

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* KAZMIERCZAK, Minors.

UNPUBLISHED  
December 4, 2014

No. 320920  
Oakland Circuit Court  
Family Division  
LC No. 12-798684-NA

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*In re* KAZMIERCZAK, Minors.

No. 320922  
Oakland Circuit Court  
Family Division  
LC No. 12-798684-NA

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Before: RIORDAN, P.J., and SAAD and TALBOT, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother and respondent father appeal as of right the order terminating their parental rights to their minor children, AK (born May 2012) and BK (born September 2013). Their rights were terminated under MCL 712A.19b(3)(b)(i) (parent caused physical injury to child),<sup>1</sup> (c)(i) (conditions that led to adjudication continue to exist),<sup>2</sup> (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm). We affirm.

I. ADJUDICATION

In a one sentence parenthetical, respondent father first contends that because he was never adjudicated, he is entitled to a new trial pursuant to the Michigan Supreme Court's opinion in *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014), which struck down the one-parent doctrine. Petitioner responds that respondent father's argument amounts to a collateral attack on jurisdiction, which is impermissible.

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<sup>1</sup> This ground only applied to BK.

<sup>2</sup> This ground only applied to AK.

This Court recently decided these issues in a published case, *In re S Kanjia, Minor*, \_\_ Mich App \_\_; \_\_ NW2d \_\_ (Docket No. 320055, issued October 21, 2014).<sup>3</sup> This Court found that “the general rule prohibiting a respondent from collaterally attacking a trial court adjudication on direct appeal from a termination order does not apply to cases where a respondent raises a *Sanders* challenge to the adjudication.” *Id.* at \_\_ (slip op at 6). However, this Court further held that “*Sanders* is to be given limited retroactivity; its holding applies only to cases then pending when *Sanders* was decided, where the issue was raised and preserved.” *Id.* at \_\_ (slip op at 8). Thus, this Court ultimately held that “because respondent failed to raise and preserve the *Sanders* issue in the trial court, he is not entitled to relief on his *Sanders* challenge.” *Id.*

Likewise in this case, respondent father did not preserve a *Sanders* challenge based on his due process rights or challenge “the validity of the one-parent doctrine[.]” *In re S Kanjia, Minor*, \_\_ Mich App at \_\_ (slip op at 8). Because he did not preserve the *Sanders* issue in the trial court, respondent father is not entitled to reversal pursuant to *In re S Kanjia, Minor*.<sup>4</sup>

## II. STATUTORY GROUNDS FOR TERMINATION

### A. STANDARD OF REVIEW

Respondents next contend that the trial court erred in finding the statutory grounds for termination existed. We review for clear error a trial court’s finding that a statutory ground for termination was proven by clear and convincing evidence. *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). “A decision is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *Id.* at 17-18 (quotation marks and citation omitted).

### B. ANALYSIS

Respondents do not provide substantive challenges to each statutory ground for termination. Instead, they offer generalized assertions that their parental rights should not have been terminated because they were in compliance with their service plans and making progress toward reunification. It is not enough “for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or

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<sup>3</sup> “A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis.” MCR 7.215(C)(2).

<sup>4</sup> We note that in *In re K Farris, Minor*, \_\_ Mich \_\_; \_\_ NW2d \_\_ (Docket No. 147636, issued September 19, 2014), the Michigan Supreme Court granted leave to decide whether a *Sanders* challenge constitutes a collateral attack and “to the extent a collateral attack is permissible, whether the Court’s decision in *Sanders* applies retroactively[.]” However, “a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals.” MCR 7.215(C)(2).

reject his position.” *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (quotation marks and citation omitted).

Furthermore, the trial court did not err in finding that the statutory grounds for termination were proven by clear and convincing evidence. In particular, MCL 712A.19b(3)(j) provides for termination when “[t]here is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.”<sup>5</sup>

The conditions that led to the instant proceedings were AK’s neglect, malnutrition, and failure to thrive because of respondents’ inability to care for him. AK’s health was in such jeopardy that he was hospitalized for over a week. Evidence at the termination hearing demonstrated that while respondents participated in services, they made little to no improvement. Neither respondent appeared to grasp basic concepts of parenting, such as providing for a child’s physical needs. Nor did they demonstrate any discernable bond with the children. During parenting time, respondent father was often observed sleeping or entranced with his cellular telephone rather than interacting with the minors. Respondent mother was distant and detached during parenting time, and would also focus on her cellular telephone. Both respondents appeared physically dirty and presented with body odor, which concerned the foster care worker because of the implications regarding recognizing the importance of proper hygiene for children. There was no discernable improvement in either respondent, despite repeated prompting.

During the course of these proceedings, respondent mother also became pregnant with BK. She initially denied the pregnancy, and despite being 20 weeks pregnant, she did not seek prenatal care from a physician. At time of BK’s birth, concerns still existed regarding respondents’ lack of adequate housing and insufficient income. Respondents also displayed difficulty with rudimentary skills such as the proper way to hold or swaddle BK, despite repeated instruction.

Instead of addressing these significant issues on appeal, respondents instead focus on their participation in services. Yet, respondents were not tasked with mere participation in the services offered. Rather, they had to participate *and* sufficiently benefit from the services in order to address the causes of concern. *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). As this Court has recognized:

‘Compliance’ could be interpreted as merely going through the motions physically; showing up for and sitting through counseling sessions, for example. However, it is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent’s custody. In other words, it is necessary, but not sufficient, to physically comply with the

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<sup>5</sup> “It is only necessary for the DHS to establish by clear and convincing evidence the existence of one statutory ground to support the order for termination of parental rights.” *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012).

terms of a parent/agency agreement or case service plan. For example, attending parenting classes, but learning nothing from them and, therefore, not changing one's harmful parenting behaviors, is of no benefit to the parent or child. [*In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005) superseded by statute on other grounds MCL 712A.19b(5).]

Thus, respondents' compliance with the minimum requirements of attendance and participation in the services offered is not dispositive.

Because of respondents' failure to progress or grasp basic concepts of parenting, such as providing nutrition or being emotionally connected with their children, the trial court did not err in finding clear and convincing evidence that there was a reasonable likelihood the children would be harmed if returned to respondents. MCL 712A.19b(3)(j).

### III. REASONABLE EFFORTS

#### A. STANDARD OF REVIEW

Respondent mother also contends that DHS failed make reasonable efforts to reunify her with the children. "Appellate courts are obliged to defer to a trial court's factual findings at termination proceedings if those findings do not constitute clear error." *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009); MCR 3.977(K). "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* at 91 (quotation marks, citation, and brackets omitted).

#### B. ANALYSIS

"[W]ith limited exceptions, 'reasonable efforts to reunify the child and family must be made in all cases[.]'" *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012), quoting MCL 712A.19a(2). "Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). "While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App at 248.

DHS provided services to respondent mother. Several DHS caseworkers testified that services were explained and offered to respondent mother, repeatedly, but that she failed to progress in those services or follow through with several referrals. The foster care worker testified that she was aware of respondents' mental limitations, and instructed others involved to take extra time with them. At the termination hearing, which occurred nearly a year and a half after the initiation of these proceedings, respondent mother admitted that she was offered "a lot" of services during the pendency of the case. DHS did not neglect its duty to provide services. Rather, the failure was on the part of respondent mother in failing to "demonstrate sufficient compliance with or benefit from those services[.]" *In re Frey*, 297 Mich App at 248.

### IV. BEST INTERESTS

## A. STANDARD OF REVIEW

Lastly, respondents contend that the trial court clearly erred in finding that termination was in the best interests of the children. We review for clear error a trial court's decision regarding a child's best interests. *In re Rood*, 483 Mich at 90-91. "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation marks, citations, and brackets omitted).

## B. ANALYSIS

In determining the best interest of a child, the trial court may consider the child's bond to the parent, the parent's parenting ability, the advantages of a foster home over the parent's home, and the child's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App 35, 41-42; 832 NW2d 144 (2012). "[O]nce a statutory ground is established, a parent's interest in the care and custody of his or her child yields to the state's interest in the protection of the child." *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009).

Considering the significant barriers that respondents still faced at the time of the best interests hearing, the circuit court did not clearly err in finding that termination was in the children's best interests. Although respondents complied with portions of their respective service plans, they did not make meaningful progress. DHS caseworkers continued to observe the same difficulties with respect to respondents' ability to perform basic parenting tasks without prompting. Nor was there evidence that the minors strongly bonded with respondents. The evidence also shows that respondents were evicted from their apartment for failing to pay rent, and that neither parent was employed at the time of the best interest hearing. Respondent father admitted that he had lost his job before the statutory grounds hearing, but never disclosed this change in circumstances.

Respondents simply were unable or unwilling to obtain a stable and safe environment for their children. Respondent mother, in particular, contends that more time was needed in light of her mental disorders. However, the trial court did not err in prioritizing the needs of the child over those of respondents. See *In re Foster*, 285 Mich App at 635. The circuit court did not clearly err in finding that termination was in the children's best interests.

## V. CONCLUSION

We find no error justifying reversal in the adjudication, statutory grounds analysis, or best interest determination. We affirm.

/s/ Michael J. Riordan  
/s/ Henry William Saad  
/s/ Michael J. Talbot