

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

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In the Matter of M. BARKER, Minor.

UNPUBLISHED  
October 15, 2013

No. 314805  
Calhoun Circuit Court  
Family Division  
LC No. 2009-000874-NA

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Before: SERVITTO, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Respondent-mother, S. Monarch, appeals as of right the trial court's order terminating her parental rights to her minor child under MCL 712A.19b(3)(g), (j), and (l). Because the trial court's findings and determinations were not clearly erroneous, we affirm.

**I. FACTS**

**A. FACTUAL BACKGROUND**

The trial court terminated Monarch's parental rights to another child in 2009. In January 2012, Monarch gave birth to the child at issue in this case. The child was born about two months premature, weighed only three pounds and eight ounces, and tested positive for methamphetamine and opiates.

In February 2012, the Department of Human Services (the Department) petitioned the trial court to remove the child from Monarch's care and requested that it terminate her parental rights at the initial disposition hearing. In response to the petition, Monarch admitted that she used heroin laced with methamphetamines during the first three or four months of her pregnancy and while she was in labor. She also admitted that she had a criminal history of larceny and controlled substance possession.

In April 2012, Monarch was arrested on charges of larceny and uttering and publishing. Her psychological examinations indicated that she had substance abuse and mental health problems, including bipolar disorder. Monarch was admitted into a Drug Court program, but she failed to appear for drug screens in June 2012. She was arrested, pleaded guilty to uttering and publishing, and was sentenced to serve eight months' imprisonment, 90 days in an inpatient substance abuse treatment program, and three years' probation.

Monarch requested that the trial court adjourn her initial dispositional hearing and agreed to “waive any time limits involved in this case . . . .” All the parties subsequently asked the trial court to adjourn Monarch’s hearing until she was released from treatment. Monarch’s residential treatment program released her in January 2013, and the trial court held the initial disposition hearing in February 2013.

## B. THE TERMINATION PROCEEDING

At the initial dispositional hearing, Monarch testified that she began abusing drugs when she was 18 or 19 years old, and she began using heroin when she was 29 years old. Monarch testified and that her longest period of sobriety was about three or four years, and that she remained sober for about nine months after the trial court terminated her parental rights to her previous child.

Allen testified that Monarch had successfully completed a residential substance abuse treatment program and remained sober. Keri Hultink, Monarch’s Drug Court case manager, testified that Monarch had participated in Drug Court for about three weeks and appeared to be very positive and motivated. Monarch testified that her substance abuse was now controlled and that her spirituality and support group helped her remain sober. However, Hultink testified that she could not predict whether Monarch might successfully complete Drug Court. Allen testified that she was concerned that Monarch only demonstrated progress when under court supervision.

Valerie Patterson, Monarch’s probation officer, testified that Monarch was not taking her mental health medications. Kelly Allen, the child’s foster care caseworker, testified that Monarch refused to take the medications for her bipolar disorder. Monarch testified that she did not take the medications because she believed that they caused more harm than good and she could not afford them.

Allen testified that Monarch’s psychological evaluation recommended that she participate in behavioral therapy after becoming sober. Allen testified that behavioral therapy took about one year to complete and Drug Court would take Monarch an additional one and a half years to complete. Allen estimated that it would be about two and a half years before the trial court could safely return the child to Monarch’s care.

According to Allen, the child had special needs and required physical therapy and extra care. She did not believe that Monarch would be able to provide the child with the care that he needed. Monarch testified that she loved the child and could care for his special needs.

## C. THE TRIAL COURT’S FINDINGS AND CONCLUSIONS

The trial court found that the Department established MCL 712A.19b(g), (j), and (l) by clear and convincing evidence. It found that Monarch’s rights to another child had been terminated. It found that she had been in jail and had not provided the child with care and custody. It found that she was doing well in treatment, but noted that it was not convinced that Monarch was now dealing with her substance abuse problem and that it was very possible that Monarch would relapse. It found that it was reasonably likely that the child would be harmed if he was in her care when that occurred. It also found that there was no reasonable expectation

that Monarch would be able to provide for the child's care within a reasonable time, considering his age and her extensive history of substance abuse and criminal conduct.

Considering the child's medical needs, the trial court found that it was in his best interests to terminate Monarch's parental rights.

## II. ADJOURNMENTS

Monarch contends that the trial court erred by adjourning her initial disposition for over a year. We conclude that Monarch may not seek appellate review of this issue.

A waiver is an intentional relinquishment of a known right.<sup>1</sup> A party who waives his or her rights "may not then seek appellate review of a claimed deprivation of those rights[.]"<sup>2</sup> A party also may not "create[] the very error that it wishes to correct on appeal[.]"<sup>3</sup>

Here, Monarch requested that the trial court adjourn the initial dispositional hearing. And in June 2012, Monarch waived the time limitations regarding the procedures in this case. Thus, Monarch intentionally abandoned her known right to have a timely initial dispositional hearing.

## III. STATUTORY GROUNDS

### A. STANDARD OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination.<sup>4</sup> The trial court's factual findings are clearly erroneous if the evidence supports them, but we are definitely and firmly convinced that it made a mistake.<sup>5</sup>

### B. MCL 712A.19b(3)(g) and (j)

Monarch contends that the trial court clearly erred when it found that she was not able to provide a stable and safe environment for her children. Monarch also contends that the trial court prematurely terminated her parental rights when she had just completed substance abuse rehabilitation. We disagree with both contentions.

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights if

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<sup>1</sup> *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

<sup>2</sup> *Id.* (quotation marks and citations omitted).

<sup>3</sup> *People v Szalma*, 487 Mich 708, 726; 790 NW2d 662 (2010).

<sup>4</sup> MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

<sup>5</sup> *In re Mason*, 486 Mich at 152.

[t]he 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.

MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights if

[t]here 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.

The trial court may properly consider the parent's mental health and substance abuse conditions when determining whether it is reasonably likely that the child will be harmed if returned to the parent's home.<sup>6</sup>

Here, Allen testified that even if Monarch successfully completed all her treatment, it would be at least two and a half years before the child could be safely returned to her care. Further, there was extensive testimony—including Monarch's own admissions—that she had a long history of substance abuse and criminal conduct. After the trial court terminated her rights to another child because of her substance abuse, Monarch managed to stay sober for only nine months. She admitted that she used heroin and methamphetamines while she was pregnant with the child. The testimonies of Allen and Hultink also supported the trial court's findings that Monarch was likely to relapse and harm the child.

We are not convinced that the trial court made a mistake when it found that it was not reasonably likely that Monarch would be able to provide the child with proper care and custody within a reasonable time, given his young age, and when it found that it was reasonably likely that Monarch would relapse into substance abuse and harm the child.

#### C. MCL 712A.19b(3)(l)

Additionally, Monarch concedes that the trial court properly terminated her rights under MCL 712A.19b(3)(l). The Department need only establish one statutory ground supporting termination of parental rights.<sup>7</sup> MCL 712A.19b(3)(l) provides that the trial court may terminate a parent's rights if

[t]he parent's rights to another child were terminated as a result of proceedings under [MCL 712A.2(b)] or a similar law of another state.

Here, Monarch admitted that the trial court terminated her rights to another child in September 2010 because of Monarch's history of substance abuse. Therefore, even were we to

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<sup>6</sup> See *In re AH*, 245 Mich App 77, 87-88; 627 NW2d 33 (2001).

<sup>7</sup> *In re Trejo Minors*, 462 Mich 341, 360; 612 NW2d 407 (2000).

concluded that the trial court erred under MCL 712A.19b(3)(g) or (j), at least one statutory ground supported terminating Monarch's parental rights.

#### IV. THE CHILD'S BEST INTERESTS

Monarch contends in her statement of issues that it was not in the child's best interests to terminate her parental rights. But the entirety of her argument on this point is that the trial court erred in finding that the Department proved the statutory grounds. Monarch also states that "this is not an issue." A party must support his or her positions on appeal.<sup>8</sup> Because Monarch has conceded this issue, we conclude that Monarch has abandoned any argument concerning the trial court's determination of the child's best interests.

#### V. CONCLUSION

We conclude that the trial court did not clearly err when it found that statutory grounds supported terminating Monarch's parental rights. We conclude that Monarch has abandoned or waived the remainder of her arguments on appeal.

We affirm.

/s/ Deborah A. Servitto  
/s/ William C. Whitbeck  
/s/ Donald S. Owens

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<sup>8</sup> MCR 7.212(C)(7).