712A.19b(3)(c)(i) and (g). At the time of the adjudication, the youngest child had recently been born testing positive for cocaine, like his older siblings. By the time of the termination hearing, respondent-mother had not resolved her substance-abuse issues. She had missed numerous drug screens and tested positive on other occasions. Respondent-mother

attended and completed a 30-day rehabilitation program in November 2011 but immediately relapsed after being discharged. Her psychological evaluation gave her a poor prognosis, revealing that she lacked insight, displayed impulsive behavior, and tended to act out. Furthermore, respondent-mother had not maintained a legal source of income, which her treatment plan required.

Respondent-mother argues that she substantially complied with her treatment plan and accepted responsibility for her problem. She further argues that her relapse should not prevent her from caring for her children because she can properly care for her children with appropriate treatment. In making these assertions, respondent-mother downplays the issues in the case. While respondent-mother may have accepted responsibility for her substance addiction, she had not adequately addressed it. Respondent-mother's series of relapses were keeping her from parenting her children. She had been provided with proper treatment but had consistently demonstrated a significant vulnerability to relapse and was not able to maintain sobriety for more than 90 days during the pendency of this case. The evidence shows that respondent-mother was not committed to maintaining sobriety, and there was no reason to believe that any amount of additional time or treatment would give her the motivation to overcome her addiction. Because respondent-mother did not adequately address the substance use that led to the children's adjudication and because her substance use interfered with her ability to properly care for her children, termination of parental rights was proper under MCL 712A.19b(c)(i) and (g).

We further conclude that termination of respondent-mother's parental rights was in the best interests of SW and LW. See MCL 712A.19b(5). Given respondent-mother's extensive history of drug use, she was unable to provide these children with a safe and appropriate home environment. Respondent-mother argues that she had always properly cared for and attended to the children and that the children were very bonded to her. Although respondent-mother was consistently described as a good, attentive parent, she cannot provide proper care to SW and LW if she is abusing drugs. Her choice to continue using drugs shows that she has not made these children a priority. She cannot offset the risks that her continuing drug abuse would cause these children even with superior parenting skills. Moreover, the bond between respondent-mother and the children was not more important than their safety and well being.

We also conclude that termination of respondent-father's parental rights was in SW's and LW's best interests given his extensive drug use and his failure to complete domestic-violence services. Respondent-father was unable to provide these children with a safe and appropriate home environment.

SW and LW could only achieve the stability and permanency they deserve if respondents' parental rights were terminated so that they would have an opportunity to be adopted. See *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011) (considering child's need for stability and permanency). It was in the children's best interest to be raised by caregivers, unlike respondents, who could provide them with a stable, safe home without exposure to drugs and domestic violence. "If a parent cannot or will not meet [his or] her irreducible minimum parental responsibilities, the needs of the [children] must prevail over the needs of the parent." *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000) (quotation omitted).

Finally, with respect to the best interests of AW, we conclude that the trial court clearly erred when it failed to explicitly address AW's placement with a relative<sup>1</sup> when analyzing AW's best interests. See *In re Olive/Metts*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 306279, issued June 5, 2012), slip op at 4 ("Because the trial court was required to consider the best interests of each child individually and was required to explicitly address each child's placement with relatives at the time of the termination hearing if applicable, . . . we conclude that the trial court clearly erred in failing to do so."). As we recently explained in *Olive/Metts*,

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 to be considered in determining whether termination is in the child's best interests. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Although the trial court may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests, *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999); *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991), the fact that the children are in the care of a relative at the time of the termination hearing is an "explicit factor to consider in determining whether termination was in the children's best interest." *Mason*, 486 Mich at 164. A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best interests determination and requires reversal. *Mason*, 486 Mich at 163-164; *In re Mays*, 490 Mich 993, 993; 807 NW2d 307 (2012). [*Id.*]

Because the trial court failed to explicitly address AW's placement with a relative when analyzing AW's best interests, the factual record in this case is inadequate to make a best-interests determination regarding AW. See *id.* We must, therefore, vacate the trial court's best-interests determination with respect to AW and remand for further consideration of the issue. See *id.* On remand, the trial court must determine whether termination of respondents' parental rights to AW is in AW's best interests and, in doing so, must consider whether termination is

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<sup>1</sup> The record established that AW was placed in the care of a relative who has been referred to as both a maternal cousin and a maternal aunt.

appropriate given AW's placement with a relative. See *id.*; see also *Mays*, 490 Mich at 993-994; *Mason*, 486 Mich at 163-164.

Affirmed with respect to termination of respondents' parental rights to SW and LW. Affirmed in part, vacated in part, and remanded for further consideration with respect to respondents' parental rights to AW. We retain jurisdiction.

/s/ Kathleen Jansen  
/s/ Stephen L. Borrello  
/s/ Jane M. Beckering

# Court of Appeals, State of Michigan

## ORDER

In the Matter of Williams, Minors

Docket No. 309113; 309120

LC No. 09-766163-NA

Kathleen Jansen  
Presiding Judge

Stephen L. Borrello

Jane M. Beckering  
Judges

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The Court orders that this matter is REMANDED for the following purpose:

(1) The trial court shall determine whether termination of respondent's parental rights is in the best interest of the minor child AW *only*, and, in doing so, shall consider whether termination is appropriate given AW's placement with a relative. See *In re Mays*, 490 Mich 993, 994; 807 NW2d 307 (2012); *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010); *In re Olive/Metts*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 306279, issued June 5, 2012), slip op at 4. The trial court shall detail its findings of fact and conclusions of law on the record or in a written opinion.

We retain jurisdiction. Proceedings on remand in this matter shall commence within 35 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded.

The parties shall promptly file with this Court a copy of all papers filed on remand. The trial court shall complete the proceedings within 63 days after the issuance of this order. Respondent-appellant shall file with this Court copies of all orders entered on remand within seven days of their entry. The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

SEP 25 2012

Date

  
Chief Clerk