

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 18, 2013

In the Matter of POLOCOSER Minors.

No. 311958
Monroe Circuit Court
Family Division
LC No. 09-021183-NA

In the Matter of POLOCOSER, Minors.

No. 311959
Monroe Circuit Court
Family Division
LC No. 09-021183-NA

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother, M. Polocoser, and respondent-father, P. Polocoser, each appeal as of right the circuit court orders terminating their parental rights to nine of their minor children. In Docket No. 311958, M. Polocoser appeals the termination of her parental rights under MCL 712A.19b(3)(b)(ii), (g), and (j). In Docket No. 311959, P. Polocoser appeals the termination of his parental rights under MCL 712A.19b(3)(b)(i), (g), and (j). We affirm.

I. FACTS

A. THE FIRST PROCEEDING

In June 2009, the trial court first asserted jurisdiction over the Polocosers' children. At that time, the Department of Human Services (the Department) petitioned the trial court to remove the Polocosers' minor children, alleging that P. Polocoser physically abused them and M. Polocoser, who suffers from multiple sclerosis and is confined to a wheelchair, failed to protect them from P. Polocoser and failed to provide them with proper care and custody.

P. Polocoser admitted that he used excessively harsh physical discipline on the children and continued to do so after he received services. M. Polocoser admitted that she failed to protect the children from him, and was unable to care for the children because of her disability.

In September 2010, the Department petitioned the trial court to terminate the Polocoser's parental rights, pursuant to MCL 712A.19b(3)(b), (g), and (j). P. Polocoser admitted that he abused the children, and the trial court found that he abused them on several occasions. But on the basis of the testimony of the four oldest children, who had been returned home during the pendency of the case, the trial court found that P. Polocoser had changed his behavior and no longer used excessive physical discipline, and thus it was not reasonably likely that the children would suffer further abuse in the Polocoser's home. The trial court gradually returned all but one child to the Polocoser's home.

B. THE SECOND PETITION

Kelly McNicol, a Child Protective Services worker, testified that she investigated a report that on April 18, 2012, P. Polocoser did not allow the children to attend school and denied them food and water. McNicol testified that during the investigation, she discovered that the six-year-old daughter had a bruise on her thigh; at a forensic interview, the six-year-old daughter stated that P. Polocoser caused it by hitting her with a belt. Additional forensic interviews with the children revealed that P. Polocoser had denied the children food, water, and sleep. McNicol testified that M. Polocoser was too distressed to be interviewed, but she spoke with P. Polocoser, who stated that he would rather kill himself than participate in services again. McNicol determined that the children were at a risk of harm, and the minor children were removed from the home, and placed in foster care.

The Department petitioned the trial court for jurisdiction over the children, and requested that the trial court terminate the Polocoser's parental rights at the initial dispositional hearing. The petition alleged that the sixteen-year-old son reported that on April 18, 2012, he was missing approximately \$200. P. Polocoser did not allow the children to go to school, eat, or drink, and later struck the six-year-old daughter with a belt, leaving a bruise. When the ten-year-old daughter protested, P. Polocoser also "grabbed a scooter and brandished it over the child, threatening to hit her with it until she died." The petition also incorporated the abuse that the trial court found had occurred during the previous child protective proceeding. The Polocoser's requested a jury trial to determine the truth of the Department's allegations.

C. PRETRIAL CONFERENCE

At a pretrial conference, the Polocoser's challenged the admissibility of the evidence related to the first child protective proceeding. The Polocoser's argued that the trial court should exclude all the evidence related to the first proceeding, because it was irrelevant and could potentially confuse and prejudice the jury. The trial court ruled that the Department could only introduce the legally admissible evidence related to the first proceeding, and that the evidence related to that proceeding was relevant. However, it expressed its concern that the Department's amended petition could potentially confuse the jury because it did not clearly differentiate the abuse in the first proceeding from the new allegations of abuse. The trial court ordered the Department to file a petition that provided specific time frames for each incident.

D. THE ADJUDICATION

Several of the Polocoser's children testified at the adjudication. According to the six-year-old daughter, the sixteen-year-old son said that his money was missing. When P. Polocoser came home, he told the children that if they did not find the money, they could not sleep. In the morning, P. Polocoser did not allow them to go to school and said that they could not eat for two days. When P. Polocoser saw the children eating, he yelled at them to stop. Later that evening, P. Polocoser held a scooter and threatened to hit his ten-year-old daughter on the head with it until she died. P. Polocoser also hit his six-year-old daughter on the buttocks with a belt.

The six-year-old daughter testified that P. Polocoser often yelled at the children, and sometimes pulled her hair or hit her with a belt. She saw him hit six of the other children with his hand or a belt, and he also kicked the other children. The six-year-old daughter testified that her fourteen-year-old brother sometimes hit her. She testified that M. Polocoser told P. Polocoser to stop hitting the children, and that M. Polocoser knew that none of the children went to school.

The nine-year-old daughter testified that P. Polocoser blamed the six-year-old daughter for the sixteen-year-old son's lost money, and did not allow the children to eat. The nine-year-old daughter testified that after the trial court returned the children home the first time, P. Polocoser continued to beat the children, and that he would use a belt and a shoe to hit them. The nine-year-old daughter testified that M. Polocoser told P. Polocoser to stop hitting the children, and that she told M. Polocoser about the beatings, but M. Polocoser could not do anything to prevent them because she could not walk.

The ten-year-old daughter testified that P. Polocoser would not allow the children to eat or go to school until they found the sixteen-year-old son's money. When the ten-year-old daughter told P. Polocoser that he was not allowed to touch the six-year-old daughter, he said that he would "kill [the ten-year-old daughter] with the scooter till [she] died" while he was holding a scooter. The ten-year-old daughter did not see P. Polocoser kick anyone, but saw him pull the six-year-old daughter's hair.

The twelve-year-old daughter testified that P. Polocoser's behavior improved after the trial court returned the children the first time. She testified that when the sixteen-year-old son's money was missing, P. Polocoser said he would beat the children unless they found the money. Later, P. Polocoser picked up a scooter and yelled that he was going to hit the ten-year-old daughter with it until she died. The twelve-year-old daughter also testified that she saw P. Polocoser hit the five-year-old son and the three-year-old daughter, and that he picked the three-year-old daughter up by the hair and kicked her with his boots on.

The twelve-year-old daughter testified that she could not recall whether M. Polocoser ever told P. Polocoser to stop hitting the children, and that when she told M. Polocoser that she was going to report P. Polocoser's abuse, M. Polocoser cried.

The fourteen-year-old son testified that when the sixteen-year-old son lost his money, the only thing that happened was that P. Polocoser "went crazy" and said was going to kill the horses, which made the younger children start crying. The fourteen-year-old son testified that P. Polocoser no longer hit the children, and did not tell him to hit his siblings, but that he sometimes did so because he was angry.

The sixteen-year-old son testified that P. Polocoser yelled at the children less often and handled situations better after the trial court returned them home the first time. According to the sixteen-year-old son, he never saw P. Polocoser pull anyone's hair or hit anyone, but he did see P. Polocoser kick the five-year-old and the eight-year-old sons after the children returned home. However, P. Polocoser no longer struck him or the fourteen-year-old son. P. Polocoser encouraged the sixteen-year-old son to hit his siblings.

The sixteen-year-old son testified that never heard M. Polocoser tell P. Polocoser to stop hitting the children, and when he talked with her about P. Polocoser's behavior, "she just sat there and just like looked sad" The sixteen-year-old son testified that M. Polocoser was a good mother, but she could not intervene if P. Polocoser hit the children because she could not walk or get to a phone.

The twenty-two and nineteen-year-old daughters testified that they still lived with their parents. The twenty-two-year-old daughter testified that P. Polocoser was more patient and understanding after the trial court returned the children the first time, but the children refused to respect or obey P. Polocoser. She testified that P. Polocoser had reformed himself since the trial court returned the children, and he now grounded or withdrew privileges from the children and did not physically discipline them at all.

According to the nineteen-year-old daughter, the night that the sixteen-year-old son's money was missing, all the children went to sleep and were asleep when she woke up. When she returned home at midday, the children were getting themselves lunch.

P. Polocoser testified that he learned during the previous proceedings that he should not hit his children, and that he no longer did so.

The trial court instructed the jury that P. Polocoser was entitled to use reasonable force to discipline his children. The trial court provided the jury with a separate verdict form for each child. The jury found that the trial court had jurisdiction over the children.

E. THE TERMINATION HEARING

The trial court's initial dispositional hearing was a termination hearing. At the hearing, Kristine Kane, the children's foster care worker, testified about each child's challenges and how each child was doing in his or her foster care placement.

Kane testified that P. Polocoser was not interested in participating in a treatment plan. She testified that she offered M. Polocoser services, but M. Polocoser deferred to P. Polocoser's wishes. Kane testified that it was unlikely that the parents could rehabilitate themselves. Kane testified that she believed that each child was at a risk of physical abuse and neglect, and that she was concerned that P. Polocoser would continue to physically abuse the younger children. Kane testified that she did not believe that returning the children to M. Polocoser's care, but not P. Polocoser's, was a possible solution.

P. Polocoser admitted that he previously said that he would not participate in services, and that he was no longer an abuser. However, he testified that he was willing to participate in services and wanted to be reunited with his children.

F. THE TRIAL COURT'S FINDINGS AND DETERMINATIONS

The trial court found that P. Polocoser has a serious anger problem that causes him to physically and emotionally abuse most of his children. It found that P. Polocoser did not know how to appropriately discipline his children. The trial court noted that in 2009, it found that P. Polocoser punched and kicked the children, pulled their hair and ears, and made them kneel with their hands in the air for prolonged periods. The trial court found that P. Polocoser admitted that he was an abuser, but at the time of the first termination hearing, it believed that P. Polocoser was reformed.

The trial court found that P. Polocoser had previously participated in services, but did not benefit from them, and did not “demonstrate[] a willingness or capacity to benefit from further services.” The trial court found that the Polocosers were offered services in 2009, and that P. Polocoser “exhausted his opportunity to take advantage of services. Services were attempted . . . but nonetheless, Mr. Polocoser is resorting to the same methods that he resorted to previously” It found that P. Polocoser was now ordering the sixteen-year-old son to discipline the children and was thus “missing the point.”

The trial court found that when P. Polocoser discovered that the sixteen-year-old son's money was missing, he went into a rage, struck the six-year-old daughter with a belt, and threatened to hit the ten-year-old daughter with a scooter when she came to the six-year-old daughter's defense. It found that P. Polocoser inappropriately denied the children food and did not let them go to school. It found that P. Polocoser kicked his younger children and hit them with boots “many, many times[.]” Considering the infant daughter who was born during the proceedings, it found that the Polocosers had not abused the infant daughter. But the trial court found that it was likely that P. Polocoser would abuse his youngest children, including the infant daughter, in the future.

The trial court found that M. Polocoser was physically unable to prevent P. Polocoser from abusing the children, did not report his abuse to the authorities, and was not willing to do so. The trial court found that she had an opportunity to prevent the abuse, and failed to do so.

On the basis of its findings, the trial court found that clear and convincing evidence supported terminating the Polocosers' parental rights to the nine youngest children under MCL 712A.19b(3)(b), (g), and (j). However, the trial court found that there was not clear and convincing evidence that the sixteen-year-old son and the fourteen-year-old son would be harmed if returned to the Polocosers.

Considering the children's best interests, the trial court found that the children clearly loved and were bonded to the Polocosers. The trial court found that termination of the Polocosers' parental rights was in the children's best interests because they deserved permanence, were not thriving, and required permanence in order to thrive.

II. CLAIMS COMMON TO BOTH DOCKETS

Both M. Polocoser and P. Polocoser argue that the trial court (1) made several mistakes at the adjudication, (2) failed to make reasonable efforts to reunify the family by failing to provide

a service plan, (3) violated their constitutional rights to procedural due process, and (4) failed to make individual factual findings for the statutory grounds concerning each child.

A. THE TRIAL COURT'S DECISIONS AT THE ADJUDICATION

1. STANDARD OF REVIEW

This Court reviews de novo questions of constitutional law and questions of family division procedure under our Court Rules.¹

2. THE POLOCOSERS' ATTACK ON JURISDICTION

As an initial matter, we conclude that the Department's contention that the Polocosers' assertions are an impermissible collateral attack is without merit.

If termination occurs at the initial disposition as a result of a request for termination contained in the original, or amended, petition for jurisdiction, then an attack on the adjudication is direct and not collateral, as long as the appeal is from an initial order of disposition containing both a finding that an adjudication was held and a finding that the children came within the jurisdiction of the court.²

Here, the Polocosers appeal the trial court's initial dispositional order. The trial court entered the order after an adjudication was held that resulted in a finding that the children came within the court's jurisdiction, and the trial court terminated the Polocosers' parental rights at the initial disposition. Thus, the Polocosers' attack on the trial court's jurisdiction in this case is direct, not collateral.

3. THE PETITION AMENDMENT

The Polocosers contend that the trial court improperly instructed the Department to amend its petition to include allegations of P. Polocoser's past conduct. We conclude that the record does not support this allegation.

The record indicates that the Department included the allegations in its amended petition, and the trial court ordered it to include the dates of the past conduct to clearly specify which conduct pertained to the current proceeding; *not* that the trial court ordered the Department to include those allegations in the first place. Thus, the Polocosers' assertion that the trial court instructed the Department to include this information is without merit.

¹ *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006).

² *In re SLH*, 277 Mich App 662, 668-669; 747 NW2d 547 (2008).

4. EVIDENCE CONCERNING THE FIRST PROCEEDING

The Polocosers additionally contend that the trial court should have excluded the evidence that pertained to the first proceeding. The Michigan Rules of Evidence apply at an adjudication.³ Generally, this Court reviews de novo questions of law related to the admissibility of the evidence, and reviews for an abuse of discretion the trial court's decision whether to admit evidence.⁴

Here, the trial court ruled that the parties could present only legally admissible evidence at the trial, including the legally admissible evidence pertaining to the first proceeding. The Polocosers challenged this evidence on relevance grounds, and the trial court ruled that the evidence was relevant. The Polocosers do not explain how this evidentiary ruling was an abuse of discretion or violated our court rules. Parties abandon issues on appeal if they “merely announce their position and leave it to this Court to discover and rationalize a basis for their claims.”⁵ We conclude that the Polocosers have abandoned this issue.

B. REASONABLE EFFORTS

1. STANDARD OF REVIEW

We review for clear error the trial court's finding that the Department engaged in reasonable efforts to reunify a child with his or her parent.⁶

2. LEGAL STANDARDS

The Department must make reasonable efforts to reunify a child with his or her parents unless aggravating circumstances are present.⁷ However, the Department need not provide services to every family in every situation.⁸ “Services need not be provided where reunification is not intended.”⁹ Further, “there exists a commensurate responsibility on the part of [parents] to participate in the services that are offered.”¹⁰

³ MCR 3.972(C)(1).

⁴ *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001).

⁵ *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008).

⁶ *In re Mason*, 486 Mich 142, 152, 166; 782 NW2d 747 (2010).

⁷ MCL 712A.19a(2).

⁸ See MCL 712A.18f(1)(b); *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011).

⁹ *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008).

¹⁰ *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

3. APPLYING THE STANDARDS

We conclude that the trial court did not clearly err when it found that the Department engaged in reasonable efforts to reunify the children with the Polocoser in this case. Here, McNicol testified that she offered P. Polocoser services, but he stated that he would rather kill himself than participate in them. Kane testified that P. Polocoser was not interested in participating in a treatment plan, and that she offered M. Polocoser services, but M. Polocoser deferred to P. Polocoser's wishes. Further, the Department previously offered the Polocoser services, and it is apparent from the record that the Polocoser did not benefit from those services. Thus, we are not convinced that the trial court made a mistake when it determined that the Department engaged in *reasonable* efforts in this case.

C. PROCEDURAL DUE PROCESS

1. STANDARD OF REVIEW

Generally, this Court reviews de novo whether the trial court complied with the requirements of procedural due process in a child protective proceeding.¹¹ However, because the Polocoser did not raise their constitutional challenge in the trial court, it is not preserved.¹² This Court reviews unpreserved claims of constitutional error for plain error that affected a party's substantial rights.¹³ An error is plain if it is "clear or obvious."¹⁴

2. LEGAL STANDARDS AND APPLICATION

The Polocoser contend that the trial court deprived them of procedural due process by failing to order services. We conclude that the trial court did not plainly err in this case.

Parents have a significant liberty interest in the care and custody of their children.¹⁵ Our statutes, court rules, and DHS policies are in place to generally ensure that parents are provided with procedural due process when their children are removed from their home.¹⁶ But, as we have previously stated, our statutes do not require the Department to provide parents with services in every case as long as the agency justifies its decision not to provide the parents with services.¹⁷

¹¹ *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

¹² See *In re Frey*, 297 Mich App at 247.

¹³ *In re Williams*, 286 Mich App at 274.

¹⁴ *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

¹⁵ *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003).

¹⁶ *In re Rood*, 483 Mich 73, 93; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.).

¹⁷ *In re Plump*, 294 Mich App at 272.

Here, the Department justified its decision by indicating that it did not intend to reunify the children with the Polocosers, the Polocosers refused services, and it previously provided the Polocosers with services but those services were not effective. When making its findings and decision, the trial court considered the nature and extent of the previous services and the Polocosers' refusal to participate in new services. We conclude that the trial court did not plainly err by depriving the Polocosers of procedural due process when it failed to order the Department to provide the Polocosers with services in 2012.

D. INDIVIDUALIZED FINDINGS ON EACH STATUTORY GROUND

The Polocosers assert that the trial court is required to make individualized findings on each statutory ground supporting termination for each child. The Polocosers provide no authority for their assertion. A party who provides no legal authority in support of his or her assertion has abandoned an issue.¹⁸ We conclude that the Polocosers have abandoned this issue. Further, we note that “[e]vidence of how a parent treats one child is evidence of how he or she may treat the other children.”¹⁹ Even were we to consider this issue, we would reject the Polocosers' argument.

III. DOCKET NO. 311958

In Docket No. 311958, M. Polocoser contends that the trial court's findings were clearly erroneous, including that (1) the Department proved the statutory grounds by clear and convincing evidence, and (2) terminating her parental rights was in her children's best interests.

A. 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.²⁰ 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.²¹

2. MCL 712A.19b(3)(b)(ii), (g), AND (j)

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

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

¹⁸ *Berger v Berger*, 277 Mich App 700, 715; 747 NW2d 336 (2008).

¹⁹ *In re Hudson*, 294 Mich App 261, 266; 817 NW2d 115 (2011).

²⁰ MCR 3.977(K); *In re Mason*, 486 Mich at 152.

²¹ *In re JK*, 468 Mich at 209-210.

* * *

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

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.

We conclude that the trial court did not clearly err when it determined that the Department proved these statutory grounds by clear and convincing evidence. Even though M. Polocoser is confined to a wheelchair and has difficulty protecting her children from P. Polocoser, MCL 712A.19b(3)(g) is not concerned with M. Polocoser's lack of intent, and MCL 712A.19b(3)(j) is not concerned with her lack of capacity. Even a disabled parent must demonstrate that he or she can meet his or her children's basic needs, once those children come into the trial court's jurisdiction.²² M. Polocoser is not absolved of her responsibilities to care for her children and keep them from harm simply because she suffers from a physical disability. For instance, a parent can protect his or her children from abuse by separating from the person who is abusing the children.²³

Here, the trial court found that there was clear and convincing evidence that M. Polocoser could not and would not prevent P. Polocoser from harming her younger children, and they would likely be harmed if returned to her care. The testimony at the adjudication and dispositional hearing supported the trial court's finding, including the testimony that (1) M. Polocoser could not reach a phone, (2) M. Polocoser did not do anything to stop P. Polocoser's abuse, (3) McNicol's testimony that M. Polocoser deferred to P. Polocoser and would not even discuss services with her and (4) the twelve-year-old daughter's testimony that M. Polocoser cried when the twelve-year-old daughter informed her that she was going to report P. Polocoser's abuse. The evidence reflected that M. Polocoser did nothing to report or prevent the abuse, and even discouraged her children from reporting it. We are not convinced that the trial court was mistaken when it found there was clear and convincing evidence that M. Polocoser had an

²² *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000).

²³ See *In re Sours*, 459 Mich 624, 635; 593 NW2d 520 (1999).

opportunity to prevent the abuse but failed to do so, that she failed to provide her children with proper care, and that the children were reasonably likely to be harmed if returned to her care.

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.²⁴

2. LEGAL STANDARDS

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.²⁵ To determine whether termination is in a child's best interests, the court may consider a wide variety of factors, which may include children's needs for "permanency, stability, and finality."²⁶

3. APPLYING THE STANDARDS

M. Polocoser contends that the trial court's determination to terminate her parental rights to her younger children was clearly erroneous because they were bonded to her. We conclude that the trial court did not clearly err when it determined that, regardless of whether the children were bonded to M. Polocoser, termination was in their best interests.

The trial court found that the children deserved permanency, but would likely be back in the court "every twelve to eighteen months with another allegation." We conclude that this finding was not clearly erroneous, as the trial court had returned the children to M. Polocoser's care only about one year before they were again removed in the instant proceeding. Kane's testimony at the adjudication, which included that the children suffered from educational and social developmental delays, supported the trial court's determination that the children were not thriving. On the weight of this record, we are not convinced that the trial court made a mistake.

IV. DOCKET NO. 311959

In Docket No. 311959, P. Polocoser asserts that the trial court's findings and determinations were clearly erroneous, including that (1) the Department proved the statutory grounds by clear and convincing evidence and (2) terminating his parental rights was in his children's best interests.

²⁴ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

²⁵ MCR 3.977(E)(4); MCL 712A.19b(5); *In re Trejo*, 462 Mich at 354.

²⁶ *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

A. STATUTORY GROUNDS

1. STANDARD OF REVIEW

As previously stated, we review for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination.²⁷ 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.²⁸

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

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

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

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.

We conclude that the trial court did not clearly err when it found that the Department proved these statutory grounds by clear and convincing evidence. The trial court found that P. Polocoser struck and bruised the six-year-old daughter and threatened to hit the ten-year-old daughter with a scooter. It found that P. Polocoser kicked his younger children and hit them with boots. The children's testimony amply supported the trial court's findings that Polocoser continued to physically abuse his children.

We are not convinced by P. Polocoser's assertion that the trial court's failure to provide him with services created a "hole in the evidence." We conclude that the trial court had ample

²⁷ MCR 3.977(K); *In re Mason*, 486 Mich at 152.

²⁸ *In re JK*, 468 Mich at 209-210.

evidence from which to determine whether the children were reasonably likely to suffer from abuse in the future. P. Polocoser previously admitted to multiple instances of abuse, and the Department previously provided him with services. P. Polocoser continued to beat his children after the trial court returned them to his care. The children’s testimony supported the trial court’s findings that P. Polocoser failed to benefit from the previously offered services. Finally, although the trial court found that P. Polocoser was not reasonably likely to continue to abuse the oldest minor children, that does not negate the evidence that P. Polocoser did abuse, and was likely to continue to abuse, his younger children. On the weight of this record, we are not convinced that the trial court lacked sufficient evidence to make its findings or that its findings were mistaken.

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.²⁹

2. LEGAL STANDARDS

As we have previously stated, 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 children’s best interests.³⁰ The court may consider a wide variety of factors, which may include children’s needs for “permanency, stability, and finality.”³¹

3. APPLYING THE STANDARDS

P. Polocoser contends that, because the trial court did not offer the family services, it did not have sufficient information to make best interests findings for each individual child. We disagree.

The trial court was entitled to consider the entirety of the record evidence, including the testimony of the witnesses at the adjudication and the children’s testimonies at the dispositional hearing.³² As stated previously, the trial court’s findings that the children would not be likely to have permanence in the Polocosers’ home—as they would likely be in and out of further court proceedings—was not clearly erroneous. Further, Kane testified that most of the children had developmental delays and were experiencing various problems in their foster homes. We

²⁹ MCL 712A.19b(5); *In re Trejo*, 462 Mich at 356-357; 612 NW2d 407 (2000).

³⁰ MCR 3.977(E)(4); MCL 712A.19b(5); *In re Trejo*, 462 Mich at 354.

³¹ *In re Olive/Metts*, 297 Mich App at 41-42.

³² See *In re Trejo*, 462 Mich at 351.

conclude that this evidence supported the trial court's determinations that the children were not thriving in the Polocosers' home.

Concerning the sufficiency of the trial court's findings, this case is not like *In re Olive/Metts*.³³ In that case, this Court held that the trial court clearly erred by failing to consider the individual best interests of the children because it failed to address the children's placement with relatives when some of the children were placed with relatives and others were not.³⁴ We held that the trial court "has a duty to decide the best interests of each child individually."³⁵

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, when the children's needs or situations differed, the trial court addressed the differences in its findings of fact. For instance, the trial court differentiated its findings concerning the infant daughter, who was born during the proceedings, from the other children who actually suffered P. Polocoser's abuse. We are not convinced that the trial court erred by failing to consider each child's best interests.

We affirm.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood

³³ *In re Olive/Metts*, 297 Mich App 35.

³⁴ *Id.* at 44.

³⁵ *Id.* at 43.