STATE OF MICHIGAN

IN THE SUPREME COURT

In the Matter of O. O. Claudio-Perez, Minor Child.

DEPARTMENT OF HEALTH & HUMAN SERVICES,

Petitioner-Appellee,

v

ELIZABETH PEREZ-SALES,

Respondent-Mother/Appellant,

and

EFRAIN CLAUDIO PEREZ,

Putative-Father.

SUPREME COURT
NO. 165711

COURT OF APPEALS
NO. 360356

CIRCUIT COURT FILE
NO. 2018-0181 NA

PETITIONER-APPELLEE'S SUPPLEMENTAL BRIEF IN OPPOSITION TO RESPONDENT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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Petitioner-Appellee Answers: No.
Respondent-Appellant Answers: Yes.
Court of Appeals Answered: No.

2. WHETHER THE PETITIONER FAILED TO MAKE REASONABLE EFFORTS TO RECTIFY THE CONDITION[S] THAT LED TO THE CHILD'S REMOVAL?

Petitioner-Appellee Answers: No.
Respondent-Appellant Answers: Yes.
Court of Appeals Answered: No.

3. WHETHER THE TRIAL COURT ERRED BY CONCLUDING THAT THE CONDITIONS LEADING TO ADJUDICATION COULD NOT BE RECTIFIED IN A REASONABLE AMOUNT OF TIME WITH CONTINUED GUARDIANSHIP WHILE EXPANDING THE RESPONDENT'S PARENTING TIME AND PROVIDING APPROPRIATE SERVICES?

Petitioner-Appellee Answers: The trial court never made this specific finding or conclusion.
Respondent-Appellant Answers: Yes.
Court of Appeals Answered: The Court of Appeals was never asked, nor did it answer, this question.

COUNTER-STATEMENT OF FACTS

Petitioner-Appellee ("Petitioner") accepts the Statement of Facts set forth by Respondent-Appellant ("Respondent"), except as contradicted by the argument portion of this brief.

For ease of reference, the transcripts in this case will hereinafter be referred to as follows:

Transcript Abbreviation	Date of Hearing	Type of Hearing	Appellant's Appendix Tab	Appellant's Appendix Page
PH	4/25/2018	Preliminary	B	9
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RH VIII	5/6/2021	Review	OO	803
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SUPPLEMENTAL ARGUMENT

1. CLEAR AND CONVINCING EVIDENCE WAS PRESENTED TO SUPPORT THE TERMINATION OF RESPONDENT'S PARENTAL RIGHTS TO HER MEDICALLY FRAGILE CHILD

A trial court's findings of fact are reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). A finding is clearly erroneous if, although there is evidence to support it, the appellate court is left with a firm and definite conviction that a mistake was made after reviewing the entire record. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

To terminate parental rights, the trial court need only find that *one* of the statutory grounds listed in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); MCR 3.977(H)(3)(a). In this case, Respondent Elizabeth Perez-Sales' parental rights to her son, hereinafter referred to as "O," (who was 3 years old at the time of removal and 6 ½ years old at the time of termination) were terminated pursuant to subsections (c)(i), (c)(ii), and (j), which state:

> (c) The parent was a respondent in a proceeding brought under this chapter, *182 or more days have elapsed* since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> (i) The 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.
>
> (ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

> (j) There 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. [Emphasis added.]

Respondent came to the United States as an "unaccompanied refugee minor" from Guatemala at the age of fifteen (PH, 22). When Respondent and her son arrived in the United States in October 2015, O was nine months old and weighed only nine pounds (see Appellant's Appendix G, pp. 78). "He was described as having curved feet, pigeon toes, droopy eyes,…brittle and frail,…unable to sit up, and to have not yet met any milestones" (*Id.*). O was sent to the Phoenix Children's Hospital where he had a GI tube inserted (*Id.*). He was born with "Ehlers-Danlos," a rare genetic disorder that made him extremely susceptible to serious injury and one that required extensive medical attention (PH, 9, 12, 13-14).[1]

Respondent and O spent approximately two years at a federal refugee shelter for unaccompanied minors in Arizona before moving to Kalamazoo in October 2017 (see Appellee's Appendix 1, p. 3). While in Arizona, a psychological evaluation was ordered to "better understand [Respondent's] psychological functioning, as she was, reportedly, detached and neglectful of her baby" (see Appellee's Appendix 2, p 26).

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[1] Ehlers-Danlos syndrome is a disorder in which an individual does not produce connective tissue as one normally does (PH, 13-14). It also affects the vascular system. O does not have collagen in his veins and arteries as others do (PH, 14). A minor fall or impact can result in a large hematoma that can be life-threatening if not properly treated (PH, 14; see also, e.g., RH VII, 14; PT I, 18-20; PT II, 33). O requires 24-hour supervision and wore protective head gear when out in public and padded shorts when needed (DISP, 17; RH III, 7; PT I, 17). He requires ongoing speech, occupational, and physical therapy (RH II, 4; RH III, 5-6; RH IV, 5; PT I, 22). In addition to Ehlers-Danlos, O was also diagnosed with congenital deformities of both the right and left foot, heart and eye issues, asthma, and chronic lung disease (PPH II, 27-29; RH VI, 9; see Appellee's Appendix 2, p. 2). He sees medical specialists in numerous areas, including an ophthalmologist, a geneticist, a cardiologist, a hematologist, and a nutritionist (PPH II, 7-8; PT I, 24; RH VI, 17; RH VIII, 11; Appellee's Appendix 2, p. 27). These are life-long conditions that are drastically impacted by the type of care he receives (PPH II, 28; RH VI, 17).

Upon relocating to Kalamazoo, Michigan, Respondent and her son lived in a "semi-independent" setting with numerous other refugee minors where Respondent received one-on-one assistance from a refugee case manager through Bethany Christian Services (BCS), as well as a host of other services (PH, 13, 19, 21; PT I, 46-47; PT II, 25; see also Appellee's Appendix 1, p. 4). At that time, O was still failing to thrive (DISP, 10; PT I, 20-21) and was seen by emergency room doctors three times between January 29, 2018 and April 24, 2018, for unexplained physical injuries (PH, 12, 17-18). Respondent was informed by both medical professionals and CPS that she could not physically discipline her son due to his medical fragility (PH, 18-19; PT II, 20), yet she was observed by individuals at the refugee home hitting O on his face and buttocks, throwing him on his back, pulling him by his arm, and lifting him up by his feet (PT II, 19, 33-34, 47, 57-58, 59, 60-61). And when injuries occurred, Respondent refused to take O to the hospital until forced to do so (PT II, 33-34).

A petition seeking court intervention was filed on April 25, 2018, alleging in pertinent part that O's medical needs exceeded Respondent's parenting skills, that Respondent was physically abusing O (including using physical discipline), was reluctant to seek necessary medical treatment, and, consequently, placed him at risk of harm (see Appellant's Appendix A, p. 7). The trial court removed O from Respondent's care that day, noting that it was unclear at that point whether Respondent did not understand O's needs, or simply did not care (PH, 34-35). On June 27, 2018, Respondent pled no-contest to an added allegation that she was "unable to meet the child's special needs" (ADJ, 3; Appellant's Appendix E, p. 61).

The same was true 3 ½ years later when the trial court terminated Respondent's parental rights, finding that she was still unable to provide for her son's needs, she did not fully comprehend or acknowledge the abuse that she inflicted on him, and she did not appreciate or fully understand

the seriousness of O's life-threatening disorder nor took sufficient measures to understand, (PT IV, 7-11, 17). The trial court opined that although Respondent "stepped it up" in the latter part of 2020, she was "no where close to being able to reunify with [her] child" (PT IV, 12, 18). The court added that Respondent still relied too much on—and even took advantage of—the caseworkers to do what she should be doing on her own (PT IV, 12-13, 15). The trial court also questioned whether Respondent could afford to house and care for herself and her son (PT IV, 16). The court further found that "services and trainings were offered to mom and mom did not take advantage of those" and although she was attending O's appointments, "she either does not care or does not comprehend the seriousness of [those]…appointments" (PT IV, 17-18). Ultimately, whether it be a lack of understanding, immaturity, or an unwillingness to try, the trial court opined that considering O's medical needs, if he was returned to Respondent's care, "there is a very very high likelihood that he will end up in the hospital or worse could happen" (PT IV, 17-19). The trial court's findings are supported by clear and convincing evidence. No clear error was committed.

Early on, Respondent refused the voluntary services that were available to her, and not long after the court got involved and she was ordered to comply with services, she told her attorney and her caseworker that she wanted to focus more on school and work and asked that O spend more time with his foster mother (PH, 31-32; RH I, 5, 10-11). When the supportive visitation program started, Respondent was hesitant to engage and complained and questioned why she needed to participate (RH II, 5). And although she eventually "opened up" over time and changed her attitude, she asked that her visits with O be reduced to once a week because she was too stressed and tired from her job (RH II, 6). By that time, Respondent had quit school and was only working (RH II, 12).

At the first permanency planning hearing in March 2019, the caseworker reported that Respondent met with a new therapist, but asked that she not be required to continue with that service (PPH I, 6). The caseworker noted that Respondent's "emotional stability" was identified as a barrier to reunification due to her long history of trauma and that she spoke with Respondent about the importance of therapy (PPH I, 8, 10; see also, Appellee's Appendix 3). The caseworker also agreed that it was critical that Respondent have an understanding of "good parenting" and "good discipline"—considering the reason the case came before the court—and although the supportive visitation specifically addressed those issues, additional education was needed (PPH I, 10-11). And she reiterated that Respondent had a tendency to have a bad attitude about starting new services (PPH I, 12-13).

Nine months later, at the review hearing held in December 2019, the caseworker reported that Respondent was still not participating in therapy (RH V, 5). The caseworker also reported that Respondent's living situation was not appropriate or suitable for her son (RH V, 5).

During the second permanency planning hearing in March 2020, nearly two years after O was removed from Respondent's care, the caseworker reported that Respondent was attending O's medical appointments, but not his weekly PT or OT appointments (PPH II, 9, 15). And despite the urging of both her and the refugee caseworker, Respondent was still not attending school or therapy (PPH II, 20-21). The caseworker stated that Respondent was more involved with her son's medical concerns than she was in the beginning, but indicated that she was not sure about Respondent's understanding of O's medical issues (PPH II, 10, 21). The caseworker acknowledged that O's congenital deformities were something he would deal with for the rest of his life and agreed that because Respondent was not participating in the OT and PT appointments, she was unaware of how to take care of those particular medical needs (PPH II, 27-28). And after

supporting a guardianship with the foster parents for quite some time, Respondent recently started talking about wanting O to be returned to her care (PPH II, 22-23).

In August 2020, the caseworker reported that "little progress has been made" and that Respondent did not engage "very much" with the caseworker or her son's case (PPH III, 9, 12. 17-18). She noted, for example, that Respondent expressed little interest in what was happening, and did not inquire about O's wellbeing or ask for updates (PH III, 12, 19). The caseworker stated that she wanted to see Respondent more engaged at O's medical appointments—i.e., actually speaking to the doctor or medical professionals—and attending his therapy (PH III, 14). She specifically instructed Respondent to attend O's appointments and learn more about his medical condition and to obtain suitable housing (PPH III, 10, 14).

The caseworker agreed that the same barriers existed after two years, stated that O needed and deserved permanency, and opined that "the reduction of barriers would appear too great for the mother" (PH III, 17). The caseworker added that Respondent's refugee caseworker felt the same—that Respondent would be unable to reduce the barriers to reunification (PPH III, 19). The caseworker also reported that Respondent refused to attend therapy and was therefore not rescheduled (PPH III, 23).

Respondent claimed that she went to therapy, was told that the sessions were done, and that she did not need to go anymore (PPH III, 26-27). She insisted that she was willing to go (PPH III, 27). Respondent also claimed that she had always gone to her son's medical appointments and asserted that she knew about O's condition (PPH III, 27). She also said that she got most of her information from the foster mother and admitted that she had not contacted her foster care caseworker for the past two months (PPH III, 26, 29). Respondent added that she had nothing to say to her caseworker—all the questions she had she asked the foster mother (PPH III, 30). She

stated that she spoke with the caseworker three months ago and the caseworker told her that she wanted to see progress—instructing her to do therapy, get a house, and engage in O's medical situation (PPH III, 30). Respondent then stated, "I know about those things" (PPH III, 30). She also claimed that the prior caseworker told her that therapy was no longer needed (PPH III, 31).

The guardian ad litem recommended that the trial court change the goal to adoption, noting that O needed permanence (PPH III, 33). The trial court ordered the Department to initiate proceedings to terminate Respondent's parental rights (PPH III, 35). The court opined that Respondent was more concerned with herself than with getting her child back (PPH III, 36). She knows that therapy is crucial and yet has done nothing to accomplish that goal (PPH III, 36). Moreover, the case came into the system due to child abuse—the fact that there has been no progress on that front was "deeply concerning" to the trial court (PPH III, 36).

The trial court reconvened one month later to go back on the record because there were some concerns that Respondent did not understand what happened at the prior permanency planning hearing (PPH IV, 4). The caseworker reiterated that Respondent was not attending therapy, noted that she only attended one of six of her son's medical appointments during the proceeding reporting period, and again opined that O could not safely return to Respondent's care (PPH IV, 8, 11-13). The caseworker testified that Respondent had not completed any services since her psychological evaluation nearly 2 ½ years ago (PPH IV, 15, 24-25). Indeed, the services requested at the time the case was initiated remained the same (PPH IV, 25; see also, Appellee's Appendix 3).

Respondent testified that she wanted O with her, but admitted that could not happen at that time because "I don't have the things that were requested of me" (PPH IV, 30). She then added, "I need to look for a house, a house that is safe for the child and understand the doctor better and

what [the caseworker] said about going to therapy appointments and attending the child's appointments" (PPH IV, 30). Respondent stated that she had no problem understanding what O's doctors said and indicated that she understood everything that was happening (PPH IV, 30, 32). When asked if there was anything the caseworker was not helping her with, Respondent answered, "Not right now, I don't think so" (PPH IV, 31).

The trial court stated that parenting training was inconsistent, participation in the medical appointments was inconsistent, and Respondent's participation in therapy was "almost non-existent" (PPH IV, 38). The trial judge then addressed Respondent, "[T]his is not over. There is still time. But you need to understand you have been given a lot of time already. If you are serious about maintaining your status with this child, you need to make him and your case plan your top priority" (PPH IV, 41).

At the November 2020 review hearing, the caseworker reported that Respondent was attending therapy, but, per her counselor, she "needs to be more open and engaged in her sessions" (RH VI, 8). The caseworker indicated that she was still recommending termination, noting that "there has been little to no progress in barrier reduction" (RH VI, 11). She reported that Respondent found an apartment, but believed that Respondent's income was insufficient to meet both her needs and O's (RH VI, 15-16).

The guardian ad litem added that O's hematologist had concerns about O's future care, noting that his condition could not be cured, but the "extent of damage" could be drastically impacted by the type of care O received (RH VI, 17). It was also reported that Respondent was still seeking reunification (RH VI, 18).

During the February 2021 review hearing, the caseworker reported that Respondent moved into an apartment with another unaccompanied refugee minor against her advice, as the other

individual had a CPS history (RH VII, 7-8). The caseworker was also concerned that Respondent's finances were insufficient to cover the cost of the apartment and that finances would likely be a barrier for Respondent in the future, as she was no longer receiving URM funds (RH VII, 8). The caseworker reported that Respondent completed parenting classes and was participating in counseling (RH VII, 8, 9). But while the counselor reported progress, Respondent had yet to fully address the physical abuse against O or process her own past trauma (RH VII, 8). The caseworker believed that was important, especially because Respondent had indicated that her disciplinary habits were likely a product of how she was disciplined (RH VII, 9).

The caseworker again recommended that the trial court terminate Respondent's parental rights, stating that Respondent still relied primarily on the Department for transportation, her housing and financial situation was tenuous, she needed to make more progress in counseling, her parenting time was still supervised, and she declined to virtually attend a recent ER visit involving her son (RH VII, 9-12, 15). The caseworker added that she believed Respondent's understanding of O's condition was superficial—that she did appreciate that it is life-long and that O requires a large amount of supervision (RH VII, 16-17). She also noted that O has a lot of appointments and not all are local (RH VII, 17).

The foster mother testified the first day of the termination hearing in March 2021. She stated that O's genetic disorder presents life-long issues for O and his caretaker (PT I, 17). O required 24-hour supervision; he cannot play alone because he is susceptible to severe injury (PT I, 17). She noted that O had 6 to 7 emergency room visits since he was in her care (PT I, 18). The last severe injury was in August 2020, when O lost his balance, fell off a short step stool, and hit his head against the wall (PT I, 18-19). The foster mother stated that he developed a hematoma on his head that was larger than a grapefruit (PT I, 19). It filled with blood, eventually "broke"

open two months later—necessitating surgery—and required special wound care and dressings for approximately seven months thereafter (PT I, 19-20). She noted that Respondent never changed O's dressings from that incident (PT I, 25).

The foster mother also testified that O sees medical specialists frequently and attends OT and PT on a weekly basis (PT I, 21-22). In the beginning, she was taking O to approximately ten appointments per month and Respondent never joined them (PT I, 37). She stated that Respondent started regularly attending O's appointments in October 2020 and more recently started asking questions and showing more interest (PT I, 22, 39). She added, though, that Respondent did not know the hematologist that O has been seeing for the past three years—the same doctor that reported that O has many "abnormal genes," believed he would unlikely ever live independently, and referred him out to U of M for more extensive genetic testing (PT I, 25, 36).

The caseworker testified that Respondent did "very poorly" with the PATP before October 2020, and there were still concerns with her housing situation and financial resources (PT I, 44-46). And despite the fact that Respondent had finished another parenting class and was attending O's medical appointments, she was still ill-equipped to take O into her care (PT I, 48-49). Overall, there was "very little movement" with the case, as far as Respondent cooperating with the PATP (PT I, 48-50). Even Respondent acknowledged that she initially focused more on herself and needed more time before she and O could be reunited (PT I, 48-50). The caseworker was also concerned that Respondent still did not understand the extent of O's genetic disorder, nor his fragility, she was unable to schedule his appointments and/or transport him to and from those appointments, and she still had not adequately addressed the physical abuse that brought her child into the system (PT I, 50-51, 64-65). Finally, the caseworker reported that Respondent was in fact

always aware of O's medical appointments and the file did not support her claim that the previous caseworker told her it was unnecessary that she attend them (PT I, 44, 55-56).

The caseworker reported much of the same when the termination hearing continued in April 2021. When asked why she believed that Respondent's understanding of O's medical needs had not improved, she responded, "she hasn't taken the initiative to really dive more into…future delays…either cognitive or physical that the minor may suffer that she could prepare for" (PT II, 11). She opined that Respondent "demonstrated a lack of motivation to acknowledge and understand her child's medical fragile issue and needs" (PT II, 21; see also, PT II, 29). The caseworker added that Respondent was attempting to schedule some of O's appointments, but still relied heavily on the caseworker to provide her with information, repeat reminders, and actual assistance with the phone call itself (PT II, 15). And she again emphasized that Respondent's visits with O were still being supervised and explained that it was primarily to ensure O's safety (PT II, 14). The caseworker did not believe that Respondent could take care of O on her own—adding that O recently started acting out before parenting times—and continued to opine that termination was the "best case scenario" (PT II, 35-36).

Respondent persisted that she was told O's appointments were not important early on in the case, but attended them now because her caseworker said they were important "and I have my termination case and I don't want my child taken away" (PT II, 48, 62). She admitted to physically abusing O in the past and stated that she was working through that with her counselor (PT II, 47, 50, 52, 67). Respondent claimed that she could take care of O, insisting that she understood O would have medical issues the rest of his life and that his care would be difficult (PT II, 52-53). She added that she would like "a little more time, but if not, I would like to have my child back" (PT II, 54). Respondent also admitted that she knew O had Ehlers-Danlos syndrome for more than

five years but just started engaging in services when her most-recent caseworker took over in March 2020 (PT II, 58, 68).

The trial court noted that PATPs from the past instructed Respondent to attend all medical appointments and she did not (PT II, 70). The court encouraged the caseworker to let Respondent make some of the appointments on her own to see how she did and to increase her parenting time (PT II, 70-71).

During the third day of the termination hearing (the last in which testimony was received), Respondent testified that she at one time thought counseling, too, was not important (despite the constant direction from the court and her caseworkers) because people told her "going to a therapist is for crazy people" (PT III, 12). When she was questioned about O's specialists and the reason he was seeing them, she confessed that she did not know what his orthopedic appointments were for, she was not sure what a geneticist did nor about the geneticist at the University of Michigan, and otherwise had only a very basic understanding of what the different doctors did for her son (PT III, 14, 22, 26-27). Respondent also acknowledged that she did not speak much to her new caseworker (PT III, 16-17).

The caseworker testified that Respondent struggled to make appointments for O, noting that she at times failed to write them down, she required multiple reminders to make them, and she refused to leave a voicemail and insisted that the caseworker do so (PT III, 32, 34). The caseworker also noted that Respondent exhibited little interest at the conclusion of O's doctor appointments, particularly his OT and PT appointments, explaining that she did not take part in the conversation with the doctor and/or therapist nor asked questions regarding O's progress (PT III, 33). As opposed to Respondent, the foster parents took the initiative to find out all of the information that was needed at O's appointments (PT III, 46). She added that she often had to give Respondent

multiple reminders to make certain appointments (PT III, 34). The caseworker explained that timeliness was very important given O's condition (PT III, 35). She did not believe Respondent understood their importance or made them a priority (PT III, 35). The caseworker was also concerned that Respondent was not meeting all goals of her own therapy and again opined that termination of her parental rights was in O's best interest, stating that the barriers to reunification still existed (including the child's medical needs, her parenting skills and emotional stability, and resource availability and management) (PT III, 36, 39, 46).

Again, and as the Court of Appeals determined, no clear error was committed by the trial court. At least one statutory ground for termination was supported by clear and convincing evidence.

2. REASONABLE EFFORTS WERE MADE TO RECTIFY THE CONDITIONS THAT LED TO THE CHILD'S REMOVAL

Once more, a trial court's findings of fact are reviewed for clear error. *Trejo*, *supra*, 462 Mich at 356-357; MCR 3.977(K). And a finding is clearly erroneous if, although there is evidence to support it, the appellate court is left with a firm and definite conviction that a mistake was made after reviewing the entire record. *JK*, *supra*, 468 Mich at 209-210.

Unpreserved challenges, however, are reviewed for plain error. *In re Ferranti*, 504 Mich 1, 29; 934 NW2d 610 (2019). To preserve a challenge to the sufficiency of the services provided by DHHS, Respondent must object or indicate that the services provided to them were inadequate. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). In her brief on appeal to the Court of Appeals (docketed on 4/18/2022), Respondent conceded that no such objection was made. Therefore, to prevail on appeal, Respondent must establish that an error occurred, that the error

was "plain," i.e., clear or obvious,[2] and that the error affected her "substantial rights," i.e., it was outcome determinative. Even then, reversal is not warranted unless this Court finds that the error "'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.'" *Ferranti*, *supra*, at 29, quoting in part *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). See also, *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008). No plain error occurred.

With few exceptions, MCL 712A.19a(2) mandates that "[r]easonable efforts to reunify the child and family must be made in all cases." See also, *In re Rood*, 483 Mich 73, 121; 763 NW2d 587, 597-600 (2009). "[T]he Department must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *In re Hicks/Brown*, 500 Mich 79, 85–86; 893 NW2d 637 (2017), citing MCL 712A.18f(3)(d) (stating that the service plan shall include a "[s]chedule of services to be provided to the parent…to facilitate the child's return to his or her home"). "Not only must [R]espondent cooperate and participate in the services, she must benefit from them." *In re TK*, 306 Mich App 698, 711; 859 NW2d 208 (2014). And in order to prevail on the argument that Petitioner's reunification efforts were inadequate, Respondent must demonstrate that she would have fared better if sufficient services were offered. *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005).

Respondent argues on appeal that her parental rights were unfairly terminated after the Department did, what she referred to in her initial brief on appeal to the Court of Appeals as, a "bait and switch." She insists that she was told by her caseworker(s) that she did not need to

[2] A "clear or obvious" error is one that is not subject to reasonable dispute. *In re Pederson*, 331 Mich App 445, 463; 951 NW2d 704 (2020).

engage in services because it was the Department's goal to set up a guardianship with the foster family taking care of her son. More specifically, Respondent claims that she was told that she did not have to attend the child's medical appointments and that it was unnecessary that she attend counseling. Then, Respondent argues, approximately two years later Petitioner moved to amend the goal to adoption and Respondent was ultimately faulted for not understanding her son's medical condition and failing to comply with services. Respondent's claims are unsupported by the record.

Before the neglect petition was even filed in the spring of 2018, Respondent was working with a BCS case manager and was being offered services as an unaccompanied refugee minor, including an independent living stipend, food assistance, a cash allowance, and medical services (PH, 19, 21; PT I, 46-47; see also Appellee's Appendix 1, p. 4). She lived in a home with other refugee minors "where she was surrounded by a support system that [wa]s there to help her" and was offered parenting classes and individual behavioral therapy through BCS (PH, 13, 21; Appellant's Appendix G, p. 90). Respondent declined the parenting classes and only intermittently attended therapy (PH, 21). She also had an intake appointment with an independent counselor but declined future sessions (Appellee's Appendix 1, p. 7).

Respondent was informed early-on by her local caseworkers and Dr. Sarah Brown regarding the "fragile nature" of her son's medical condition and the importance of him receiving all recommended follow-up medical care (PH, 12-13, 17, 18-19, 29). Respondent was in turn able to communicate her understanding and awareness of O's condition to Dr. Brown (PH, 16).

Respondent was first informed of her son's medical condition while in Arizona, after the two of them arrived in the United States in 2015 (PT II, 57; see also, Appellee's Appendix 2, p. 27). According to the May 24, 2018 initial Case Service Plan, Respondent and O lived in a federal

refugee shelter for unaccompanied minors in Arizona for approximately two years before moving to Kalamazoo (see Appellee's Appendix 1, p. 3). During her time in Arizona, she participated in a psychological evaluation and received one-on-one supervision services for one month—after which she was described as being "more attuned to her child's needs" by the shelter's medical coordinator (see Appellee's Appendix 2, p 26). Upon relocating to Kalamazoo, Respondent began meeting regularly with a life skills coach and the two worked together on an independent life skills curriculum (*Id*. at 2).

On April 25, 2018, while at the hospital with O in Kalamazoo—their fourth trip to the emergency room within three months—Respondent was questioned regarding her son's condition and the source of his recent and/or reoccurring injuries (*Id*. at 2-3). Respondent denied using physical punishment, and although she struggled to remember the name of O's syndrome, she stated that her son "had weak bones and bruise[d] easily" (*Id*. at 3). When asked how she cared for him, Respondent answered, "you are very careful with his skin because he bruises easily. Be careful to make sure that he does not fall because he bleeds easily and it's important to feed him through his feeding tube at night" (*Id*.). She added that O took Vitamin D for his bones and that "if [O] falls, he will swell up" (*Id*.). Respondent reported the same to the CPS worker when asked to explain what problems O's condition caused, stating that "it causes easy bruising and bleeding, and hematomas" (*Id*. at 5). Respondent again denied using physical punishment to discipline O despite reports to the police to the contrary (*Id*. at 5-6, 7).

Dr. Brown requested O's medical records from Arizona and reported to CPS that "[t]he mother has received education numerous times on how to care for [O]'s medical diagnos[is] and continues to struggle to meet his needs" (*Id*. at 7). Dr. Brown was not sure if Respondent did not understand or was simply not interested, noting that when she spoke to Respondent regarding her

son's medical needs, Respondent "would not look at her" (*Id*.). The initial case service plan also notes that Respondent was advised back in October 2017 (by local CPS workers) of the fragile nature of her son's condition, the importance of not using physical discipline, and the need for appropriate supervision and follow-up medical treatment when an injury occurred (*Id*. at 9-10). Moreover, it was documented that Respondent was advised and understood that she was to attend O's medical appointments and "eventually demonstrate her own competency to get to both parenting times and medical appointments" (*Id*. at 18, 24).

At the July 23, 2018 dispositional hearing, the caseworker reported that Respondent was given a calendar containing her son's appointments and visitation times (DISP, 5). She was participating in her "refugee services," and attending parenting times and the medical appointments (DISP, 5). The caseworker added that a psychological evaluation had been scheduled, Respondent was on a waitlist for "supportive visitation" through "Family & Children Services," and the caseworker was collaborating with the Hispanic American Consulate to see what other services may be available for Respondent (DISP, 5-6). The caseworker was especially interested in finding a Spanish parenting class (DISP, 6). And although Respondent quit seeing her therapist, the caseworker reported that those sessions would begin again (DISP, 6). Also, the caseworker confirmed that interpretation services were provided to Respondent for all services, including her son's medical appointments (DISP, 6, 15). As for Respondent's son, he was referred to "Early On" to see if he qualified for speech services (DISP, 7).

In the July 13, 2018 Case Service Plan (proceeding the dispositional hearing), the caseworker reported that she specifically informed Respondent during a July 5, 2018 family team meeting that she was "required to participate in a parenting class, psych evaluation, individual therapy and parenting time visits" (see Appellant's Appendix G, p. 83). She also informed

Respondent that she needed to provide proof of employment and let her know that she "would be providing her with a calendar every month that included all of the parenting time visits, any appointments for [Respondent,] and [O's] medical appointments" (*Id*. at 84). The caseworker added that Respondent was "shut off and had an attitude at the end of this meeting. She stated she no longer wanted to talk, [and when] asked if she wanted the calendar…she stated she did not want it and walked out" (*Id*.). The same report contained multiple notations from the caseworker that she provided notification to Respondent of O's appointments (*Id*. at 85-86; see also, 89).

During the September 18, 2018 review hearing, the caseworker reported that Respondent completed the psychological evaluation, was engaging in individual therapy, was working with her refugee worker in an attempt to obtain her GED, and was receiving assistance in securing another job (RH I, 5). It was at that hearing that the caseworker informed the trial court that BCS was exploring guardianship as an option—particularly due to the fact that neither Respondent nor her son had green cards (RH I, 8). The caseworker informed the court that she spoke with Respondent in both Spanish and English, adding that "she [Respondent] understands English pretty well" (RH I, 10). Respondent's attorney reported that he explained to her what a guardianship was and that Respondent was interested in it (RH I, 10-11). He added that Respondent was focusing on school and work and wanted her son to spend more time with the foster mother (RH I, 10-11). The trial court indicated at the end of the hearing that it *may* consider a guardianship in the future (RH I, 12).

In the September 5, 2018 Case Service Plan (completed before the September review hearing), the caseworker noted that she spoke with Respondent regarding visitation with O, noting that the trial court agreed to ordered additional visitation, but that Respondent was now requesting to reduce visits to only one per week (see Appellant's Appendix J, p. 127). The caseworker also

reported that Respondent asked how much longer her son would be in care (*Id*. at 132). She told Respondent that the process generally took about a year, but could be more or less than that, and explained to her that "services needed to be completed and then the agency would have to recommend return and the Judge would make the final decision" (*Id*.). Respondent then asked about letting O stay with the foster mother "until she got situated," adding that she needed to make money to pay her uncle back for assisting them in getting to the United States and preferred to work rather than go to school (*Id*.). The caseworker told Respondent that they could discuss the possibility of a guardianship and explore whether that was a good option (*Id*.). It was also noted that the foster mother was comfortable with having direct communication with Respondent and that they regularly communicated with another, allowing O to speak with Respondent outside of parenting time visits (*Id*. at 134).

During the December 12, 2018 review hearing, the caseworker reported that Respondent's son was attending elementary school—where he was receiving speech and occupational therapy (RH II, 4). And both Respondent and her son were participating in the "supportive visitation program" (RH II, 5). Respondent initially complained and questioned why she needed to engage in the visitation program but began to open up to the assistance over time (RH II, 5). The caseworker informed the trial court that Respondent wanted to pursue a guardianship with the foster parents and had actually asked that her visits with her son be reduced to once a week (because she was stressed and tired with her full-time job) and that they no longer occur at her new home (where she was renting a room from her boyfriend's family) (RH II, 6-7, 10). She also noted that Respondent quit attending school and was only working (RH II, 12). Respondent was again participating in individual counseling (RH II, 7). When asked, the caseworker confirmed that if the goal was changed to a guardianship, this would no longer be a reunification case (RH II, 10).

The trial court indicated that the next hearing was a permanency planning hearing and that if Respondent was still interested in a guardianship, the court would give it a shot (RH II, 13).

At the March 13, 2019 permanency planning hearing, the caseworker reported that Respondent completed the supportive visitation program and asked to discontinue therapy (PPH I, 6). Respondent was comfortable with her son staying with the foster parents and wanted a guardianship put in place (PPH I, 7). The caseworker stated that reunification was still the goal and that she wished to wait out the immigration process before moving toward a guardianship, noting that Respondent was working with her refugee worker to obtain a green card and the process could take up to a year (PPH I, 7-9). She added that the PATP identified "emotionally stability" as a barrier to reunification due to Respondent's long history of trauma and noted that Respondent understood that what was in the PATP were not just "suggestions," but orders of the court (PPH I, 8). The caseworker also stated that Respondent had a bad attitude and a tendency to be negative about starting new services and that she spoke with Respondent about how important it was to continue therapy (PPH I, 10, 12). The caseworker indicated that she intended to look into online classes for Respondent, but Respondent made it clear that she was not interested in more schooling (PPH I, 15-16). All parties agreed to wait on the immigration process and none were opposed to adding guardianship as a concurrent goal to reunification (PPH I, 17, 18).

The caseworker reported in the May 29, 2019 updated Case Service Plan that Respondent quit participating in counseling as early as the end of April 2019, although she told her caseworker otherwise, and was only visiting with her son once a week (Appellant's Appendix Q, p. 225). Respondent also mentioned to her caseworker in May 2019 that he might want O to come live with her, but she was not sure (*Id.*). The caseworker wrote, "[Respondent] would like the goal to remain guardianship. She has gone back and forth with contemplating if that is the right decision.

Explained that if she wants the goal to be reunification she is going to have to have more parenting time and complete therapy" (*Id*. at 226). Respondent was hesitant about therapy but indicated that she was willing to participate (*Id*.). The caseworker also offered to get Respondent into English classes again and Respondent insisted that they would conflict with her work schedule (*Id*.; see also, PPH I, 16). The barriers to reunification remained the same—Respondent's parenting skills, her emotional stability, communication, and her child's medical needs (*Id*. at 228). Respondent was "expected to be present for any of her son's medical appointments and school meetings" (*Id*. at 230). It was also noted, "[i]n regards to communication skills, [Respondent] has a tendency to have a bad attitude and can shut down when dealing with new professionals in her life. [Respondent] takes time to warm up to participating in services" (*Id*. at 231; see also, PPH I, 13).

During the June 11, 2019 review hearing, the caseworker reported that Respondent was attending her son's medical appointments when she was able and that the agency was working to set up physical and speech therapy for the child at "Nova Care Kids" (RH III, 5). The referee reviewed the services provided to Respondent and her son, including: "foster care services, parenting time, supportive visitation, parenting class referral, occupational therapy, speech therapy and physical therapy, Nova Care for Kids, medical and dental, team meetings, Bethany Christian Services, psych eval, safety planning, contact with mother, the child, and foster parents, feeding tube removed, English as a second language for mom, employment services, transportation assistance and GAL visits" (RH III, 9-10). The caseworker added that she was also looking at getting Respondent re-enrolled in school (RH III, 13).

At the September 6, 2019 review hearing, the caseworker testified that she was attempting to get Respondent reestablished with a counselor—and that was really the only other thing she was expecting Respondent to do (RH IV, 7). The caseworker acknowledged that Respondent was

otherwise complying with services (RH IV, 6). In the November 5, 2019 updated Case Service Plan, Respondent's (then) new caseworker reported, however, that she texted Respondent in mid-August indicating that she wanted to refer her to a parenting coach and asked Respondent if she would be willing to participate (Appellant's Appendix W, p. 300). Respondent texted back, "no, I don't like being with people, so I'm fine thanks" (*Id*.). The report also noted that when Respondent and the caseworker took O to the hospital for a scheduled surgery on September 4, 2019, the nurse began asking Respondent questions about O, such as if he was allergic to anything or if he had any loose teeth, and Respondent was unable to answer (*Id*. at 303). The caseworker had to call the foster mother to get the answers (*Id*.). When Respondent was provided with the discharge papers, she continued playing and laughing with O and watched videos on her phone (*Id*.). And on September 18, 2019, when the caseworker texted Respondent to ask what day of the week she would like to do counseling, Respondent read the text but never responded (*Id*. at 308).

During the December 5, 2019 review hearing, the caseworker testified that Respondent was visiting with her son twice a week for two hours at a time, that she was using public transportation, friends, and agency workers to get to and from work, and that she was referred to counseling in October 2019, but had not yet gone (RH V, 4-5). The caseworker reiterated that counseling had been ordered by the court and was the only additional services required of Respondent at that time—and new housing if they were looking at reunification (RH V, 8-9). In her January 31, 2020 updated Case Service Plan, Respondent's caseworker reported that Respondent still was not attending counseling, she did not have appropriate housing for O, and she was being informed of O's sessions at NovaCare Kids (Appellant's Appendix Y, pp. 345-347). On December 6, 2019, the caseworker had to text Respondent to tell her that O's dentist was trying to call her and that she needed to answer her phone (*Id*. at 349). The end of January 2020, O said

he did not want to visit with Respondent, he asked to leave early to go home to his foster mother, and was misbehaving (*Id*. at 358). He also cried the next visit (just two days later) because he did not want to go with Respondent (*Id*.).

A second permanency planning hearing was held on March 4, 2020. Respondent did not appear (PPH II, 3). She told the caseworker that she would not be present because she had to work (PPH II, 3-4). The caseworker reported at that hearing that Respondent was attending her son's medical appointments, but not his physical and occupational therapy appointments (PPH II, 9). She noted that Respondent had not been personally invited to attend her son's therapy sessions, but agreed to urge her to attend all appointments in order to learn her son's needs (PPH II, 10-11, 14-15). The caseworker also testified that the lack of counseling was still an issue, noting that Respondent was not attending therapy or school—she was only working (PPH II, 12, 20). The caseworker stated that Respondent recently expressed interest in wanting to work toward reunification (PPH II, 22-23). It was the caseworker's understanding that they could not move forward and establish a guardianship until Respondent and her son received their green cards (PPH II, 23-25). In the meantime, Respondent was supposed to be working on obtaining transportation, housing, and participating in counseling to address her own emotional trauma (PPH II, 25-26). The trial court continued the hearing in order to hear directly from Respondent's refugee worker (PPH II, 33).

At the August 12, 2020 hearing, Respondent's caseworker reported that both Respondent and her son received their green cards (PPH III, 9). She recommended that the trial court give Respondent another 90 days to work toward reunification (PPH III, 9). If no more progress was made, she believed that the goal should be changed to guardianship (PPH III, 9). The caseworker expected Respondent to start attending her therapy appointments, to obtain suitable housing, and

to attend her son's appointments, become more engaged in his treatment, and learn more about his medical problems/needs (PPH III, 10, 14). The caseworker believed that Respondent could benefit from more services—namely, getting more involved in her son's medical treatment (PPH III, 16). She noted that Respondent's refugee case manager was not optimistic that Respondent could reduce the barriers needed for reunification (PPH III, 19). The caseworker added that Respondent engaged very little in the case, explaining that she refused services approximately a year ago and had not attended therapy since (PPH III, 18, 23). The foster family was willing to do a guardianship, but preferred an "open" adoption—either way, they were interested in keeping Respondent involved in her son's life (PPH III, 24, 32). The trial court changed the goal to adoption or guardianship (PPH III, 35, 37).

In the July 29, 2020 updated Case Service Plan (authored before the August 2020 permanency planning hearing), the caseworker (now Respondent's third) reported that both the BCS case manager and the unaccompanied refugee minor (URM) caseworker spoke to Respondent and specifically instructed her to make an effort to find suitable housing for herself and her son and to "become more knowledgeable of the minor's medical condition by attending medical appointments with the minor…." (see Appellant's Appendix CC, p. 427). Up to that point in time, the case manager had not seen any progress (*Id.*). When the case manager spoke with Respondent about reunification, Respondent confessed that she did not feel ready and "may possibly be ready within two years" (*Id.*)

The trial court reconvened the permanency planning hearing on September 17, 2020 at the request of the caseworker because she was concerned that Respondent did not understand the nature of the hearing that took place in August 2020 (PPH IV, 4, 9). The caseworker stated that she spoke with Respondent, explained the purpose of the permanency planning hearing, and went

over the parent/agency treatment plan with her (PPH IV, 9). Respondent indicated that she understood (PPH IV, 10). The caseworker believed that Respondent understood what she was supposed to be doing (PPH IV, 20). She had been working with Respondent since March 2020 and communicated with her in Spanish (PPH IV, 20). She added that Respondent had "not fully" wanted to pursue reunification, noting that for the first year she was primarily interested only in a guardianship (PPH IV, 26-27). And Respondent's refugee case manager was of the opinion that Respondent would not be ready for reunification for another two years (PPH IV, 22). Finally, the caseworker opined that adoption may not be the best fit due to the child's legal status, believing that termination may result in the loss of his green card (PPH IV, 13, 23).

Respondent testified as well, acknowledging that she did in fact understand what guardianship, adoption, and termination would mean for her and her son (PPH IV, 29). She also stated that she understood what the doctors say and that she wanted her son to be returned to her care (PPH IV, 30). Respondent was asked if there was anything her caseworker was not helping with and she responded, "Not right now I don't think so" (PPH IV, 31). The trial court affirmed its decision to change the goal to adoption and guardianship (PPH IV, 38-39).

At the November 10, 2020 review hearing, the caseworker reported that Respondent was attending her son's medical appointments, was receiving interpretation support, and assistance with transportation and her search for housing (RH VI, 6-7). Respondent planned to get an apartment with another refugee minor, but the caseworker was concerned that she did not have sufficient finances to do so (RH VI, 7). She helped Respondent create a budget and reported to the trial court that Respondent's income was barely enough to meet her own needs (RH VI, 15). The caseworker also testified that Respondent began counseling again, her refugee case manager

got her enrolled in an online Spanish parenting class, the guardianship paperwork was initiated, and an adoption referral was submitted (RH VI, 7, 9-10, 13).

A review hearing was held on February 9, 2021, wherein Respondent testified that she completed her second parenting class (RH VII, 22). Respondent was asked if there were any "other services or help" she wanted and she responded that she told her caseworker that she "would like to spend more time with the boy" (RH VII, 22). She saw her son four hours a week and wanted more parenting time (RH VII, 23). Respondent was not going to school at the time, but indicated that her caseworker helped her prepare the documents to obtain her GED (RH VII, 24). The caseworker also signed Respondent up to begin an English class (RH VII, 24).

The GAL reported that Respondent was attending her son's appointments, but expressed concern that she still did not appreciate the gravity of his medical needs (RH VII, 26). Respondent's own attorney agreed with the Department's report and recommendation and noted that he stressed to her "months ago" the importance of her attending the medical appointments (RH VII, 27).

Termination proceedings began on March 3, 2021 and continued over four days, concluding on October 5, 2021. At the first hearing the caseworker testified that she had been working with Respondent since March 2020 and was still concerned that Respondent did not fully comprehend the medical fragility of her son (PT I, 42-43, 51). She also stated that Respondent claimed that she did not initially comprehend what was going on in the case, but admitted that she was more focused on herself at that time (PT I, 50). The caseworker believed, too, that despite the fact that translators were provided at every appointment and Respondent always had the assistance of a Spanish-speaking caseworker, language still likely posed a barrier to her understanding and navigating care for her son's medical condition (PT I, 51-52, 60). She testified that Respondent

received medical training regarding her son's condition before the neglect proceedings even began—both through the "Phoenix" program and through BCS (PT I, 57). The caseworker added that Respondent's participation then waned during the time she and the agency were pursuing a guardianship (PT I, 57). She opined that it was a mistake that the agency did not provide more training to Respondent, stating "we could have done a better job at providing her more support in regards to medical" (PT I, 64).

When the termination hearing continued on April 23, 2021, the caseworker was questioned again on the topic of medical training and Respondent's involvement with her son's care. She acknowledged that the medical "training" that was provided to the foster parents was via information shared by medical professionals during the child's medical appointments and/or his therapy sessions—many of which Respondent did not attend (PT II, 12-13). The only formal training the foster parents received was regarding the child's feeding tube (PT II, 17). The caseworker reiterated that Respondent had access to behavioral specialists and nurses who cared for her son in the group home before the neglect case began and while she may have benefitted from having more information, the caseworker believed that Respondent ultimately lacked the initiative and motivation to truly understand the gravity of her child's condition (PT II, 24-25, 29). The caseworker confirmed that Respondent was made aware of her son's appointments early-on and, again, had she attended them she would have received the same information or training given to the foster parents (PT II, 31-32). The caseworker added that some training had been provided to Respondent in the past several months (PT II, 37).

A final review hearing was held on May 6, 2021, wherein the caseworker reported that Respondent was now spending six hours a week with her son, she completed a third parenting

class, she was engaged in counseling, and at the instruction of the caseworker, had even scheduled a few medical appointments for her son (RH VIII, 10-11).

During the third day of the termination hearing (and the last day testimony was taken) the caseworker reported that Respondent relied heavily on her regarding the scheduling of the child's appointments, including requiring repeated reminders and simply wanting the caseworker to do it for her (PT III, 32, 34). A translator was provided to assist Respondent in making those calls and the caseworker created a "to-do list" to help her remember (PT III, 42-44, 45). The caseworker also reported that Respondent often did not listen when updates and/or information was being provided by the medical professionals during her son's physical and occupational therapy sessions and his medical appointments (PT III, 33). Finally, the caseworker opined that Respondent made little to no progress with her own therapy—even in the areas of concern that she identified herself (PT III, 36). Notably, when questioned why she stopped attending therapy during the pendency of the neglect proceedings, Respondent stated, "maybe I just didn't think it was important, I mean, I've had people tell me going to a therapist is for crazy people" (PT III, 12).

While it is true that all parties were interested in pursuing a guardianship early on in the neglect proceedings, at no time was Respondent told that it was unnecessary for her to continue services. Instead, it appears that she simply made the decision that she no longer needed to do the work because the foster parents were. Case law holds that "[w]hile the DH[H]S 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 [and benefit from] the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). And again, in order to prevail on the argument that Petitioner's reunification efforts were inadequate, Respondent must demonstrate that she would have fared better if sufficient services were offered.

Fried, *supra*, 266 Mich App at 543. Respondent's lack of progress was not due to a shortage of services, but to her lack of interest and/or engagement. The GAL's statements at the conclusion of the termination hearing summarized it well.

> Could the Department have done more? Sure. Just because more could have been given does not mean that what was provided was insufficient. Just because she was not given the information doesn't mean mom could not have shown an interest on her own.
>
> She keeps saying that nobody tells her what she needs to do, but there is more that could have been done of her own initiative had she thought more about it. Simple things like looking for her own classes and support groups, watching videos on YouTube regarding first aid, looking up things about Ehlers disease, keep a journal about what is talked about at each medical appointment, work on the physical therapy and occupational therapy exercises at home during her parenting time.
>
> Ultimately whose burden is it to reduce the barriers? Parents need to take ownership and do the work. Mom has only shown passing progress with extensive support of the case worker. If this case were to close and she no longer has the support of her case worker I don't—I am unconvinced she would be able to do it. [PT III, 63-64.]

In short, as the Court of Appeals held, the trial court did not plainly err when determining that reasonable efforts were made toward reunification.

3. The trial court did not clearly err when determining that given the child's age and his right and/or need for permanency and that termination of Respondent's parental rights was in the child's best interest.

This Court has asked "whether the trial court erred by concluding that the conditions leading to adjudication could not be rectified in a reasonable amount of time with continued guardianship while expanding the respondent's parenting time and providing appropriate services?" Although a guardianship was pursued, or at least explored and discussed early on in the case, it was not something that Respondent wanted in the end. To the contrary, Respondent sought reunification. Indeed, there was no mention by her attorney during his closing arguments

that the trial court even consider a guardianship. It appears that a guardianship was simply the most viable option while the parties waited on the immigration process (see e.g., PPH IV, 13)—and, frankly, an excuse for Respondent to not have to expend any effort to comply with services.

After finding clear and convincing evidence was presented to support statutory grounds for termination, the trial court determined that considering the child's age and the amount of time he had been in care, "guardianship is not the solution" (PT IV, 19). The trial court determined, instead, that termination was in O's best interest. No clear error was committed by the court in making either determination.[3]

In 2008, MCL 712A.19b(5) was amended to require an affirmative finding that termination of parental rights is in the child's best interest before the court may terminate parental rights. "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). When making this determination, a trial court may consider a variety of factors including the parent's history, the child's age, parenting techniques, the strength of the bond between the parent and child, the visitation history, the parent's compliance with treatment plans, the child's well-being while in care, and the possibility of adoption. *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014). A trial court may also consider the child's need for permanency and the length of time the child may be required to wait for the parent to rectify the conditions, which includes

[3] A trial court's best interest determination is also reviewed for clear error on appeal. *In re Rood*, 483 Mich 73, 90-96; 763 NW2d 587, 597-600 (2009); MCR 3.977(K).

Petitioner notes that the Court of Appeals was never asked to review the trial court's best interest determination—nor was it asked to consider whether the trial court erred in failing to order a guardianship. For that reason, Petitioner respectfully questions whether this issue is properly before this Court.

consideration of the child's age and particular needs. *Id*; see also, In *re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).

Respondent argues on appeal that the lower court clearly erred when finding that it was in her children's best interest to terminate her parental rights given the "less restrictive option of a guardianship." Her claim is without merit.

"[T]he focus at the best-interest stage has always been on the child, not the parent." *Moss*, *supra*, at 87. "[T]he interests of the child and the parent diverge once the petitioner proves parental unfitness"—which, again, has clearly been established in this case. *Id*.; see also, *Santosky v Kramer*, 455 US 745; 102 S Ct 1388; 71 L Ed 2d 599 (1982). "During the best-interest stage of a termination proceeding, the child and the parent may become adversaries because the child's interests in a normal family home align more with the state's interest in terminating parental rights and providing the child with a stable home." *Moss*, *supra*, at 87. "Although the parent still has an interest in maintaining a relationship with the child, this interest is lessened by the trial court's determination that the parent is unfit to raise the child." *Id*. If a parent is simply unable to meet the needs of her child, then "the needs of the child must prevail over the needs of the parent." *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000); quotation marks and citation omitted. Indeed, "[o]nce the state present[s] clear and convincing evidence that at least one ground for termination was established, then the 'liberty interest of the parent no longer include[s] the right to custody and control of the children.'" *Moss*, *supra*, at 88, quoting in part *Trejo*, *supra*, 462 Mich at 355. "Accordingly, at the best-interest stage, the child's interest in a normal family home is superior to any interest the parent has." *Moss*, *supra*, at 89.

This case is somewhat unique given the child's severe medical needs. He was grossly underweight and failing to thrive when he and Respondent arrived in the United States in 2015.

And for the next three years his medical needs were neglected and he was subjected to physical abuse by Respondent. He was removed from Respondent's care in April 2018 when he was three years old and placed with a foster family that shared his cultural background and was fully dedicated to taking on his medical challenges, while also facilitating an ongoing relationship between him and his mother (PPH III, 19-20). The foster parents quickly became very attached to O and O in turn had a strong attachment to them, referring to them as "daddy and mom" and indicating that he wanted to live with them and just visit with Respondent (RH II, 12; PPH IV, 34; PT I, 54). And while the foster parents were initially open to the idea of a guardianship, they became more interested in a permanent placement (PPH III, 22; PPH IV, 15; PT I, 25-26).

During September 2020 permanency planning hearing, the GAL recommended permanency with the foster family via an open adoption—something the foster family was also willing to do so long as mental health professionals believed it would be in O's best interest (PPH IV, 35; PT I, 39). She indicated that she would not necessarily be opposed to a juvenile guardianship so long as it was not set up with the idea that Respondent would eventually be reunited with O, just that she would have a legal right to visit him (PPH IV, 35). Petitioner's attorney opposed a guardianship because of its non-permanent nature and Respondent's ability to revoke it at any time (PPH IV, 36). Petitioner believed that it put O at risk (PPH IV, 36).

As the case progressed and Respondent failed to show sufficient progress and true motivation or interest in assuming the responsibility of O's care, the foster care worker, Respondent's refugee case worker, and the GAL opined that O needed permanency—and that Respondent would not be able to provide it within a reasonable time (PPH IV, 23; PT I, 54; PT II, 35; PT III, 39, 62, 66). Respondent, herself, believed she needed more time—mentioning two years (PT II, 54).

The trial court determined that, in the end, the foster parents demonstrated how to properly care for O and that he was doing well in their care (PT IV, 17). The court continued, "Three years have gone by and we are no closer to reunification than we were years ago…you are not ready to parent this child and I don't see you ever being able to parent this child" (PT IV, 18). And considering O's medical condition and the "inability or unwillingness of mother to try to improve her abilities to care for the child," it is in O's best interest to terminate Respondent's rights (PT IV, 19). Moreover, given O's age (6 ½ at that time) and the amount of time he had been in care (3 ½ years), a guardianship was not the solution (PT IV, 19). The trial court opined that "[t]he solution is permanence…." (PT IV, 19).

Simply put, considering the record as a whole, there was no compelling reason for the trial court to find that an alternative placement would ultimately be more beneficial *for the child* than would terminating Respondent's parental rights. Considering his needs and interests, no clear error was committed. Accordingly, Respondent is not entitled to relief on appeal.

RELIEF

WHEREFORE, the Department of Health & Human Services, Petitioner-Appellee herein, respectfully request that this Honorable Court deny Respondent-Appellant's Application for Leave to Appeal based on the arguments presented herein.

Respectfully submitted,

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[*This document contains 11,369 "countable words," as defined by MCR 7.212(B)(1) and (2*).]