STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of K. FARRIS, Minor.	UNPUBLISHED August 8, 2013 No. 311967 Antrim Circuit Court Family Division LC No. 10-005512-NA
In the Matter of FARRIS/JESKA, Minors.	No. 312193 Antrim Circuit Court Family Division LC No. 10-005512-NA
In the Matter of JESKA, Minors.	No. 312194 Antrim Circuit Court Family Division LC No. 10-005512-NA

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

PER CURIAM.

In these consolidated cases, respondent-father, J. Farris (Docket No. 311967), respondent-mother, S. Thornburg (Docket No. 312193), and respondent-father, A. Jeska (Docket No. 312194), each appeal as of right the trial court's order terminating their parental rights to their respective minor children. We affirm.

I. FACTS

Four minor children are involved in this appeal. Thornburg is the mother of all the children, Farris is the father of the oldest child, and Jeska is the father of the three youngest children.

A. THE YOUNGEST CHILDREN'S REMOVAL

Two of the youngest children were born prematurely, and the youngest son has extensive medical needs. In April 2010, the Department of Human Services (the Department) petitioned that the trial court take the two youngest children into protective custody, alleging that Jeska and Thornburg were not providing adequate medical care and refused to participate in services.

The Department amended its petition to include allegations against Farris, asserting that he had a history of criminality, substance abuse, and domestic violence. After Thornburg waived a probable cause finding, the trial court placed the youngest children in a foster home pending the adjudication. The oldest children remained with Thornburg and Jeska.

The Department filed additional amended petitions in August and November 2010. The amended petitions included allegations that Jeska had failed to report for probation and had an outstanding warrant, Thornburg was engaging in "prescription drug seeking behaviors," Thornburg and Jeska were not attending the youngest child's medical appointments, Farris had abused Thornburg in his child's presence, and Thornburg and Jeska had been without stable housing for over two years.

B. THE ADJUDICATION

At the adjudication, Thornburg admitted that she had not met the youngest children's medical needs and that her housing situation was unstable. On that basis, the trial court took jurisdiction over all the children and ordered the parents to participate in service plans. In pertinent part, it ordered Farris to complete a substance abuse assessment and drug screens, enroll in a domestic violence program, visit his child, and maintain suitable housing and employment. It ordered Thornburg to participate in drug screens, not use controlled substances outside of her prescriptions, and maintain suitable housing and employment. And it ordered Jeska to enroll in a domestic violence program, obtain suitable housing and employment, and participate in a substance abuse assessment, substance abuse counseling, and drug screens.

C. THE OLDEST CHILDREN'S REMOVAL

In February 2011, the Department petitioned the that trial court remove the oldest children, alleging that Jeska had committed domestic violence against Thornburg, Thornburg and Jeska tested positive for controlled substances, and Thornburg was in danger of being evicted. Concerning the oldest children, the trial court found that the parents failed to provide the children with necessary care and there was a substantial risk of harm to their mental well-being. The trial court ordered the Department to place the oldest children in a foster home.

D. THE REVIEW HEARINGS

At the February 2011 review hearing, Jeannie Donegan, the children's caseworker, testified that Farris did not comply with his service plan and that Farris was not visiting his child. Donegan further testified that Jeska had completed only three drug screens, all of which were positive, and that Jeska missed many of his parenting time appointments, and 18 of the youngest children's medical appointments.

In March 2011, Rebecca Scott, the children's foster care case manager, reiterated that Farris was required to regularly attend parenting time. In April 2011, Scott testified that Farris had completed domestic violence and substance abuse counseling, provided clean drug screens, and was showing some benefit from his service plan. But Scott expressed her concern that Farris was not attending parenting visits or family counseling appointments. Scott testified that Farris attended only four of his nine visits between February and April 2011, and did not visit the child before February. Scott testified that she had visited Farris's home, which was neat, clean, and appropriate for the child.

Scott testified that neither Thornburg nor Jeska participated in or benefitted from their service plans. Scott was particularly concerned with Thornburg's continued prescription drug misuse. Scott testified that she believed that Thornburg was selling her hydrocodone prescription.

E. THE TERMINATION HEARINGS

In June 2011, the Department petitioned that the trial court terminate the parental rights of all the parents to their respective children. The trial court held six terminations hearings from December 2011 to April 2012.

1. CONCERNING FARRIS

Timothy Strauss, a clinical psychologist, testified that Farris admitted that he had domestic violence and substance-related convictions, and that he was addicted to marijuana and other substances. Strauss testified that Farris had a short temper and difficulty seeing how his behavior affected others, and he did not think that Farris would be able to understand how his failure to visit his child affected him.

Thornburg testified that during their relationship, Farris had committed domestic violence against her, sometimes in front of the children. Donegan testified that Farris completed domestic violence classes in February 2011, but Donegan did not believe that Farris benefitted from anger management classes. She testified that Farris was difficult to work with because he swore, talked over her, was argumentative, and was very angry. Wendy Thomas, who supervised Farris's visits with his son, testified about two instances where Farris became very verbally angry at her in front of his son, who then became extremely upset. Pamela Wolz, the son's counselor, testified that the son told her that he wanted to live somewhere without fighting.

Farris's father testified that he and his son were strongly bonded, and that Farris was an appropriate parent. But Donegan testified that Farris did not participate in counseling services with his son and rarely visited him—from April 2010 until June 2011, Farris missed or was late to 47 of his 55 parenting visits. The child's foster mother testified that Farris's son was extremely excited to see Farris at appointments, and became aggressive when Farris missed appointments. Wolz testified that the child was very attached to Farris, and became extremely anxious and upset when Farris missed parenting visits.

Donegan testified that Farris's failure to visit greatly upset his son. Wolz testified that Farris's inconsistency barred his son from making progress in counseling, and that the son

needed predictability and was anxious about where he would live. She testified that his inconsistency was actually more harmful to the son than if Farris was simply neglectful.

At the final termination hearing, Wolz testified that Farris had begun making progress, and she did not recommend terminating Farris's parental rights.

2. CONCERNING THORNBURG

Strauss testified that Thornburg suffered from depression, anxiety, and post-traumatic stress disorder. Strauss testified that he did not think that Thornburg would abuse the children, but she was at a high risk for continued substance abuse and for continuing to be involved in abusive relationships. Donegan testified that Thornburg repeatedly presented with injuries. She did not think that Thornburg could develop a plan to keep the children safe. Scott testified that Thornburg and Jeska were still seeing each other.

Thornburg admitted that she had previously used cocaine, methamphetamines, oxycontin, and morphine, and admitted that she was currently using Tramadol, Valium, and Norco, to control the pain from a crushed vertebra in her neck. Bridget Lemburg, the lab director at Forensic Fluids Laboratory, testified that samples given by Thornburg regularly tested positive for elevated levels of Tramadol, occasionally tested positive for marijuana, and once tested positive for methadone. Lemburg testified that the therapeutic level of Tramadol is 100 to 600 ng/mL, but that Thornburg's levels of Tramadol regularly exceeded 1000 ng/mL, and on one occasion exceeded 20,000 ng/mL.

Donegan testified that Thornburg had not fully participated in or benefitted from services, and that Thornburg continued to have housing difficulties. Donegan further testified that Thornburg's current residence was inappropriate for the youngest son because it contained conditions that could exacerbate his medical conditions.

Donegan testified that Thornburg missed the majority of the children's medical appointments. The child's foster mother testified that she offered to take both Thornburg and Jeska with her to the children's medical appointments, but that Thornburg had only attended two appointments. Wolz testified that Thornburg's lack of consistent participation in her children's therapy sessions was harming them. However, at the final termination hearing, Wolz testified that Thornburg had attended all scheduled therapy session and made progress.

3. CONCERNING JESKA

Strauss testified that Jeska had a criminal history of breaking and entering, controlled substances convictions, and substance abuse. Strauss testified that Jeska possessed positive parenting skills. Donegan testified that Jeska exhibited good parenting skills and was consistent in disciplining the children during his parenting visits, but attended only two of the children's medical appointments. Strauss also testified that Jeska could overreact and become hostile and aggressive. Donegan testified that Jeska and Thornburg engaged in repeated acts of domestic violence between March 2010 and January 2011, and that neighbors called 911 on six occasions.

Donegan testified that Jeska did not participate regularly in drug screens, and that he tested positive for marijuana in January 2011. Lemburg testified that samples given by Jeska

were positive for marijuana and elevated levels of Tramadol, occasionally were positive for methadone, and once was positive for amphetamines.

4. CONCERNING THE CHILDREN

Donegan testified that the youngest children continued to require medical treatment. She testified that though all the children had exhibited developmental delays when they entered foster care, they were now functioning at age-appropriate developmental levels. Dr. Lisa Klassen, MD, testified that the youngest child's medical problems had greatly lessened or even disappeared since his placement in foster care.

Scott testified that the children were placed together and were stable in their placement, and that returning the children to their parents would be chaotic and unstable for them. Wolz testified that the oldest child was frequently anxious about his mother's safety, greatly upset by Farris's missed parenting visits, and missed both Farris and Thornburg. Wolz testified that the oldest child needed predictability, and that the second oldest child was beginning to exhibit behavior problems, including extended tantrums.

At the final termination hearing, Wolz testified that she did not think that it was in the children's best interests to terminate Thornburg's or Farris's parental rights, because they were beginning to show progress.

II. DOCKET NO. 311967

Farris contends that (1) the trial court's application of the one-parent doctrine violated his constitutional rights, (2) the trial court clearly erred when it found that statutory grounds supported terminating his parental rights, and (3) the trial court clearly erred when it found that termination was in his child's best interests.

A. ONE-PARENT DOCTRINE

1. STANDARD OF REVIEW AND ISSUE PRESERVATION

Generally, this Court reviews de novo whether child protective proceedings complied with a parent's rights to due process.[1] But this Court reviews unpreserved issues for plain error affecting a parent's substantial rights.[2]

2. LEGAL BACKGROUND

At the adjudication, the petitioner must prove by a preponderance of legally admissible evidence that the children are subject to the trial court's jurisdiction.[3] In *In re CR*, this Court

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[1] *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009) (Opinion by CORRIGAN, J.).

[2] *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

[3] *In re CR*, 250 Mich App 185, 200; 646 NW2d 506 (2002).

held that the trial court establishes its jurisdiction over the children, not the parents.[4] After the trial court has established jurisdiction over the children, our court rules authorize the trial court to determine what measures should be taken concerning the child or any adult.[5] Thus, the trial court may terminate the rights of a parent who did not participate in the adjudication.[6]

This Court has recognized that application of the doctrine may lead to procedural confusion.[7] It may not be the best practice of the trial court to take jurisdiction over the children on the basis of only one parent's involvement at the adjudication, particularly when the Department knows the identities and whereabouts of the other parent, and has grounds to involve that parent in the proceeding. We also note that the Michigan Supreme Court has recently granted an application for leave to appeal to resolve "whether the application of the one-parent doctrine violates the due process or equal protection rights of unadjudicated parents."[8]

3. JURISDICTION OVER THE CHILD

As an initial matter, Farris asserts that the trial court did not properly establish jurisdiction over the oldest son. We disagree.

One of the circumstances in which the trial court has jurisdiction over a child is when a parent responsible for that child's care "neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals."[9] Here, Thornburg pleaded that she was unable to maintain stable housing. When the trial court removed the child from the home after Jeska and Thornburg continued to commit domestic violence, it reiterated that Thornburg's plea established its jurisdiction over the oldest child. We conclude that the trial court did not err when it found that Thornburg's failure to provide stable housing constituted neglect of each child's necessary support or care.

4. DUE PROCESS

Farris contends that the trial court denied him due process by ordering him to comply with a service plan when the trial court's jurisdiction over the children was based on only allegations against Thornburg. We conclude that the trial court did not plainly err when it ordered Farris to participate in a service plan after determining that the children came within its jurisdiction, even though the trial court only found that the Department proved allegations that related to Thornburg's care of the children.

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[4] *Id*. at 202-203.

[5] *Id*. at 202; MCR 3.973(A).

[6] *In re CR*, 250 Mich App at 209.

[7] *Id*. at 205.

[8] *In re Sanders*, ___ Mich ___, issued April 5, 2013 (Docket No. 146680).

[9] MCL 712A.2(b)(1).

"Due process applies to any adjudication of important rights."[10] A parent's interest in the companionship, care, custody, and management of his or her children is protected by due process.[11] However, as long as the nonadjudicated parent has been provided with notice and an opportunity to be heard, and the trial court's bases its decision to terminate that parent's rights on legally admissible evidence, it does not violate that parent's due process rights.[12]

The trial court did not plainly err by ordering Farris to participate in services and by subsequently terminating his parental rights. An error is plain it if is "clear or obvious."[13] Here, Farris was notified and involved in the case from the beginning and was provided counsel. The trial court ordered Farris to comply with a service plan in to address his issues with substance abuse and visitation with his child. Though a trial court may not presume that a parent is unfit,[14] Farris's conduct throughout the course of this case demonstrated that he was *not* a fit parent.

As we will explain, legally admissible evidence supported the trial court's findings concerning the statutory grounds under which it terminated Farris's parental rights. We conclude that the trial court did not plainly err when it did not make findings concerning any of the allegations in the petition against Farris at the adjudication, and did not plainly err when it terminated Farris's parental rights because it properly concluded that statutory grounds supported terminating them.

5. EQUAL PROTECTION

Farris contends that the trial court violated his rights to equal protection when it denied him the opportunity to have an adjudication. We disagree because an adjudication is not a procedural right of the parent.

The Michigan and United States constitutions provide coextensive protections on equal protection.[15] Both guarantee equal protection of the law.[16] The Supreme Court has held that parents' interests in relationships with their children are fundamental interests protected by the Fourteenth Amendment.[17] Imposing different procedural consequences on different categories

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[10] *In re Brock*, 442 Mich 101, 110; 499 NW2d 752 (1993), quoting *In re LaFlure*, 48 Mich App 377, 385; 210 NW2d 482 (1973).

[11] *Stanley v Illinois*, 405 US 645, 651; 92 S Ct 1208; 31 L Ed 2d 551 (1972); *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003).

[12] *In re CR*, 250 Mich App at 204-206.

[13] *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

[14] See *In re Mason*, 486 Mich 142, 168; 782 NW2d 747 (2010).

[15] Const 1963, art 1, § 2; US Const, Am XIV; *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 11; 740 NW2d 444 (2007).

[16] *Frame v Nehls*, 452 Mich 171, 183; 550 NW2d 739 (1996).

[17] *MLB v SLJ*, 519 US 102, 119; 117 S Ct 555; 136 L Ed 2d 473 (1996).

of persons is not consistent with precepts of equal protection.[18] Thus, "[d]iscriminatory conduct in judicial proceedings may give rise to a due process or equal protection claim . . ." in a child protective proceeding.[19]

We conclude that the current scheme does not discriminate between parents, when one parent participates in the adjudication and another does not, because the adjudication is not a determination that controls the procedural right of the parents.

The purpose of the adjudication is not to determine whether a parent was a fit parent or an unfit parent—it is to determine whether *the child* comes within the jurisdiction of the court. The trial court's jurisdiction over the child may be established by a plea or by a trial.[20] The language MCL 712A.2, which establishes the court's jurisdiction over the child, focuses on *the child*, not the parents:

> (b) [The trial court has j]urisdiction in proceedings *concerning a juvenile* under 18 years of age found within the county:
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> (1) *Whose* parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, *who* is subject to a substantial risk of harm to his or her mental well-being, *who* is abandoned by his or her parents, guardian, or other custodian, or *who* is without proper custody or guardianship. . . .

Thus, the plea or trial establishes whether the child has been neglected, abandoned, or placed at a risk of harm. Though the parent's care is implicated, nothing in the language of MCL 712A.2 or our court rules imply that the adjudication is *against* a parent or that the trial court must find that *each* parent failed to provide for the child.

Further, the procedures provided to both parents after the trial court has established its jurisdiction do not depend on whether the parent participated in the adjudication. Parental fitness is not determined at the adjudication. A trial court cannot terminate a parent's parental rights at the adjudication.[21] The parent is not found to be unfit until the termination.[22] Prior to terminating a parent's parental rights, the trial court must make reasonable efforts to reunify a child with his or her family unless aggravating circumstances are present.[23] The trial court must determine at the termination that the facts in the petition are true, utilizing the clear and

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[18] *Id*. at 127.

[19] *In re AMB*, 248 Mich App 144, 197; 640 NW2d 262 (2001).

[20] See MCR 3.971 and 3.972.

[21] *In re Brock*, 442 Mich at 111-112.

[22] See MCL 712A.19b(3).

[23] MCL 712A.19a(2).

convincing evidence standard.[24] We note that this standard is higher than the preponderance standard employed at the adjudication.

Here, the trial court did not deny Farris any rights that it afforded to other parents to determine whether they were fit, including an opportunity to participate in services and the right to have the Department prove the statutory grounds for termination by clear and convincing evidence at the termination hearing. We conclude that the trial court did not clearly err by violating Farris's right of equal protection.

B. STATUTORY GROUNDS

1. STANDARD OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination.[25] 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.[26]

2. MCL 712A.19b(3)(c)(*i*), (g), AND (j)

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

> [t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

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

> [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.

And 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.

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[24] MCR 3.977(H)(3)(a)(*i*).

[25] MCR 3.977(K); *In re Mason*, 486 Mich at 152.

[26] *In re Mason*, 486 Mich at 152.

3. APPLYING THE STANDARDS

We agree that the trial court clearly erred when it found that the Department proved MCL 712A.19b(3)(c)(*i*). Because none of the conditions that Thornburg pleaded to at the adjudication pertained to Farris, the Department did not prove that the conditions that led to the adjudication continued to exist as related to him.

However, we conclude that this error is harmless. The trial court need only find a single statutory ground to terminate a parent's parental rights.[27] Any error concerning a statutory ground is harmless when the trial court properly found that the Department established another statutory ground.[28]

We conclude that the trial court did not clearly err when it found that the Department established MCL 712A.19b(3)(g) and (j) by clear and convincing evidence. A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child with proper care and custody.[29]

Here, the trial court's findings that Farris did not benefit from the anger management portion of his service plan were supported by the evidence. Various witnesses testified about instances where Farris became excessively angry, including one incident where Thomas called 911 because of Farris's demeanor. During another parenting visit, Farris became extremely angry at Thomas, and on that occasion his child became seriously upset as well. Additionally, the trial court found that Farris's demeanor in court supported this testimony, and the trial court was in the best position to observe Farris's demeanor. All this evidence was legally admissible, and proper for the trial court to consider when terminating Farris's parental rights.

Nor did the trial court clearly err in finding that the child was likely to be harmed if returned to Farris's care. When determining whether a child is likely to be harmed if returned to the parent's care, the trial court may consider whether a parent has "only minimally complied with the more important aspects of the family plan, including visitation with the child[,]"[30] as well as the potential psychological harm to the child caused by the parent's conduct.[31]

Here, Farris only rarely visited his child, and Wolz testified that the effect of Farris failing to visit his child was traumatic. Donegan testified that Farris's failure to participate in his parenting time greatly upset the child. Wolz testified that, at the child's last therapy session before the termination hearing, Farris told his child that he would attend the final parenting visit

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[27] *In re Powers*, 244 Mich App 111, 117; 624 NW2d 472 (2000).

[28] *Id*. at 118.

[29] *In re JK*, 468 Mich at 214.

[30] *In re BZ*, 264 Mich App 286, 300; 690 NW2d 505 (2004).

[31] *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

later that day. When Farris did not attend, the child expressed homicidal and suicidal thoughts. Given these facts, we are not definitely and firmly convinced that the trial court made a mistake.

C. BEST INTERESTS

1. STANDARD OF REVIEW

The trial court must order the parent's rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence, and the trial court finds from evidence on the whole record that termination is in the child's best interests.[32] We review for clear error the trial court's best interests determination.[33]

2. LEGAL STANDARDS

To determine whether termination of a parent's parental rights is in a child's best interests, the court should consider a wide variety of factors that may 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."[34] The trial court may also consider the parent's visitation history with the child.[35]

3. APPLYING THE STANDARDS

Farris contends that the trial court erred by failing to consider each child individually and that trial court's finding that termination was in the child's best interest was clearly erroneous. We disagree.

We conclude that the trial court did not err by failing to address the child individually. Farris only had one child in the proceedings. The trial court's findings of fact that related to Farris only would affect the best interests of Farris's child. Additionally, the trial court found that termination was "in each child's best interests . . . ," and Farris does not identify any factors that the trial court should have used to distinguish his child from the other children.

We also conclude that the trial court did not clearly err when it found that terminating Farris's parental rights was in his child's best interests. From the testimony, the child was very strongly bonded to Farris, and Wolz did not recommend terminating Farris's parental rights. However, this strong bond did not have a healthy effect on the child. It is clear from the record that Farris's failure to visit the child turned the strength of that bond into a liability to the child's mental well-being. Wolz testified that Farris's inconsistency was even more harmful to the child than if Farris was entirely neglectful, and the child had a very strong need for permanency and

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[32] MCL 712A.19b(5); *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

[33] MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

[34] *In re Olive/Metts*, 297 Mich App at 41-42 (internal quotations omitted).

[35] See *In re BZ*, 264 Mich App at 301.

stability. Given Farris's failure to regularly visit the child, and the effect this had on the child, we are not convinced that the trial court's best interests determination was mistaken.

III. DOCKET NO. 312193

In Docket No. 312193, Thornburg contends that the trial court clearly erred when it found that (1) the Department established statutory grounds supporting termination and (2) terminating her parental rights was in the children's best interests.

A. STATUTORY GROUNDS

1. STANDARD OF REVIEW

As discussed above, this Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination.[36]

2. MCL 712A.19b(3)(c)(*i*), (g), AND (j)

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

> [t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

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

> [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.

And 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.

3. APPLYING THE STANDARDS

We conclude that the trial court did not clearly err when it found that the Department established these grounds by clear and convincing evidence.

Concerning MCL 712A.19b(3)(c)(*i*), the conditions that led to the adjudication were Thornburg's neglect of her youngest children's medical needs and her failure to maintain stable

[36] MCR 3.977(K); *In re Mason*, 486 Mich at 152.

housing for all the children. Donegan testified that Thornburg attended only seven of her children's 34 medical appointments, despite that she was unemployed and the foster mother offered to drive her to those appointments. Further, Thornburg admitted that in the two years prior to the case, she lived in four different residences. During the pendency of the case, Thornburg was evicted from three residences. We are not convinced that the trial court made a mistake when it found that Thornburg had not rectified the issues of medical neglect and unstable housing that led to the adjudication.

Concerning MCL 712A.19b(3)(g) and (j), we conclude that the trial court did not clearly err when it found that Thornburg was unlikely to be able to provide her children with proper care and custody, and that it was likely that they would be harmed if returned to her care. A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child with proper care and custody.[37] The trial court may consider the parent's substance abuse when determining whether it is reasonably likely that the child will be harmed if returned to the parent's care.[38]

Here, the trial court ordered Thornburg to participate in substance abuse screens and to find and maintain stable housing, and to refrain from associating with people who have a history of domestic violence. The youngest children were in care for two years. Though Thornburg did comply with parts of her service plan, there was extensive testimony that she did not comply with and benefit from other parts. Thornburg rarely participated in substance abuse screens, but when she did, she tested well above the therapeutic level of Tramadol. Thornburg also tested positive for marijuana and methadone, for which she did not have prescriptions.

Further, Thornburg clearly did not comply with the trial court's requirement that she not associate with people who have a history of domestic violence. Donegan testified that there were six 911 dispatches to Thornburg's residence in a single month. She testified that Thornburg frequently presented with suspicious injuries, and that between June 2010 and January 2011, Thornburg sustained a bruise on the upper arm, two black eyes, a broken nose, bruising to the face and temple, stitches to the nose, a leg injury, and a laceration to her throat. She also testified that Thornburg would not even acknowledge that domestic violence was occurring. Wolz testified that the domestic violence affected the oldest child. We are not convinced that the trial court made a mistake when it found that MCL 712A.19b(3)(g) and (j) supported terminating Thornburg's parental rights.

[37] *In re JK*, 468 Mich at 214.

[38] See *In re AH*, 245 Mich App 77, 87; 627 NW2d 33 (2001).

B. THE CHILDREN'S BEST INTERESTS

1. STANDARD OF REVIEW

We review for clear error the trial court's determination regarding the children's best interests.[39]

2. STANDARDS AND APPLICATION

Thornburg primarily contends that the trial court's best interests determination was erroneous because its findings concerning the statutory grounds were erroneous. For the reasons stated above, we disagree. We note that the trial court properly considers a parent's history of domestic violence and the parent's compliance with his or her case service plan when determining the children's best interests.[40] Thornburg did not rectify her housing issues, did not sufficiently participate in her children's medical care, and continued to place herself in situations that would expose the children to domestic violence.

Thornburg additionally contends that she and the children shared a strong bond, and that the trial court should have given additional weight to Wolz's testimony and opinion that it should not terminate Thornburg's parental rights. The trial court should weigh all the evidence available to determine the children's best interests.[41] We defer to the special ability of the trial court to judge the credibility of witnesses.[42] Given the evidence concerning Thornburg's deficient parenting skills and failure to rectify the conditions that did place and would continue to place the children in danger, we do not think that the trial court made a mistake when it determined that terminating Thornburg's parental rights was in the children's best interests.

IV. DOCKET NO. 312194

In Docket No. 312194, Jeska contends that the trial court's determination that terminating his rights was in his children's best interests was clearly erroneous.

A. STANDARD OF REVIEW

We review for clear error the trial court's determination regarding the child's best interests.[43]

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[39] MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357.

[40] See *In re BZ*, 264 Mich App at 301; also see *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

[41] *In re Trejo*, 462 Mich at 353.

[42] MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

[43] MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357.

B. LEGAL STANDARDS

When determining whether termination of a parent's parental rights is in a child's best interests, the court should consider a wide variety of factors that may include the parent's parenting ability.[44] As noted above, the trial court may also consider a parent's history of domestic violence,[45] and the parent's compliance with his or her case service plan.[46]

C. APPLYING THE STANDARDS

Jeska contends that the trial court clearly erred when it found that termination of his parental rights was in his children's best interests. We disagree.

Here, multiple witnesses testified that Jeska was a patient, consistent, and appropriate parent. However, Jeska failed to comply with his service plan. Two years after his youngest children were placed in foster care, Jeska remained unable verify that he had stable housing or employment. On the rare occasions that Jeska submitted substance abuse screens, he tested positive for substances for which he did not have a prescription, and tested above the therapeutic levels for Tramadol. Nor did Jeska address his domestic violence issues. Donegan testified that in March 2010, there were six 911 dispatches to Thornburg and Jeska's residence. We are not convinced that the trial court made a mistake when it weighted these factors more strongly than the evidence of Jeska's positive parenting skills.

Jeska also contends that the trial court erred by failing to address each child individually. We disagree.

In *In re Olive/Metts*, a panel of this Court held that the trial court erred by failing to consider each child individually when it failed to explicitly address each child's placement with relatives, when some were placed with relatives and others were not.[47] We held that the trial court "has a duty to decide the best interests of each child individually."[48]

Here, the trial court heard testimony concerning each child. And unlike in *In re Olive/Metts*, there is no indication that the trial court failed to consider each child individually. To the contrary, though the trial court did not specifically address each of Jeska's three children by name, it found that termination was "in *each* child's best interests." Further, there is no indication that the trial court should have—but did not—distinguish the children on an important basis. All the children were placed together, none of them were placed with relatives, and there

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[44] *In re Olive/Metts*, 297 Mich App at 41-42.

[45] See *In re Jones*, 286 Mich App at 129.

[46] See *In re BZ*, 264 Mich App at 301.

[47] *In re Olive/Metts*, 297 Mich App at 43-44.

[48] *Id*. at 43.

was no testimony that would support a conclusion that the children's needs for a substance abuse- and violence-free environment differed in any material fashion.

We affirm.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck