

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* A L HARRIS-FORTNER, Minor.

UNPUBLISHED  
September 10, 2015

No. 324394  
Muskegon Circuit Court  
Family Division  
LC No. 09-038652-NA

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Before: BOONSTRA, P.J., and MURPHY and MARKEY, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating her parental rights to her minor child, ALH, under MCL 712A.19b(3)(c)(i) (failure to rectify the conditions that led to adjudication) and (g) (failure to provide proper care and custody).<sup>1</sup> We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Petitioner first became involved with the minor child on May 20, 2012, after Children's Protective Services (CPS) was informed that respondent had given birth to twin boys, ALH and AH II, and that the boys had both tested positive for marijuana at birth; respondent also tested positive for opiates, amphetamines, and marijuana at that time. As a result, CPS offered respondent services, including a substance abuse assessment and drug screens. The record indicates that while respondent participated in the substance abuse assessment, she failed to follow through with the recommendation that she participate in substance abuse counseling. Respondent testified at the termination hearing that she believed that the recommendation was optional, so she chose not to participate. Respondent tested positive for marijuana on June 26, 2012. Respondent then accidentally smothered AH II in her sleep on August 14, 2012, killing him; ALH is the sole subject of this appeal.<sup>2</sup>

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<sup>1</sup> The child's father previously voluntarily released his parental rights to the child. The father is not a party to this appeal.

<sup>2</sup> Respondent is also the mother of an older child, AH I. That child was a part of the proceedings below; however, at a review hearing on April 16, 2014, respondent's caseworker testified that petitioner was pursuing a juvenile guardianship for him with Stephanie Harris, his maternal

Respondent was arrested on October 18, 2012 for retail fraud. At the time of her arrest, respondent's children had been living with respondent's mother, Ursula Harris, as respondent did not have her own housing.

In response to the above events, petitioner filed a petition on October 24, 2012 requesting that the trial court assume jurisdiction over ALH and AH I and remove them from respondent's care. In support of jurisdiction, the petition alleged the above facts regarding respondent's drug abuse, failure to follow through with substance abuse treatment, criminal history, and unstable housing (the petition alleged that respondent admitted to moving several times in the last year, although she listed Ursula's home as her current address). A preliminary hearing was also held on October 24, 2012. At the time of the hearing, respondent was still incarcerated, and the children remained with Ursula. Respondent admitted that she had smoked marijuana shortly before her October 18, 2012 arrest and admitted that she had not followed through with recommended substance abuse treatment. The trial court authorized the petition and ordered the ALH and AH I<sup>3</sup> to be placed with Stephanie Harris until respondent's release from jail, at which point they could be returned to respondent's care. However, despite the trial court's order, it appears that ALH remained with Ursula rather than being placed with Stephanie.

A pretrial conference was held on October 31, 2012. Respondent was still incarcerated but was present at the hearing. Respondent admitted to an amended petition; the trial court accepted the plea and assumed jurisdiction over the children. The children remained placed with Stephanie and Ursula pending respondent's release from jail.

Respondent was released from jail on November 21, 2012, and the children were returned to her care at that time. Thereafter, she and the two children lived with Stephanie. Respondent agreed to participate in the following services: substance abuse counseling at West Michigan Therapy, random drug screens, the infant mental health program, grief counseling related to her child's death, and parent mentoring through Catholic Charities. Petitioner also agreed to assist respondent with housing. Initial reports indicated that respondent was cooperative and willing to participate in services.

On December 12, 2012, respondent was sentenced to one year of probation in connection with her earlier arrest for retail fraud. According to the record, a warrant for her arrest was subsequently issued on December 20, 2012, after respondent failed to comply with the terms of her probation.

On February 20, 2013, petitioner petitioned the trial court to remove the children from respondent's care. According to petitioner, respondent had not been compliant with services. For example, although respondent was referred to the parent mentoring program at Catholic Charities, "the parent mentor closed the case" after respondent failed to schedule a meeting time. Additionally, the respondent continued to not follow through with substance abuse treatment at West Michigan Therapy. Finally, respondent had failed to submit to any drug screens. In addition to  

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great-aunt. The caseworker confirmed at the termination hearing that termination of respondent's parental rights to AH I was not being sought at that time.

<sup>3</sup> Hereinafter references to respondent's "children" will refer to ALH and AH I.

her noncompliance with services, petitioner also noted that respondent was noncompliant with her probation and continued to lack stable housing. As of February 20, 2013, the children were living “with a friend, temporarily,” and respondent had been unable to find independent housing despite being provided assistance in this area by petitioner. In light of these facts, petitioner alleged that it was contrary to the children’s welfare to keep them in respondent’s care.

The trial court granted the emergency removal petition and suspended respondent’s parenting time rights until she complied with services. ALH was initially placed with Ursula, while AH I was placed with Stephanie. ALH was subsequently removed from Ursula’s home after Ursula was listed on the Central Registry.<sup>4</sup> ALH was then placed in a licensed, non-relative foster home.

Respondent’s overall progress between February 21, 2013 and May 16, 2013 was rated as “poor.” In sum, respondent was almost completely non-compliant with services during this time period, despite expressing a willingness to participate. In fact, the only indication of respondent’s participation with services during this time period was her attendance at an initial appointment at West Michigan Therapy on May 9, 2013. She did not complete any drug screens. As of the May 10, 2013 updated court report, petitioner indicated that respondent still needed to make “substantial progress” before reunification could occur. Specifically, respondent needed “to follow through with services and not just take initial steps with no continued participation.” In addition to her substantial non-compliance with services, respondent continued to lack independent housing and instead stayed with various friends during the reporting period. As of May 16, 2013, her whereabouts were unknown. In light of these facts, the trial court continued the status quo at the May 16, 2013 dispositional review hearing. Respondent’s parenting time rights remained suspended.

Respondent’s progress between May 16, 2013 and August 7, 2013 was again poor. Petitioner had very little contact with respondent during this reporting period and her whereabouts remained unknown until the “end of July,” when petitioner learned that respondent was incarcerated. During this reporting period, respondent did not participate in “any services” such as drug screens or substance abuse treatment. As a result of respondent’s continued noncompliance with services, petitioner recommended at the August 7, 2013 combined dispositional review/permanency planning hearing that respondent’s parental rights be terminated. Respondent, through her attorney, acknowledged her lack of participation to this point. She attributed that lack of participation to her legal situation, specifically her non-compliance with probation and subsequent warrant. Respondent indicated, however, that she was now ready “to do whatever is necessary” to have her children returned to her care. The trial court declined to order the initiation of termination proceedings, but implored respondent to

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<sup>4</sup> “Michigan’s Central Registry is a list of people who committed child abuse or neglect, as mandated by the Child Protection Law.” See [http://www.michigan.gov/dhs/0,4562,7-124-7119\\_50648\\_48330-180331--,00.html](http://www.michigan.gov/dhs/0,4562,7-124-7119_50648_48330-180331--,00.html) (last accessed August 4, 2015), see also MCL 722.625, MCL 722.627-627j.

make substantial progress over the next 90 days; otherwise, it would order a termination petition to be filed.

Respondent's progress between August 7, 2013 and October 31, 2013 was again poor. While in jail, the caseworker met with respondent, who expressed a desire to participate in services upon her release and promised to do whatever it takes to have her children returned to her. However, upon her release from jail on August 28, 2013, she failed to follow through with this promise. Respondent contacted the caseworker immediately upon her release and the caseworker referred her for parenting classes and substance abuse counseling at West Michigan Therapy. However, despite respondent's indication that she would attend the next parenting class, she did not do so. Moreover, she did not participate in any substance abuse treatment. As of October 31, 2013, the last time the caseworker had spoken to respondent was on September 13, 2013, when respondent called about receiving a gas card. No further contact was made after that point. As a result, petitioner again recommended at the October 31, 2013 dispositional review hearing that respondent's parental rights be terminated.

At the dispositional review hearing, respondent, through her attorney, attributed her lack of participation after being released from jail to a "breakdown in communication between the case worker and [respondent]." According to respondent, she intended to participate in the parenting class, but found out shortly before the class was scheduled to begin that she could not simply show up for the class, but rather had to be placed on a waiting list. Respondent subsequently attempted to contact the parenting class, to no avail. Additionally, respondent did attempt to participate in substance abuse treatment at West Michigan Therapy, but was told that she could not be provided services because she did not have insurance. Respondent attempted to relay these issues to the caseworker, but the caseworker never returned her telephone calls. Despite these issues, however, respondent claimed to have made progress in other areas without petitioner's assistance. For example, she enrolled to obtain her GED, obtained employment, and began attending Narcotics Anonymous (NA).

The trial court declined to order petitioner to file a termination petition, but acknowledged that it could not stop petitioner from doing so on its own accord. In the meantime, the trial court ordered respondent to continue complying with services.

Between October 31, 2013 and January 22, 2014, respondent had absolutely no contact with petitioner. During this reporting period, the caseworker checked with respondent's various service providers and was told that she had not participated in any services whatsoever.

A dispositional review hearing was held on January 22, 2014. Petitioner recounted respondent's complete lack of contact with petitioner and non-participation in services. On the day of the hearing, respondent provided the caseworker with a certificate of completion, dated January 21, 2014, for a parenting class at Every Woman's Place. Petitioner was previously unaware that respondent was even involved with this service because respondent had not contacted petitioner. Petitioner again recommended that termination proceedings be initiated. As before, respondent stated that she had attempted to keep in contact with the caseworker but the caseworker never returned her telephone calls. Aside from completing the parenting class, respondent indicated that she was also signed up to participate in a "strengthening families class"

at Every Woman's Place. Additionally, she continued working to obtain her GED, and she remained employed. The trial court continued the status quo.

Between January 22, 2014 and April 16, 2014, respondent again had limited contact with petitioner, despite the caseworker's repeated attempts to contact her. When contact was made, respondent did not provide any verification of her participation in services. Accordingly, petitioner had limited knowledge about respondent's progress during this reporting period.

On April 11, 2014, petitioner filed a petition requesting termination of respondent's parental rights to ALH pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (c)(ii), and (g). As to (a)(ii), petitioner alleged that respondent had not visited ALH since approximately April 3, 2013, and therefore had deserted him. As to (c)(i) and (c)(ii), petitioner alleged that respondent had not completed any services except for parenting classes, had never completed a drug screen, and her whereabouts were currently unknown. Finally, as to (g), petitioner alleged that respondent had failed to provide proper care and custody for ALH, and that there was no expectation that she would be able to do so within a reasonable time. Petitioner alleged that termination of respondent's parental rights was in ALH's best interests, as it would allow him to be adopted and placed in a permanent, stable, and loving environment.

A permanency planning hearing was held on April 16, 2014. Respondent was present. Petitioner recounted respondent's lack of contact with the agency over the last several months and reiterated that, if in fact respondent was participating in services, the agency was unaware because respondent had not provided any verification of such participation. Respondent continued to assert that her lack of participation was attributable to the "breakdown in communication" between her and the caseworker. The trial court ordered that the permanency planning goal ALH be changed to termination and adoption.

Between April 16, 2014 and July 9, 2014, respondent had no additional contact with petitioner. At the final dispositional review hearing, held on July 9, 2014, petitioner indicated that it had no update as to respondent's progress and no knowledge as to whether she had recently completed any services. Petitioner noted that respondent's pattern of having little to no contact with the agency had been ongoing for "quite a long period of time." For her part, respondent also acknowledged that she had not "been able to accomplish very much as far as the case plan" in recent months. As such, petitioner requested that the case proceed toward termination, and the trial court agreed.

The termination hearing was held on September 19, 2014. Respondent was not present despite having notice of the proceedings. Taniekka Harris, respondent's caseworker, testified that the conditions leading to adjudication in this case were respondent's substance abuse, poor parenting skills (specifically, that she had previously had a child die from unsafe sleep), criminal history, and lack of stable housing. In order to rectify those concerns, petitioner entered into a parent-agency treatment plan with respondent and offered respondent a multitude of services, including parenting time visits, parenting classes, individual counseling, a substance abuse assessment, drug screens, a parent mentor, and infant mental health services. As of the termination hearing, the only thing respondent had completed was a parenting class. She attended some initial counseling appointments, but never followed through after that. Moreover, it had been "several months" since respondent had participated in any parenting time visits. She

never submitted to a single drug screen. Moreover, she never showed proof that she completed her GED or that she maintained stable employment. Respondent still did not have stable housing. Finally, she often went lengthy periods of time without contacting the agency. The last time Harris had spoken to respondent was approximately two weeks before the hearing, and before that, she had not spoken to respondent since sometime in August.

Harris opined that termination of respondent's parental rights was in ALH's best interests. In essence, respondent simply had not put forth the effort to show that she wanted to reunify with ALH, who was currently in a stable non-relative foster home, where his needs were being met, and the foster parent had expressed a willingness to adopt him.

Following proofs, petitioner argued that termination was proper under MCL 712A.19b(3)(c)(i) and (g). ALH's lawyer guardian ad litem concurred with petitioner's recommendation. Respondent's attorney offered no argument because respondent was not present and had not had any contact with the attorney in months.

Following argument, the trial court found that (c)(i) and (g) had each been met by clear and convincing evidence. After almost two years of proceedings, the conditions that led to adjudication continued to exist and there was no reasonable expectation that they would be rectified within a reasonable time. Moreover, respondent had failed to provide proper care and custody to ALH and there was no reasonable likelihood that she would be able to do so within a reasonable ALH's best interests. The latter determination, the trial court noted, was "supported by the statements of the caseworker." Specifically, the trial court noted:

[t]he caseworker has indicated that there is little to no parental bond, child/parent bond because [respondent] hasn't visited with the child in months and upon further investigation it comes up 16 months and this child you know [is] 30 months old so for half of the child's life there hasn't even been a parenting time. The child's age is very young and his need for stability is high and permanency and we do have the opportunity to provide him with permanency through an adoption.

I do believe it's a high likelihood also that this child will be adopted. There are people very interested in adopting this young child.

The trial court subsequently entered an order terminating respondent's parental rights to ALH. This appeal followed.

## II. STATUTORY GROUNDS FOR TERMINATION

At the outset, while respondent does not challenge the trial court's determination that a statutory ground for termination was proved by clear and convincing evidence,<sup>5</sup> we conclude that

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<sup>5</sup> In her original brief on appeal, respondent argued that the trial court's termination order should be reversed because there was no indication that the trial court made any findings of fact or conclusions of law related to respondent, as required by MCR 3.977(I). However, after

the trial court did not clearly err in this regard. “In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review trial court’s determination for clear error. *Id.*; MCR 3.977(K).

The proceedings in this case began in October 2012. At that time, petitioner identified that respondent’s barriers to reunification were her substance abuse problems, lack of stable housing, and lack of parenting skills, among others. Petitioner offered respondent a plethora of services to address these issues. However, throughout the almost two years this case was open, respondent substantially failed to participate in almost all of the services offered to her, and failed to demonstrate any benefit whatsoever, participating in only one substance abuse counseling session and never submitting to a single drug screen. Additionally, she failed to obtain suitable housing, and did not have any contact with ALH for approximately 16 months. Thus, at the time of termination, her barriers to reunification remained and there was no reasonable likelihood that she could rectify them in a reasonable time going forward, such that she would be able to provide proper care and custody to ALH. As such, termination was warranted under both MCL 712A.19b(3)(c)(i) and (g), and the trial court did not clearly err in so concluding.

### III. BEST-INTEREST DETERMINATION

In a supplemental brief, respondent argues that the trial court clearly erred in finding that termination of her parental rights was in ALH’s best interests. We disagree. “Once a statutory ground for termination has been proven, the trial court must find that termination is in the child’s best interests before it can terminate parental rights.” *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (citations omitted). “[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence.” *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court’s finding is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). The trial court should weigh all the evidence available to it in determining the child’s best interests, *In re Trejo*, 462 Mich at 356-357, and may consider such factors as

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 at 41-42 (citations omitted).]

Other considerations include the length of time the child was in foster care or placed with relatives, the likelihood that “the child could be returned to her parent’s home within the foreseeable future, if at all[,]” and compliance with the case service plan. *In re Frey*, 297 Mich

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respondent’s brief was filed, this Court was provided with an amended transcript of the termination hearing, which contained a previously missing portion of the proceedings related to mother. During this latter portion of the proceedings, the trial court made the required findings of fact and conclusions of law on the record. Thus, the argument raised in respondent’s initial brief has been rendered moot, and we need not address it. See *BP 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

App 242, 248-249; 824 NW2d 569 (2012). The trial court may also consider the parent's visitation history with the child. *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004).

Here, there was ample evidence to support the trial court's best-interest determination. At the outset, at the time of termination, ALH, then 28 months old, had spent almost two years under petitioner's supervision—a large portion of which was spent in a foster home—because of respondent's continued inability, or unwillingness, to address her various issues. ALH was in definite need of permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App at 41-42. Moreover, as discussed above, during the almost two years this case was open, respondent made little to no effort to participate in services in order to address her issues and demonstrate her desire to be reunified with ALH. Finally, at the time of termination, she lacked suitable housing. It was thus "unlikely that the child could be returned to [respondent's] home within the foreseeable future, if at all." *In re Frey*, 297 Mich App at 249. On the other hand, ALH was placed in a loving foster home, where his needs were being met, and the foster parent had expressed a willingness to adopt him. The foster home was therefore more advantageous than respondent's home. *In re Olive/Metts*, 297 Mich App at 42. A preponderance of the evidence supported that termination of respondent's parental rights was in the ALH's best interests, and the trial court did not clearly err in so finding.

Respondent does not dispute any of the above evidence or the ultimate conclusion reached by the trial court. Instead, she argues that the trial court's findings on this issue were insufficient because they "lack[ed] specificity," "contained only minimal analysis," and "contain[ed] only generic conclusions." However, "[b]rief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1). See also *People v Nelson*, 168 Mich App 781, 790; 425 NW2d 225 (1988) (a trial court's findings need only be "sufficiently specific for meaningful appellate review"). We conclude that the trial court's findings related to this issue were sufficient and, as discussed above, those findings were supported by the record and not clearly erroneous.

Affirmed.

/s/ Mark T. Boonstra  
/s/ William B. Murphy  
/s/ Jane E. Markey