

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

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In the Matter of L CONRAD, Minor.

UNPUBLISHED  
October 8, 2013

No. 313985  
Benzie Circuit Court  
Family Division  
LC No. 12-001791-NA

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Before: MURRAY, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

In this child welfare proceeding, respondent appeals as of right from the lower court order terminating her parental rights to the minor child. On appeal, respondent raises several challenges to the court's statutory-grounds and best-interest findings. Because we hold that the record sufficiently supported those findings, we affirm.

**I. BACKGROUND**

The record supports the following findings by the lower court. Respondent has a longstanding substance abuse problem, first with alcohol and currently with opiates, and also a long history of case involvement with petitioner dating back to 2006. Petitioner, as well as the courts that were largely involved due to respondent's criminal activity in substance abuse-related activities, previously provided respondent with residential inpatient substance abuse treatment to cope with her addiction, but to no avail. As a result of these prior interventions and respondent's failure to resolve her substance abuse problems, she lost her parental rights to her two older children after she voluntarily released her rights following the initiation of termination proceedings.

This case started when respondent broke into the home of Jason Kercher, her ex-boyfriend, at night around May 14, 2012. At that time, respondent argued with Kercher, attempted to take his truck without permission, and—of particular import—left the minor child in Kercher's care without obtaining Kercher's permission to watch the child and without staying in contact with Kercher or letting him know when she would return for the child. He was unable to contact respondent, so he contacted respondent's probation officer, Shaun Anchuk, in order to

locate respondent.<sup>1</sup> After Anchuk made a referral to petitioner, he—along with CPS Investigator Jeff Hawkins—interviewed respondent. She admitted to abusing prescription drugs, marijuana, and heroin for the two preceding weeks, reportedly because she was attempting to cope with the recent murder of her cousin. Anchuk noted that respondent’s substance abuse was a violation of her probation, but believed that residential treatment and follow-up services would be better for respondent than incarceration.

Petitioner removed the child on May 16, 2012. The court later assumed jurisdiction over the minor child pursuant to respondent’s plea and admission that she had been abusing drugs. The court ordered respondent to comply with services recommended by petitioner. In the Parent-Agency Treatment Plan, petitioner made referrals for the following services: (1) substance abuse treatment; (2) parenting classes; (3) mental health services, including a psychological evaluation; (4) employment assistance; and (5) housing assistance. She was sent to Dakoske Hall for detox, and later entered residential treatment at Great Lakes Recovery. Although she relapsed on heroin between her stay at Dakoske Hall and at Great Lakes Recovery, she initially demonstrated improvement in recovery at the residential facility, to the point that petitioner reunified the minor child with respondent while she was staying at the facility.

Respondent was released from residential treatment at Great Lakes Recovery on July 20, 2012. At that time, petitioner began implementing services to address respondent’s reunification barriers, beginning with the Families First Program and the Family Advocate Program. However, respondent relapsed into drugs and alcohol shortly after her release from the residential facility. She had a diluted drug screen on July 23, 2012, and tested positive for alcohol on July 30, 2012. On August 3, 2012, respondent visited the home of her aunt, and overdosed on heroin in the bathroom, to the point where she had to be resuscitated by a police officer and the Emergency Medical Technician. One of respondent’s older children over whom she previously lost her parental rights was present in the home at that time and witnessed her condition. As a result of respondent’s relapse and overdose, the court violated her probation and later sentenced her to jail, with an expected release date of December 30, 2012. Further, petitioner filed a supplemental petition to terminate respondent’s parental rights on August 6, 2012.

Following the termination hearing, the court found that petitioner proved statutory grounds under MCL 712A.19b(3)(g) and (3)(j) with clear and convincing evidence. And because the court found that termination of respondent’s parental rights was in the best interests of the minor child, the court terminated respondent’s parental rights. This appeal followed.

## II. STATUTORY GROUNDS UNDER MCL 712A.19B(3)

Respondent first argues that the court clearly erred in finding that MCL 712A.19b(3)(g) and (3)(j) justified termination of her parental rights. This Court reviews for clear error the trial court’s factual findings and determination that a statutory ground for termination has been

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<sup>1</sup> Respondent was on probation following her conviction and sentence for attempted operating while intoxicated, 3rd offense, in 2009.

established by clear and convincing evidence. MCR 3.977(E)(3); MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

The court may terminate the parental rights of a parent if it finds statutory grounds to do so, as established in the juvenile code. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). The court found that petitioner proved the following statutory grounds in MCL 712A.19b(3):

(g) The 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.

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(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Petitioner bore the burden of establishing at least one of the above statutory grounds for termination by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). Clear and convincing evidence creates in the mind of the fact-finder "a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the fact-finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Hunter v Hunter*, 484 Mich 247, 265; 771 NW2d 694 (2009) (quotation marks omitted).

A parent's failure to comply with the required services in the parent-agency agreement may be used as evidence of her "failure to provide proper care and custody for the children." *In re JK*, 468 Mich at 214. Further, a respondent is required by law to demonstrate a benefit from any services provided. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005), superseded by statute on other grounds (noting that an order to participate in reunification necessarily entails an obligation to benefit from said services). And a parent's failure to overcome his or her addiction "despite extensive treatment and counseling," is clear and convincing evidence of a parent's failure to provide proper care and custody, as well as the parent's inability to do so within a reasonable amount of time. *In re Conley*, 216 Mich App 41, 43-44; 549 NW2d 353 (1996).

Respondent first challenges some of the trial court's factual findings when it considered whether statutory grounds existed to terminate her parental rights. We decline to address in specificity each challenged finding of the court because, even if some of the court's findings were made in error, this would not warrant reversal. The primary inquiry is whether petitioner presented clear and convincing evidence for the court to find that statutory grounds existed to terminate her parental rights. And because the outcome of these ancillary factual disputes has no bearing on the outcome of the case, our analysis is restricted to considering whether the court's findings *regarding the statutory grounds* were supported by sufficient evidence of record.

Respondent argues that the court erred in finding that MCL 712A.19b(3)(g) justified termination of her parental rights to the minor child. She specifically argued that the witness testimony unequivocally established that respondent was a good mother who loved the minor child, had excellent parenting skills, and made substantial progress during treatment. This argument is meritless. Although petitioner provided respondent with numerous services in the parent-agency treatment agreement to address her barriers, respondent failed to participate in—let alone benefit from—any of these services. Respondent previously lost her parental rights to two other children after the court initiated proceedings to terminate her parental rights due to her longstanding and untreated substance abuse problems, and respondent’s primary problem here continued to be her longstanding substance abuse problem.

Petitioner and the courts provided respondent with inpatient substance abuse treatment on several occasions since 2006. To date, she has failed to demonstrate any benefit from these services, as she continues to relapse whenever she is not living in a structured and supervised environment where respondent lacks access to drugs. In fact, respondent began testing positive for substances three days after she was released from the residential facility, and nearly died of an overdose less than two weeks from her release. Due to her relapse and overdose, respondent was incarcerated. Respondent even acknowledged that she was not emotionally or mentally available to care for the child while she was abusing drugs, as it interfered with her caretaking capacity. Given respondent’s long history of substance abuse and her recent failures to achieve sobriety, particularly where the most recent failure nearly cost respondent her life, the court reasonably concluded that respondent would be unlikely to change her pattern of substance abuse within the foreseeable future. Therefore, the court had clear and convincing evidence to find that MCL 712A.19b(3)(g) justified termination of respondent’s parental rights.

Respondent also argues that the court erred in finding that grounds for termination existed under MCL 712A.19b(3)(j). She specifically argues that the court merely speculated that the minor child would be harmed if returned to her care, as there was no evidence proving that respondent had ever harmed or neglected the minor child. This argument lacks any merit. True, most of the witnesses testified that respondent was well-bonded with her child and did not physically abuse the child or neglect the child’s physical needs. But respondent fails to grasp that child neglect is not so narrowly defined. As a result of her substance abuse, respondent broke the law and violated her probation conditions, which in turn required the child to be placed in foster care. This patently traumatized the child by forcing the child to be separated from her mother and placed with unfamiliar and unrelated caretakers. Respondent’s drug and alcohol addiction completely interfered with her ability to properly care for the minor child. Although respondent claims that she left the minor child with Kercher before she disappeared during her drug binge, this too was neglectful because Kercher was not a proper custodian for the child. Kercher is unrelated to the minor child and is not the minor child’s guardian. See *In re Mason*, 486 Mich at 161, n 11; MCL 712A.2(b)(1)(B).

Notably, the record evidence established that Kercher did not even consent to caring for the minor child before respondent disappeared without letting Kercher know when she would return for the child. Finally, respondent exposed her heroin use to E.K., one of her older children with whom respondent previously lost her parental rights. Conduct towards one child is indicative of probable conduct towards other children. See *In re Foster*, 285 Mich App 630, 631; 776 NW2d 415 (2009). In light of this conduct, as well as respondent’s aforementioned

substance abuse, the court reasonably found that the minor child would be subjected to further harm though traumatic disruptions in custody and exposure to respondent's substance abuse if returned to respondent's care. Therefore, the court did not err in finding that MCL 712A.19b(3)(j) justified termination of respondent's parental rights.

### III. BEST INTERESTS OF THE MINOR CHILD

Respondent also raises several challenges to the court's best-interest determination. This Court reviews for clear error the lower court's determination regarding whether termination of a person's parental rights is in the best interests of the children. MCR 3.977(K); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

Once petitioner establishes a statutory ground under MCL 712A.19b(3) to terminate a parent's parental rights, the lower court must terminate the parent's parental rights if it finds that termination is in the best interests of the children. MCL 712A.19b(5); MCR 3.977(H)(3)(b); *In re Jones*, 286 Mich App at 129. "[W]hether termination of parental rights is in the best interests of the child[ren] must be proven by a preponderance of the evidence." *In re Moss Minors*, 301 Mich App 76; 836 NW2d 182 (Docket No. 311610, released May 9, 2013), slip op at 6. The court must weigh all evidence in the whole record to determine whether termination of parental rights is in the best interests of the children. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). The court may consider the parent's capacity to care for children, as well as the children's "need for permanency, stability, and finality[.]" *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012).

In challenging the court's best-interest determination, respondent raises several duplicative factual challenges that were raised in the preceding issue. To avoid redundancy, they will not be addressed here. In light of the voluminous record, the lower court did not clearly err in finding that termination of respondent's parental rights was in the best interests of the minor child. Notwithstanding respondent's close bond with the child, she relapsed on drugs almost immediately after leaving the residential facility. Petitioner promptly offered respondent services, but she did not take advantage of those services. When considering the fact that respondent previously lost her parental rights to her two older children due to her untreated substance abuse, it is highly likely that the minor child would be subjected to the same exposure to substance abuse that respondent's older children endured. And respondent's addiction has subjected, and will likely continue to subject, the minor child to an unstable and volatile home life marked by multiple interventions by petitioner. This type of environment lacks stability and permanence, and it is clearly not in the best interests of a minor child to be reared in such a manner. The court did not clearly err in finding that termination of respondent's parental rights was supported by a preponderance of the evidence.

Respondent also argues that *In re Mason* required petitioner to provide services to respondent while incarcerated and that the court's best-interest determination was thus void because petitioner failed to do so. This is erroneous for two reasons. First, *In re Mason* does not require this of petitioner: it merely holds that the court cannot terminate a parent's parental rights *solely* on the basis of incarceration, as doing so would permit a court to terminate parental rights without providing the parent with a meaningful opportunity to participate in services. 486 Mich at 160-166. However, our Supreme Court made it clear that its decision did not rest upon due

process; rather, the Court held that terminating a parent's parental rights without giving the parent this meaningful opportunity would improperly bypass petitioner's statutory duty to prove, by clear and convincing evidence, the statutory grounds that justified termination. *Id.* at 166. In other words, if petitioner does not provide the parent with a meaningful opportunity to participate in services, petitioner did not prove the statutory grounds by clear and convincing evidence, as this evidence may only be established by the parent's actions or inactions following the initiation of proceedings under MCL 712A.2(b). See MCL 712A.19(6)(a). In this case, respondent was clearly provided with an opportunity to participate in services, as petitioner referred respondent to a variety of services before she overdosed and became incarcerated. In relapsing after her release from the residential facility, respondent's parental rights were being terminated due to her failure to comply with services, not for her incarceration. Second, petitioner was "not required to provide reunification services" to petitioner when the goal is termination of parental rights. *In re HRC*, 286 Mich App at 463; see MCL 712A.19a(2). And because petitioner changed the goal from reunification to termination almost immediately after respondent overdosed and was incarcerated, petitioner did not abandon its statutory duty.

Respondent finally argues that the court erred in failing to consider child placement alternatives that would not require the court to terminate respondent's parental rights, such as placement with a relative. This argument is both factually and legally untenable. In *In re Mason*, 486 Mich at 163-164, our Supreme Court held that a parent can "fulfill his duty to provide proper care and custody in the future by voluntarily granting legal custody to his relatives[.]" Throughout this case, petitioner and the court explicitly considered whether the minor child should be placed with a relative of respondent. During the emergency preliminary hearing, the court invited respondent to provide potential relatives with whom to place the minor child, and directed petitioner to exert more due diligence in locating potential placements. In the review hearing on August 15, 2012, following respondent's incarceration, the court offered respondent the opportunity to present potential family members to care for the minor child, but noted that they would have to be appropriate and would need to be willing to work with the child's father, as petitioner's goal for the father remained reunification with the minor child. Therefore, contrary to respondent's contention, the court did not ignore respondent's plea to obtain relative placement for the minor child. And regarding the law, the court is only required "to explicitly address" relative placement as an alternative to termination of parental rights when the child is *already* in relative placement. *In re Olive/Metts Minors*, 297 Mich App at 43; MCL 712A.19a(6)(a). Because the child was placed in foster care at the time of the termination hearing, the court was not required to make this finding before proceeding to terminate respondent's parental rights.

Affirmed.

/s/ Christopher M. Murray

/s/ Pat M. Donofrio

/s/ Stephen L. Borrello