

STATE OF MICHIGAN  
COURT OF APPEALS

UNPUBLISHED  
October 20, 2015

*In re* WILSON, Minors.

Nos. 326731; 326943  
Montcalm Circuit Court  
Family Division  
LC No. 2010-000446-NA

Before: M. J. KELLY, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother and respondent father appeal as of right the March 24, 2015 order terminating their parental rights to the minor children under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (child will be harmed if returned to parent). We affirm.

Only respondent father challenges the statutory grounds supporting termination. The trial court must find that at least one of the statutory grounds in MCL 712A.19b(3) has been met by clear and convincing evidence in order to terminate parental rights. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review the trial court’s decision for clear error. *Id.* A finding is clearly erroneous if it leaves us with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

We hold that the trial court did not clearly err in finding that termination of respondent father’s parental rights was proper under MCL 712A.19b(3)(g)<sup>1</sup> and (j).<sup>2</sup> First, although respondent father argues that the trial court should have made individual findings against each parent because the evidence presented at the termination hearing pertained only to respondent mother’s previous services, the trial court in fact received testimony about respondent father’s

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<sup>1</sup> Termination is proper under MCL 712A.19b(3)(g) when “[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.”

<sup>2</sup> Termination is proper under MCL 712A.19b(3)(j) when “[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.”

prior services at the hearing. The record evidence shows that respondent father was offered services in 2007 and again in 2010, when Child Protective Services (CPS) became involved with his family. For example, in 2010, respondent participated in a psychological and substance abuse evaluation, parenting classes, and counseling to address his anger management, substance abuse, and mental health issues. Given that the present case, which originated in 2015, involves respondent father's use and manufacturing of methamphetamine, it is evident that he did not benefit from his previous substance abuse services. Moreover, the fact that respondent father, who had a history of unresolved substance abuse, was placing the children at a risk of harm by using and manufacturing methamphetamine in the home while the children were sleeping, supports termination under MCL 712A.19b(3)(g) and (j). Therefore, the trial court did not clearly err in terminating father's parental rights on these grounds.

Both respondents argue that termination was not in the best interests of the children.<sup>3</sup> The trial court must find by a preponderance of the evidence that termination is in a child's best interest. MCL 712A.19(b)(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review the trial court's decision for clear error. *HRC*, 286 Mich App at 459. Factors to be considered 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 Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). Further, we may also consider whether it is likely "that the child could be returned to [his or] her parents' home within the foreseeable future, if at all." *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

The trial court did not clearly err by finding that termination of respondents' parental rights was in the best interests of the children. Although respondents' parental rights were terminated at initial disposition, respondents previously received services in 2007 and 2010, addressing issues such as domestic violence, substance abuse, and parenting skills. As evidenced by the circumstances in the instant proceeding, we find that respondents "failed to derive any lasting benefit" from their prior services. *Olive/Metts*, 297 Mich App at 43. Before the children's removal, respondent father manufactured methamphetamine and used it with respondent mother in the home while the children were sleeping. They also kept methamphetamine components and drug paraphernalia in the house, in addition to methamphetamine byproducts that were found in the freezer next to food. As a result, two of the children tested positive for methamphetamines. Moreover, the children were exposed to poor living conditions and were not being well fed. Given that respondents had been involved with CPS and the court system since 2007 and had yet to resolve their substance abuse issues, there is no indication that they would be able to provide the permanency and stability that the children deserve in the foreseeable future. *Frey*, 297 Mich App at 248-249. Therefore, the trial court did not clearly err in finding termination of respondents' parental rights to be in the children's best interests.

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<sup>3</sup> Although respondent father did not properly present this issue for appellate review by failing to include it in his statement of questions presented, *Marx v Dep't of Commerce*, 220 Mich App 66, 81; 558 NW2d 460 (1996), we review it nonetheless to the extent that respondent mother raised a similar best-interests argument on appeal.

Respondents nevertheless argue that the trial court failed to decide the best interests of each child individually pursuant to *Olive/Metts*, 297 Mich App at 42 (holding that “the trial court has a duty to decide the best interests of each child individually”). However, in *In re White*, 303 Mich App 701, 715; 846 NW2d 61 (2014), a panel of this Court decided that the holding in *Olive/Metts* only applies when the “best interests of the individual children *significantly* differ,” such as when some of the children are placed with a relative and some are not. A trial court does not otherwise err by failing to make individual factual findings for each child. *Id.* at 716. Here, the children were all placed with the same relative; thus, individualized findings would have been redundant. See *id.*

Further, respondent mother argues that the trial court failed to explicitly consider the children’s placement with relatives. The fact that a child is living with relatives at the time of a termination hearing is an “explicit factor” that the trial court must consider when determining best interests. *Olive/Metts*, 297 Mich App at 43. Yet, upon considering this factor, a trial court may nevertheless terminate a respondent’s parental rights if it determines that termination is in the child’s best interests. The trial court did exactly that, as it considered the children’s relative placement on the record, but found that placement with their maternal aunt was intended to only be temporary. The trial court’s findings are supported by the testimony of the foster care supervisor, who testified that the maternal aunt was not a satisfactory long-term placement because of her physical health. Accordingly, the trial court explicitly considered this factor on the record and properly found that the relative placement should not affect its best-interest determination.

Affirmed.

/s/ Michael J. Kelly  
/s/ Christopher M. Murray  
/s/ Douglas B. Shapiro