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STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS
(GADOLA, C.J., AND PATEL AND YOUNG, JJ.)

IN RE BARBER/ESPINOZA, MINORS,

Supreme Court Case No. 167745
Court of Appeals Case No. 369359

39th Circuit Court – Lenawee County
Case No. 23-000033-NA

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STATE OF MICHIGAN

COURT OF APPEALS

In re A. BERGREN, Minor.

UNPUBLISHED
June 3, 2021

No. 354767
Tuscola Circuit Court
Family Division
LC No. 19-011444-NA

Before: BECKERING, P.J., and FORT HOOD and RIORDAN, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court's order terminating his parental rights to his daughter, AB, pursuant to MCL 712A.19b(3)(b)(*i*), (b)(*ii*), (g), and (j). Because we conclude that the trial court erred when it ruled that the Department of Health and Human Services was not required to provide services to respondent, we reverse the termination order and remand the matter for further proceedings.

I. FACTUAL BACK GROUND

Respondent, a single father of AB, married S. Johnson, a divorced mother of four children, in 2014. The blended family resided together until a divorce in January 2018. At that time, respondent and AB moved out of Johnson's home and into an apartment. In approximately August 2018, respondent and Johnson reconciled and, as a consequence, respondent and AB resumed living in the family home. At that time, Johnson's son, LJ, had elected to attend school in his mother's community; consequently, he too was living full-time in the home.

In January 2019, AB disclosed to her best friend's mother and occasional babysitter that sexual activity had been occurring between her and LJ. At the time, AB was 11 years old and LJ was 13. On January 26, 2019, the babysitter contacted respondent to inform him of AB's disclosures. Children's Protective Services ("CPS") began an investigation on January 28, 2019, and a criminal investigation similarly ensued. After AB's forensic interview in February 2019, petitioner, the Department of Health and Human Services ("DHHS"), filed a petition seeking termination of respondent's parental rights at the initial dispositional hearing.

The court found grounds to assume jurisdiction of AB at the conclusion of the adjudication trial in August 2019 and, after several adjournments, including a delay precipitated by the COVID-

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19 pandemic, the court held the initial dispositional hearing in July 2020. At the conclusion of this hearing, the court terminated respondent's parental rights under MCL 712A.19b(3)(b)(*i*), (b)(*ii*), (g), and (j). Thereafter, this appeal ensued.

II. ANALYSIS

Respondent first contends that the trial court erred by terminating his parental rights because petitioner failed to make reasonable efforts to reunite him with his daughter. We agree.

This Court reviews for clear error a trial court's finding that "reasonable efforts were made to preserve and reunify the family." *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). "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." *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009) (quotation marks, citation, and brackets omitted). The interpretation and application of a statute is a question of law, which we review de novo. *Book-Gilbert v Greenleaf*, 302 Mich App 538, 541; 840 NW2d 743 (2013). "When a court incorrectly chooses, interprets, or applies the law, it commits legal error that the appellate court is bound to correct" *Fletcher v Fletcher*, 447 Mich 871, 881; 526 NW2d 889 (1994).

In *In re Hicks*, 315 Mich App 251, 264; 890 NW2d 696 (2016), aff'd in part, vacated in part on other grounds sub nom, *In re Hicks/Brown*, 500 Mich 79; 893 NW2d 637 (2017), this Court explained:

> Parents have a "fundamental liberty interest . . . in the care, custody, and management of their child[ren]," a right that "does not evaporate simply because they have not been model parents." *Santosky v. Kramer*, 455 US 745, 753, 102 S Ct 1388, 71 L Ed 2d 599 (1982). In Michigan, a court may terminate a person's parental rights when clear and convincing evidence supports at least one ground elucidated in MCL 712A.19b(3). Before the court may consider termination, however, the DHHS must exert "reasonable efforts" to maintain the child in his or her parents' care, MCL 712A.18f(1) and (4), and make "reasonable efforts to reunite the child and family," MCL 712A.19a(2). . . . The need to make "reasonable efforts" stems from federal law. Pursuant to 45 CFR 1356.21(b) (2015), to remain eligible for foster-care maintenance payments under Title IV–E, state agencies "must make reasonable efforts to maintain the family unit."

"The adequacy of the [DHHS]'s efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich at 89.

According to MCL 712A.19a(2), reasonable efforts to reunify a child with his or her family must be made in all cases except where, among other things, "[t]here is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638." MCL 722.638(1) requires DHHS to submit a petition for the court's authorization if the child has suffered or is at risk of suffering one or more of certain types of aggravated abuse. MCL 722.638(1) states in relevant part:

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> (1) The department shall submit a petition for authorization by the court under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, if 1 or more of the following apply:
>
> (a) The department determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling of the child and the abuse included 1 or more of the following:
>
> * * *
>
> *(ii)* Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate. . . .

Under MCL 722.638(2), when a petition is submitted as required by subsection (1)

> if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the department shall include a request for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIIA of 1939 PA 288, MCL 712A.19b.

Quoting MCL 712A.19a(2), the Michigan Supreme Court has stated on more than one occasion that " '[r]easonable efforts to reunify the child and family must be made in *all* cases' except those involving aggravated circumstances . . .." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); see also *In re Hicks*, 500 Mich at 85 ("[u]nder Michigan's Probate Code, the Department has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental right."); *In re Rood*, 483 Mich at 99-100 (opinion by CORRIGAN, J.) ("Under MCL 712A.19a(2), [r]easonable efforts to reunify the child and family must be made in all cases" except those involving aggravated circumstances not present here.") (quotation marks omitted; brackets in the original). Likewise, this Court has recently reiterated that "[r]easonable efforts to reunify the child and family must be made in all cases except those involving aggravated circumstances under MCL 712A.19a(2)." *In re Rippy*, 330 Mich App 350, 355; 948 NW2d 131, 133 (2019).

The issue of reasonable efforts first arose in the present case when Johnson moved to peremptorily deny termination of parental rights. Johnson argued that, as to her four children, there were no aggravating circumstances, and therefore, reasonable efforts were required and she was entitled to a service plan. The trial court agreed, noting that her's was not an abuse case, but rather a neglect matter. Therefore, the court granted Johnson's motion, stating in its order: "The Court finds that this case does not involve "aggravated circumstances" pursuant to MCL 712A.19a(2)(a) and MCL 722.638(1). Therefore "reasonable efforts" must be made pursuant to MCL 712A.19a(2)."

Shortly thereafter, respondent reproduced Johnson's motion and brought the same issue to the court for consideration on his behalf. In response, DHHS argued that because there existed aggravated circumstances, reasonable efforts were not required. DHHS argued, essentially, that respondent knew his daughter had been abused and he returned her to a home where that abuse

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occurred, and, thereafter, he allowed the sexual abuse to continue. The court concluded that as to respondent's case, reasonable efforts were not required. After noting that it was required to consider each child and each parent individually, the court reasoned that under MCL 722.638(2), it could consider a request for termination at the initial dispositional hearing and, by implication, not require that reasonable efforts be pursued. The court stated:

> Specifically as it was placed within the petition, and the Court now having jurisdiction regarding [AB], while [respondent's] restoration [sic, representation?] of the statute, specifically in regard to the MCL 7. – 722.638 is correct for the first part of the statute; there is that second part of the statute and you true – correct and on point, Mr. Burgess [the child's legal guardian ad litem], and that is placing a child in an unreasonable risk of harm could then allow the Court, pursuant to that statute, under aggravated circumstances to go ahead and schedule a termination trial at the time of the initial disposition. Court is very much aware of the fact of the case of [*In re Mason*] in this matter. As it relates to what is required to reunify children and a family.
>
> But at this point in time pursuant to the remainder of that statute this Court determines that termination can occur at the initial disposition if that is the request of the Department of Health and Human Services.

Thus, the trial court concluded that, even though the facts of this case do not constitute "aggravated circumstances" for purposes of MCL 722.638(1), MCL 722.638(2) authorizes the court's determination that reasonable efforts to reunify respondent with his child were not required in this case because respondent had put the child at risk. In so doing, the trial court committed clear legal error. See *Fletcher*, 447 Mich at 881.

MCL 722.638(2) requires a two-part analysis. It requires DHHS to include a request for termination of parental rights at the initial disposition if (1) the parent is the perpetrator or if the parent placed the child at an unreasonable risk of harm *and* (2) the filing of the petition is mandatory under MCL 722.638(1). The court did not appear to consider both factors but, instead, only focused on respondent's role in exposing his daughter to an unreasonable risk of harm. However, according to the plain language of the statute, a petition mandated by subsection (1) is necessary in order to trigger subsection (2). Yet, the trial court acknowledged, correctly, that the facts do not bring this case within the ambit of MCL 722.638(1).

As indicated above, MCL 722.638(1) requires DHHS to file a petition for authorization under MCL 712A.2 where there are any of several aggravating circumstances. In light of the facts in this case, the most relevant circumstance is MCL 722.638(1)(a)(*ii*): "Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate." None of the other aggravating circumstances listed by MCL 722.638(a) are at issue, nor is there any evidence that respondent's parental rights to another child have been terminated, voluntarily or involuntarily, MCL 722.638(b). However, for criminal sexual conduct involving penetration to constitute an aggravating circumstance under MCL 722.638(1), the perpetrator must be "a parent, guardian, or custodian, or person who is 18 years of age or older and who resides for any length of time in the child's home . . . ." Where, as here, the perpetrator was less than 18 years old and is neither a parent, guardian, or custodian of the child, the conduct at issue is not an "aggravated circumstance"

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for purposes of MCL 722.638(1). Because a petition was not mandated under subsection (1) of MCL 722.638, subsection (2) does not apply. Accordingly, the trial court's reliance on MCL 722.638(2) as authority to support its ruling that DHHS did not have to make reasonable reunification efforts was clearly erroneous.[1]

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(b)(*i*), (b)(*ii*), (g), and (j), which permit termination of parental rights under the following circumstances:

> (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.
>
> (*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.
>
> * * *
>
> (g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable

[1] We acknowledge that some decisions from this Court have indicated that DHHS is not required to provide reunification services where termination is the agency's goal. See, e.g., *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013); *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). However, both *Moss* and *HRC*, involved aggravated circumstances. *HRC* explicitly entailed aggravated circumstances under MCL 722.638(1)(a)(*ii*), and *Moss* entailed a respondent who attempted to suffocate her youngest daughter, conduct arguably falling under MCL 722.638(1)(a)(*vi*). To the extent that these cases stand for the proposition that

> reasonable efforts at reunification are not required in cases other than those with aggravated circumstances set forth in MCL 712A.19a(2), it runs afoul of our Supreme Court's explicit statements to the contrary in *In re Mason,* 486 Mich at 152; 782 NW2d 747, *In re Rood*, 483 Mich at 99-100; 763 NW2d 587, and *In re Hicks*, 500 Mich at 85 & n 4; 893 NW2d 637. We are bound by Supreme Court precedent. *In re Nestorovski Estate*, 283 Mich App 177, 206; 769 NW2d 720 (2009) (SAAD, C.J., dissenting) ("Michigan Supreme Court precedent that is binding on this Court does not permit an inferior court, appellate or trial, to overrule Supreme Court precedent[.]"). [*Rippy*, 330 Mich App at 371 (BECKERING, J., dissenting).]

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> expectation that the parent will be able to provide proper care and custody 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.

Each of these provisions requires a showing that the minor child, in some manner, would be at risk of future abuse or neglect if returned to the parent's care. In its written opinion following the termination hearing, the trial court opined that it did not believe that respondent "fully understands what is necessary to protect AB from any further abuse," referred more than once to respondent's "head in the sand" attitude, and echoed the concern of AB's therapist about respondent's obliviousness to AB's over-sexualized behavior,[2] and that returning her to respondent would cause a regression in her sense of security. On the basis of respondent's past conduct, the court concluded that, for purposes of MCL 712A.19b(3)(b)(*i*) and (*ii*) and (3)(j), there was a reasonable likelihood that AB would suffer harm or abuse if returned to respondent. As to § 19b(3)(g), the court found that respondent could provide financially for AB, but concluded that his past conduct established that he could not provide proper care and custody for her.

However, as already explained, respondent was entitled to reunification services, and DHHS had a duty to provide them.[3] Without providing respondent reunification services, and

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[2] Between September 2019 and January 2020, AB's therapist, Karshibia Davidson, observed five visits between respondent and AB. Davidson testified at the termination hearing that she was concerned with respondent's conduct during the visits. AB exhibited sexualized behavior with respondent. She sat suggestively with her legs openly toward respondent. While looking at respondent, AB also put her hand under her shirt and touched her breasts throughout the visits. This was not normal behavior for a girl AB's age, but it was normal for a sexual abuse victim. Respondent failed to acknowledge or redirect AB's behavior and it did not seem to bother him. There was no change in facial expression and he did not engage in any body movement. Davidson was concerned about respondent's ability to model appropriate behavior and help AB continue to implement coping strategies and maintain appropriate boundaries. She did not think he was able to do so. As a result, Davidson was concerned about AB's safety going forward and the risk of future trauma. Respondent testified that he thought AB adjusted her bra a few times, and that when she did, he looked away so as not to embarrass her. He said that if AB had actually been groping her breast he would have said something.

[3] Foster care worker Ashley Kingman testified that, on multiple occasions, the department offered respondent services, but he consistently refused, stating that he did not think he needed services. However, whatever services were offered can hardly be considered reunification efforts, given that the department's goal was always termination, and Kingman testified that services were offered, not with the intent to reunify respondent and his daughter, but because "the Department does not decide whether termination occurs."

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assessing his participation in and benefit from such services, concluding that AB will suffer abuse or harm or improper care is little more than speculation arising from respondent's prior conduct. In other words, the inadequacy of DHHS's efforts to provide reunification services renders the evidence insufficient to establish the statutory grounds to terminate respondent's parental rights. See *In re Rood*, 483 Mich at 89.

In conclusion, the trial court correctly concluded that this case does not involve aggravated circumstances. However, the court committed clear legal error by concluding that, even absent aggravated circumstances, MCL 722.638(2) relieved DHHS of its duty of making reasonable efforts at reunification. Without proving respondent with a meaningful opportunity to engage in services designed to remove the barriers to reunification with his daughter, there is a "hole in the record," *In re Mason*, 486 Mich at 142, that renders the evidence insufficient to terminate respondent's parental rights, see *In re Rood*, 483 Mich at 89. Accordingly, we reverse the trial court's order terminating respondent's parental rights and remand this matter for further proceedings consistent with this opinion.[4]

Reversed and remanded. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Karen M. Fort Hood
/s/ Michael J. Riordan

[4] Respondent also challenged the trial court's findings and conclusions with regard to the statutory grounds for termination and that termination was in the child's best interests. We need not address these issues further, given our disposition of respondent's challenge to petitioner's failure to make reasonable efforts at reunification.

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STATE OF MICHIGAN

COURT OF APPEALS

In re BOYCE, Minors.

UNPUBLISHED
January 23, 2020

No. 348992
Montcalm Circuit Court
Family Division
LC No. 2018-000834-NA

Before: MARKEY, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

The circuit court terminated respondent-mother's parental rights to her two daughters—BMB and BKB—under MCL 712A.19b(3)(b)(*i*) (child suffered physical injury or physical sexual abuse and is likely to suffer from injury or abuse in the foreseeable future) and (j) (reasonable likelihood that child will be harmed if returned to the parent). Respondent challenges the court's determination that aggravating circumstances existed, excusing the Department of Health and Human Services (DHHS) from providing reunification services, as well as the court's factual findings underlying the termination decision. We affirm.

I. BACKGROUND

Respondent, a mother of three, is no stranger to the child protective system. Twenty-two Child Protective Services (CPS) complaints have been raised against her since BMB's 2005 birth for issues ranging from physical abuse to medical neglect; two were substantiated. Respondent's eldest daughter, BB, has been in a guardianship with respondent's mother for several years. BMB had also previously been in a guardianship but had been returned to respondent's care. In March 2018, after respondent regained custody of BMB, CPS substantiated a complaint that respondent had not enrolled BMB and BKB in school for the 2017-2018 school year.

The allegations underlying the current action relate to respondent's inappropriate parenting of BMB. BMB was born in 2005 and was 12 years old when CPS took her into care. During a July 2, 2018 child forensic interview, BMB told an investigator that she and respondent used heroin, methamphetamine, bath salts, and marijuana together. BMB also accused her

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mother of accepting money to allow a 34-year-old man to have sex with her. The man in question, Oscar Edwards, admitted that he engaged in sex with the child; he denied that he paid respondent, but asserted that respondent was present and aware of the situation.[1] CPS placed BMB in a group home that provided services for the victims of human trafficking. Six-year-old BKB was placed with her biological father.

As the DHHS and police investigation unfolded, the allegations of human trafficking became more tenuous. Instead, the record suggests that BMB was a troubled child who sought out older boys on the Internet. She then fell into an improper (and illegal) relationship with Edwards. As BMB was only 12 years old, she could not consent to any sexual relationship, even one with an older teenager, and certainly not one with a 34-year-old man.[2] Although respondent had not instigated the sexual encounters, she admitted that she knew BMB had engaged in sexual acts with several older males. Respondent responsibly authorized the insertion of a subcutaneous birth control device in BMB's arm. However, respondent failed to protect her 12-year-old daughter from the sexual predators she encountered. Respondent admitted that she had met 34-year-old Edwards, but believed he was only 16 or 17 years old. She asserted in a police interview that a 16 or 17-year-old male was an "age appropriate" romantic partner for her 12-year-old daughter. And respondent conceded that she left Edwards alone in her hotel room with BMB, enabling Edwards to sexually penetrate her vulnerable daughter.

The circuit court found aggravating circumstances to pursue termination without providing reunification services. It suspended respondent's parenting time with both girls. Respondent then pleaded no contest to grounds for court jurisdiction. Thereafter, respondent did not appear at the final dispositional hearing or the termination hearing. At the close of the hearing, the court terminated respondent's parental rights under MCL 712A.19b(3)(b)(*i*) and (j) as follows:

> In this instance, the mother was clearly aware that her 12 year old daughter was engaging in acts of sexual intercourse with random men, and as a result had a birth control device planted in the 12 year old, perhaps 13 year old's, arm so she wouldn't get pregnant.[3] The mother was aware of the sexual activity.

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[1] With an altered offense date of September 2018, Edwards pleaded to three counts of third degree criminal sexual conduct against a person between the ages of 13 and 15. A criminal court sentenced Edwards to 10 to 15 years in prison. See OTIS, available at <http://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=573352> (accessed December 13, 2019).

[2] MCL 750.520b(1) provides no defense for a person who engages in sexual penetration with a child under the age of 13. MCL 28.728c(14) permits a convicted sex offender to avoid registration requirements, but only when the victim is between the ages of 13 and 16 and the offender is not more than four years older than the victim.

[3] BMB did not turn 13 until July 20, 2018, after she had been removed from her mother's care. Accordingly, all sexual acts described on the record occurred when the child was 12 years old or younger.

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> She was allowing the perpetrators in her home to visit the child, in motel rooms alone. . . .
>
> But regardless, [respondent] clearly knew that her daughter was engaging in sexual acts with other men, not just Oscar, other men. The mother identified these men. There was a man in Muskegon. There was Oscar, from Battle Creek, and there was another gentleman she also referenced and I couldn't catch the name if she even had a name for him. She was aware of these things, and she kept allowing it to happen. She claims some type of lack of knowledge because it was occurring when she wasn't around. That she'd find it on Facebook. I find that also incredulous to believe that she wasn't aware of these activities. She was aware of them, but it was okay because she thought they were 16, 15, 14, 17, however old she thought they were. Come to find out they're adult males, and she did nothing to protect her daughter, nothing.
>
> So I'm going to terminate her parental rights under . . . that theory, and also under MCL 712A.19b(3)(j). There's no question, in this Court's mind, that . . . there is a reasonable likelihood based on [respondent's] conduct, prior to the child's removal, that the child would clearly be harmed if returned to the mother's care . . . . [T]his case just boggles my mind that a woman who proclaims she was raised better than that would allow her 12 year old daughter to have intercourse [with] adult men, but perhaps it would be okay if these adult men look like they were 15 or 16, and it was age appropriate it was okay. That just shows a complete lack of insight, any insight, into the harmful effects that this was having on her daughter, and an utter lack of protecting her, and I'm just disgusted, frankly, with the mother's lack of parenting in this case.

The court further determined that termination of respondent's parental rights to young BKB was also required. The court found that termination of respondent's parental rights was in the best interests of both children based on respondent's failure to protect her children and lack of understanding regarding how to parent. The court opined that respondent "doesn't care what happens to these girls."

Respondent now appeals.

II. REUNIFICATION EFFORTS

Respondent challenges the circuit court's conclusion that reunification services were not required in this case because aggravated circumstances existed. We review for clear error a circuit court's factual findings in a child protective proceeding. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). "Generally, reasonable efforts must be made to reunite the parent and children unless certain aggravating circumstances exist." *In re Moss*, 301 Mich App 76, 90-91; 836 NW2d 182 (2013). Relevant to this appeal, pursuant to MCL 712A.19a(2)(a), "reasonable efforts to reunite the child and family are not required" if "[t]here is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in [MCL 722.638(1) and (2)]." MCL 722.638 describes the following "aggravated circumstances":

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> (1) The department shall submit a petition for authorization by the court under [MCL 712A.2(b)], if 1 or more of the following apply:
>
> (a) The department determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling of the child and the abuse included 1 or more of the following:
>
> * * *
>
> (*ii*) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
>
> * * *
>
> (2) In a petition submitted as required by subsection (1), if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the department shall include a request for termination of parental rights at the initial dispositional hearing as authorized under . . . MCL 712A.19b.

From the start of these proceedings, it was clear that respondent had allowed her 12-year-old daughter to engage in sexual acts with multiple older males, including Edwards. Respondent knew BMB was sexually active and ensured that she was on birth control. Respondent admitted to police that she thought it was age appropriate for her 12-year-old child to have intercourse with teenage boys as old as 17. Respondent further described that she left her 12-year-old child alone in a hotel room with Edwards because she wanted to go downstairs and meet a friend. Respondent absurdly asserted that the 34-year-old Edwards (who was older than respondent) was a teenager. On this record, the court could easily determine that BMB was the victim of "[c]riminal sexual conduct involving penetration" and that respondent "plac[ed] the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk." Accordingly, we discern no error in the circuit court's assessment that reunification efforts were not required in this case.

III. STATUTORY GROUNDS

Respondent also challenges the evidence supporting the statutory grounds underlying the court's termination decision. Pursuant to MCL 712A.19b(3), a circuit court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven by the DHHS. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review for clear error a circuit court's factual finding that a statutory termination ground has been established. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Moss*, 301 Mich App at 80 (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

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As noted, the court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(b)(*i*) and (j), which provide:

> The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
>
> * * *
>
> (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.
>
> * * *
>
> (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.

Even if the court could not conclude under factor (b)(*i*) that respondent's acts had caused BMB to suffer sexual abuse, termination of respondent's parental rights was supported under factor (j). The court need only find one statutory ground to support termination of parental rights. See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). The harm contemplated under factor (j) includes emotional as well as physical harm. See *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). We have recognized that "[e]ven when there is no palpable physical injury or overtly coercive act, sexual abuse of children causes substantial long-term psychological effects, with implications of far-reaching social consequences." *People v Benton*, 294 Mich App 191, 206; 817 NW2d 599 (2011). This statement is proven true in this case.

The social file in this case includes reports prepared by social workers and therapists working with BMB. These reports indicate that despite therapy, BMB does not understand that she was the victim of sexual abuse. BMB expressed that she was in love with Edwards and blamed herself for the trouble Edwards and respondent faced. Although BMB did not have access to social media in her group home, BMB was intercepted "trying to solicit herself to a 19-year-old male" on social media during a community visit with her aunt. A psychologist conducted a trauma assessment and diagnosed BMB with post traumatic stress disorder and chronic type depression. The psychologist noted that BMB

> has excessive aggression toward self and others, explosive behavior, hyperactive, oppositional and defiant, extreme sexual behaviors, difficulty with sleeping, excessive mood swings, intense frequent anger, chronic sadness, withdrawn and emotionally numb, attention and memory problems, difficulty with authority, does not seek adult help with hurt or scared, and has a lack of appropriate boundaries in relationships.

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BMB was also required to participate in substance abuse programming while in care due to respondent's parenting choices.

The record clearly supports that BMB is a very troubled child. Respondent's failure to protect BMB from sexual predators and her use of serious controlled substances with BMB were major causes of the child's troubles. Historical patterns of physical abuse in respondent's home exacerbated BMB's difficulties. Respondent did not comprehend the harm that she had caused BMB, placing the blame on BMB's incorrigibility. It is clear that BMB has been traumatized by her mother's actions and inactions and faced a very real chance of continued harm if returned to her mother's care. Given the harm caused to BMB by respondent's inappropriate parenting, and respondent's failure to enroll her children in school, it is likely that BKB would fall prey to the same harms as her older sister in the future.

Accordingly, we discern no error in the circuit court's determination that termination of respondent's parental rights was justified.

IV. BEST INTERESTS

Respondent also contends that termination of her parental rights was not in her children's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *Moss*, 301 Mich App at 90. The court should weigh all the evidence available to it in determining the child's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). And we review the court's factual findings in this regard for clear error. *In re Brown/Kindle/Muhammad Minors*, 305 Mich App 623, 637; 853 NW2d 459 (2014).

Factors relevant to the best-interest determination include "the child's bond to the parent, the parent's parenting ability, [and] the child's need for permanency, stability, and finality," as well as the advantages of the foster home over the child's home with the parent. *Olive/Metts*, 297 Mich App at 41-42 (quotation marks and citations omitted). "The trial court may also consider a parent's history of domestic violence, . . . the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). The circuit court must address the possibility of placement with a relative, which weighs against termination. *In re Gonzales/Martinez Minors*, 310 Mich App 426, 434; 871 NW2d 868 (2015). And the court must "consider the needs of each child individually." *White*, 303 Mich App at 714. Ultimately, "the focus at the best-interest stage [is] on the child, not the parent." *Moss*, 301 Mich App at 87.

We are concerned that the circuit court seemingly considered BKB's best interests as an afterthought and did not acknowledge at the best-interest stage that BKB had been placed with her father. However, given the extreme circumstances in this case, we cannot conclude that the circuit court erred in finding that termination of respondent's parental rights was in the best interests of both children.

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Throughout these proceedings, the DHHS presented evidence that respondent and her boyfriends had used extreme physical discipline against the children in the past. Respondent had neglected both children's education by failing to enroll them in school for the 2017-2018 school year. BKB missed kindergarten and had a serious speech delay, which apparently had not been addressed in any manner. A therapist noted that BKB looked to BMB for mothering, rather than respondent, evidencing respondent's neglect of her youngest child. And undisputed evidence supported that BKB had flourished in the care of her father and his girlfriend. The couple had dived into caring for BKB's special needs and the child showed significant improvement. This evidence supplemented the record that BKB faced a real possibility of future harm as a result of respondent's highly questionable parenting skills.

And given the record evidence, it is clear that BMB's bond with her mother is an unhealthy one. BMB reported that she used controlled substances with her mother. Respondent lacked any comprehension of how her failure to protect BMB from physical abuse as a young child and from sexual predators as a preteen had damaged BMB. BMB suffered severe emotional trauma that will affect her for the rest of her life. It is clear on this record that termination was in the children's best interests.

We affirm.

/s/ Jane E. Markey
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly

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STATE OF MICHIGAN

COURT OF APPEALS

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In re HORTON/LEE, Minors.

No. 370031
Wayne Circuit Court
Family Division
LC No. 21-001277-NA

Before: K. F. KELLY, P.J., and CAVANAGH and RIORDAN, JJ.

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to her six minor children: CCH; CLH; DML; OCL; DKL; and AAH ("the minor children"). We affirm.

I. FACTUAL BACKGROUND

This case involves the termination of respondent-mother's parental rights to her six minor children.[1] D. Lee ("Lee") is the biological father of CCH, CLH, and AAH, and the putative father of DML, OCL, and DKL. On March 17, 2022, after a no-contest plea, the trial court terminated Lee's parental rights to CCH and CLH after Lee sexually assaulted CCH multiple times.[2] The trial court also terminated the rights of DML, OCL, and DKL's unknown father.

After the termination of Lee's parental rights, the children remained in respondent-mother's care. Respondent-mother began living with her new partner, A. Johnson ("Johnson"), who had a past conviction of second-degree criminal sexual conduct (CSC-II). On June 19, 2022,

[1] At the time this case was initiated, AAH was not yet born. The Michigan Department of Health and Human Services (DHHS) subsequently petitioned for the termination of respondent-mother's parental rights to AAH after her birth.

[2] In this case, the trial court also terminated Lee's parental rights to AAH. Lee is not a party to this appeal.

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Father's Day, respondent-mother invited Lee to her home, telling him that she was stressed and needed help with the children.[3] While at the home, Johnson and Lee got into an altercation, resulting in Johnson shooting Lee. CCH and CLH stated in a forensic interview that they saw Johnson shoot Lee. Petitioner DHHS sought termination of respondent-mother's parental rights to the minor children at the initial disposition. The trial court determined that reasonable efforts were not required. The trial court also suspended parenting time.

Throughout the duration of the case, the children demonstrated mental-health concerns and behavioral issues. The children were separated and moved to different placements, including some relative placements and placements with fictive kin. There were multiple instances of relatives and fictive kin violating safety plans and allowing the children to see respondent-mother, in violation of the trial court's order. After an adjudication, the trial court found that statutory grounds for termination existed under MCL 712A.19b(3)(j). A best-interests hearing was held, and the trial court determined that termination of respondent-mother's parental rights was in the minor children's best interests. This appeal followed.

II. STANDARD OF REVIEW

"We review for clear error a trial court's decision regarding reasonable efforts." *In re Sanborn*, 337 Mich App 252, 257; 976 NW2d 44 (2021). "We review the trial court's determination of statutory grounds for clear error." *Id.* at 272. "We review for clear error the trial court's determination regarding the child[]'s best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Atchley*, 341 Mich App 332, 338; 990 NW2d 685 (2022) (quotation marks and citation omitted).

III. REASONABLE EFFORTS

Respondent-mother argues that the trial court erred by terminating her parental rights because DHHS did not make reasonable efforts toward reunification.

"Reasonable efforts to reunify the child and family must be made in all cases except those involving aggravated circumstances under MCL 712A.19a(2)." *In re Rippy*, 330 Mich App 350, 355; 948 NW2d 131 (2019). Under MCL 712A.19a(2)(a), "reasonable efforts to reunify the child and family are not required if '[t]here is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638.' " *In re Rippy*, 330 Mich App at 355, quoting MCL 712A.19a(2)(a).

MCL 722.638(1) provides that DHHS should "submit a petition for authorization" if any of the following aggravating circumstances are present:

> (a) The department determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the

[3] Respondent-mother denied this at her best-interests hearing, claiming that Lee showed up uninvited. However, respondent-mother told a detective that she invited Lee to her home.

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child's home, has abused the child or a sibling of the child and the abuse included 1 or more of the following:

(*i*) Abandonment of a young child.

(*ii*) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

(*iii*) Battering, torture, or other serious physical harm.

(*iv*) Loss or serious impairment of an organ or limb.

(*v*) Life threatening injury.

(*vi*) Murder or attempted murder.

(b) The department determines that there is risk of harm, child abuse, or child neglect to the child and either of the following is true:

(*i*) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, or a similar law of another state and the parent has failed to rectify the conditions that led to the prior termination of parental rights. . . . [MCL 722.638(1).]

Under MCL 722.638(2), DHHS is required to request termination at the initial disposition, "[i]n a petition as required by subsection (1), if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk." MCL 722.638(2). In this case, DHHS requested termination at initial disposition because respondent-mother placed her children "at an unreasonable risk of harm" by inviting Lee to her home, with the children present, knowing his parental rights were terminated for sexually abusing his daughter. See MCL 722.638(1)(a)(*ii*).

We conclude that the trial court was not required to make reasonable efforts toward reunification. MCL 722.638(2) specifically differentiates between parents who are "suspected perpetrator[s]" and parents who are "suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk." MCL 722.638(2). Under the statute, DHHS "shall include a request for termination of parental rights at the initial dispositional hearing" in both circumstances. *Id*.

In this case, although respondent-mother was not a suspected perpetrator, and did not cause the sexual abuse of CCH, the trial court determined that she did place her children at risk by allowing Lee into her home, with her children present, knowing his rights to the children were terminated. Respondent-mother knew that Lee sexually abused CCH, and she knew that Lee was not allowed to have contact with the children. Further, at the time this case was initiated, respondent-mother was in a relationship and living with Johnson, who was convicted of CSC-II, in a case involving a minor under the age of 13. When Lee was at the home, at least some of the children witnessed Johnson shoot Lee. The facts show that respondent-mother's poor judgment, poor choice in men, and careless decision-making placed the children in dangerous situations.

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Although respondent-mother did not commit sexual abuse against CCH, respondent-mother did subject CCH to abuse by continuing to allow Lee into her life, knowing that he sexually assaulted CCH on multiple occasions. Given this conduct by respondent-mother, it is reasonable to infer that she placed all of her children at an unreasonable risk of harm. The trial court therefore did not err by finding DHHS was not required to make reasonable efforts toward reunification.[4]

IV. BEST INTERESTS

Respondent-mother argues that the trial court erred by finding termination of her parental rights was in the children's best interests. We disagree.

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). In this case, respondent-mother pleaded no contest to the statutory grounds, and the issue of statutory grounds is not raised on appeal. "[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) (footnote omitted). "The trial court should weigh all the evidence available to determine the child[]'s best interests." *In re White*, 303 Mich App at 713 (footnote omitted).

> In making its best-interest determination, the trial court may consider the whole record, including evidence introduced by any party. [T]he child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home, are all factors for the court to consider when deciding whether termination is in the best interests of the child. The trial court may also consider the child's age, inappropriate

[4] To the extent respondent-mother suggests that the trial court erred by finding statutory grounds for termination under MCL 712A.19b(3)(j), the issue is abandoned on appeal. "Insufficiently briefed issues are deemed abandoned on appeal." *Greater Bethesda Healing Springs Ministry v Evangel Builders & Constr Managers, LLC*, 282 Mich App 410, 413; 766 NW2d 874 (2009). "[T]his Court need not address an issue that is given only cursory consideration by a party on appeal." *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). Respondent-mother's brief on appeal appears to raise a statutory grounds argument. However, respondent-mother merely argues that statutory grounds were not met because of lack of reasonable efforts. We have explained that "the requirement that reasonable efforts be made toward reunification is distinct from the requirement that at least one statutory ground for termination of parental rights be established by clear and convincing evidence." *In re MJC*, ___ Mich App ___; ___ NW3d ___ (2023) (Docket No. 365616); slip op at 5. Respondent-mother failed to raise a distinct statutory grounds argument.

In any event, given respondent-mother's longstanding failure to attempt to protect her children from sexual abuse, we conclude that the trial court did not clearly err by finding that MCL 712A.19b(3)(j) was satisfied. See MCL 712A.19b(3)(j) (providing that termination of parental rights is warranted 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 the child is returned to the home of the parent").

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> parenting techniques, and continued involvement in domestic violence. It may further consider visitation history, the parent's engaging in questionable relationships, the parent's compliance with treatment plans, the child's well-being in care, and the possibility of adoption. [*In re Sanborn*, 337 Mich App at 276-277 (quotation marks and citations omitted).]

We conclude that the trial court did not clearly err by finding that termination of her parental rights was in the best interests of the children. The trial court carefully considered the totality of the circumstances in this case when making its best-interests determination. The trial court considered respondent-mother's poor judgment and dangerous decision-making, not only when allowing Lee to see her children, but throughout the duration of this case. Respondent-mother has been accused of manipulating her story and convincing others to lie for her. She threatened the life of foster care workers and law enforcement. She has a history of "engaging in questionable relationships," including being in a relationship with two men who have sexually assaulted minors. See *id*. at 277.

The trial court discussed the children's need for stability and permanence. Throughout the case, the children have been separated and moved to different foster homes. Many of the children have severe mental health concerns. CCH was hospitalized multiple times throughout the case due to suicidal and homicidal ideations. CLH was also hospitalized for mental-health reasons. The children have presented behavioral issues, and have not been able to consistently have sibling visits due to behavioral concerns. Many of the children have been severely traumatized by respondent-mother.

Respondent-mother argues the children should be placed with relatives, as an alternative to termination. "[A] child's placement with relatives weighs against termination." *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). "[T]he fact that the children are in the care of a relative at the time of the termination hearing is an explicit factor to consider in determining whether termination was in the children's best interest." *In re Olive/Metts Minors*, 297 Mich App at 43 (quotation marks and citation omitted). "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interests determination and requires reversal." *Id*.

In this case, the trial court explicitly considered relative placement but found that termination was appropriate. Throughout this case, the children were placed with various relatives. However, at the time of termination proceedings, most of the children were in licensed, nonrelative foster homes. When the children were placed with relatives and fictive kin, respondent-mother did not respect boundaries and attempted to see the children, in violation of court orders. After AAH was born, respondent-mother removed AAH and DKL from where they were placed in the care of the fictive kin. If the children were to be placed with relatives, there is a high risk respondent-mother would continue to attempt contact with the children. The trial court explained that it is in the best interests of the children to avoid contact with respondent-mother. The children are traumatized, and contact with respondent-mother could trigger further negative mental health consequences.

The record indicates that the trial court thoroughly considered the best-interest factors and the circumstances of this case when making its best-interests determination. The trial court made

individualized determinations after carefully examining the unique challenges and needs of each child. The trial court did not clearly err by finding termination was in the children's best interests.

V. CONCLUSION

DHHS was not required to make reasonable efforts to reunify respondent-mother with the children. The trial court did not clearly err by finding termination of respondent-mother's parental rights was in the best interests of her children. We affirm.

/s/ Kirsten Frank Kelly
/s/ Mark J. Cavanagh
/s/ Michael J. Riordan

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STATE OF MICHIGAN

COURT OF APPEALS

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February 11, 2025
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In re SJ, Minor.

No. 369626
Gratiot Circuit Court
Family Division
LC No. 23-008766-NA

Before: BORRELLO, P.J., and REDFORD and PATEL, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to her minor child, SJ, under MCL 712A.19b(3)(b)(*ii*) (parent failed to protect child from sexual abuse and there is a reasonable likelihood of future abuse) and (j) (reasonable likelihood of harm if returned to parent).[1] For the reasons stated in this opinion, we affirm.

I. BACKGROUND

In February 2023, eight-year-old SJ disclosed that respondent's stepfather sexually abused her multiple times since she was five years old. At the time, SJ's father had sole physical custody of SJ, but shared legal custody with respondent.

In April 2023, the Department of Health and Human Services (DHHS) petitioned to remove SJ from respondent's care and terminate her parental rights. At the time, SJ's father had sole legal and physical custody of SJ, but respondent was still afforded parenting time. DHHS asserted that jurisdiction was proper under MCL 712A.2(b)(1) and (2), that grounds for termination of respondent's parental rights existed under MCL 712A.19b(3)(b)(*ii*), (b)(*iii*), and (j), and that termination of respondent's parental rights was in SJ's best interests. The trial court authorized

[1] SJ's father was not a respondent in the proceedings.

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the petition and suspended respondent's parenting time. Subsequently, DHHS filed an amended petition with additional factual allegations, which the trial court authorized.

At the combined adjudication bench trial and initial disposition hearing, a Children's Protective Services (CPS) investigator testified that SJ disclosed multiple incidents of sexual abuse by respondent's stepfather over several years. The investigator noted that CPS had contacted respondent three times between 2015 and 2022 about the danger her stepfather posed to her children, and the investigator testified that respondent agreed to comply with safety plans under which she would not leave her children alone with her stepfather. The investigator also testified that respondent was aware that her stepfather had a conviction of criminal sexual conduct (CSC) involving his seven-year-old stepson. However, respondent continued to live with her stepfather during this time and left SJ alone with him. Respondent testified that she was a victim of her stepfather's sexual abuse, that she knew about her stepfather's prior CSC conviction, and was aware her stepfather was on the sex offender registry. She also stated that she suspected her stepfather was sexually abusing SJ for well over a year, but she failed to take any action. Respondent admitted that CPS employees warned her several times, beginning in 2015, of her duty to protect SJ and to ensure that her stepfather was never left alone with SJ. Nevertheless, respondent admitted that she still left SJ alone with her stepfather on numerous occasions. Respondent explained that her mental-health issues prevented her from properly caring for SJ or protecting her from harm, although she testified that her mental health had improved. The trial court found that evidence of stepfather's no contest plea and conviction of first-degree criminal sexual conduct (CSC-I) concerning his sexual abuse of SJ established that his sexual abuse of SJ occurred for purposes of adjudication. Based on the testimony and evidence, the trial court concluded that jurisdiction was established by a preponderance of the evidence.

At the initial disposition, the caseworker testified that SJ had extreme anxiety as a result of her sexual abuse, but she had improved significantly while in her father's care. The caseworker noted that respondent continued to contact and financially rely on her mother, despite their hostile relationship. The caseworker stated that respondent struggled with financial and housing instability. The caseworker testified that respondent voluntarily engaged in services, but she was not consistent with her attendance and did not demonstrate progress in her ability to protect SJ. Based on her observations, the caseworker opined that there was a lack of bond between SJ and respondent. The caseworker stated that SJ expressed that she does not feel safe with her mother. Respondent admitted that she suspected her stepfather was sexually abusing SJ for well over a year, but she failed to take any action and continued to allow her stepfather to have unsupervised contact with SJ. Notably, when respondent was asked whether anything had changed that would lead her to take action and protect SJ from future harm, she candidly admitted that nothing had changed. She further acknowledged that her desire to continue to have parenting time with SJ was selfish, and likely not in SJ's best interests. The trial court concluded there was clear and convincing evidence to support termination of respondent's parental rights to SJ under MCL 712A.19b(3)(b)(*ii*) and (j), and that termination of respondent's parental rights was in SJ's best interests. This appeal followed.

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II. STANDARD OF REVIEW

We review a trial court's factual findings regarding statutory grounds for termination of parental rights and the decision to terminate parental rights for clear error. MCR 3.977(K); *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). We also review a trial court's decision that termination is in a child's best interests for clear error. *In re Atchley*, 341 Mich App 332, 346; 990 NW2d 685 (2022). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Sanborn*, 337 Mich App 252, 276; 976 NW2d 44 (2021) (cleaned up). "To be clearly erroneous, a decision must be more than maybe or probably wrong." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). "We give deference to the trial court's special opportunity to judge the credibility of the witnesses." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). We review de novo as a question of constitutional law whether a child-protective proceeding afforded a parent fundamentally fair procedures. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.).

III. ANALYSIS

Respondent argues that the trial court failed to make sufficient factual findings regarding the statutory bases for termination, and clearly erred by finding that termination of her parental rights was in SJ's best interests without considering other less-restrictive means in lieu of termination. We disagree.

A. STATUTORY GROUNDS

"To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence." *In re Pederson*, 331 Mich App 445, 472; 951 NW2d 704 (2020) (cleaned up). If at least one statutory ground for termination is established, "we need not consider whether the other grounds cited by the trial court also supported the termination decision." *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

In this case, the DHHS sought termination with its initial petition. "In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase." *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). "Generally, a court determines whether it can take jurisdiction over the child in the first place during the adjudicative phase." *Id*. Following testimony and evidence at the adjudication bench trial, the trial court concluded that jurisdiction over SJ was established by a preponderance of the evidence here. "Once the court has jurisdiction, it determines during the dispositional phase what course of action will ensure the child's safety and well-being." *Id*. A trial court is authorized to order termination of parental rights at the initial dispositional hearing, as it did in this case, on the basis of legally admissible evidence that had previously been introduced at the adjudication trial or legally admissible

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evidence presented for the first time at the dispositional hearing." *In re Mota*, 334 Mich App 300, 315; 964 NW2d 881 (2020), citing MCR 3.977(E).[2] See also MCL 712A.19b(4).[3]

Termination of parental rights is appropriate under MCL 712A.19b(3)(j) 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 the child is returned to the home of the parent." In concluding that there were grounds to terminate respondent's parental rights under MCL 712A.19b(3)(j), the trial court adopted and relied on its factual findings at the adjudication stage. At the adjudication, the trial court found that respondent was a victim of her stepfather's sexual abuse when she was a minor, was aware of her stepfather's prior CSC conviction arising out of the abuse of his seven-year-old stepson, and had received warnings from CPS about her duty to protect SJ from her stepfather. The court further found that respondent had created safety plans with CPS in which she was not to leave SJ unsupervised with her stepfather, but respondent failed to follow those plans and left SJ with her stepfather unsupervised despite her knowledge of his history and her suspicions that he had been sexually abusing SJ for several years. The court also found that respondent struggled with her mental health and struggled to care for her children as a result, noting respondent's testimony that she relied on SJ to help care for her other child. The court found that respondent struggled to

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[2] MCR 3.977(E) provides:

> **(E) Termination of Parental Rights at the Initial Disposition**. The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 3.973, and shall order that additional efforts for reunification of the child with the respondent shall not be made, if
>
> (1) the original, or amended, petition contains a request for termination;
>
> (2) at the trial or plea proceedings, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2(b) have been established;
>
> (3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:
>
> (a) are true, and
>
> (b) establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), or (m);
>
> (4) termination of parental rights is in the child's best interests.

[3] "If a petition to terminate the parental rights to a child is filed, the court may enter an order terminating parental rights . . . at the initial dispositional hearing." MCL 712A.19b(4).

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maintain her home during her depressive episodes, and it found that respondent had previously struggled with financial and housing insecurity.

In addition to its factual findings made at the adjudication, the trial court articulated other factual findings at the initial disposition. The court found that respondent continued to rely on and engage with her family and it found that respondent's limited participation in services had not benefited her. The court also found that there was a history of domestic violence in respondent's family household, noting an instance in which respondent's brother pointed a shotgun at her. The court further found that respondent had not remediated her mental-health issues that caused her to make decisions resulting in SJ's abuse, and it found that the evidence did not suggest that respondent would make better decisions moving forward regarding SJ's care.

The trial court made sufficient factual findings regarding termination under MCL 712A.19b(3)(j). The totality of the evidence amply supports that there was a reasonable likelihood that SJ would be harmed if returned to respondent's care based on respondent's conduct. Accordingly, we are not left with a definite and firm conviction that the trial court clearly erred by terminating respondent's parental rights under MCL 712A.19b(3)(j). Because clear and convincing evidence supported termination under MCL 712A.19b(3)(j), we need not address whether the trial court properly found statutory grounds for termination under MCL 712A.19b(3)(b)(*ii*). See *In re Foster*, 285 Mich App at 633.

B. BEST INTERESTS

"If a trial court finds that a statutory basis for terminating parental rights exists by clear and convincing evidence, it is required to terminate parental rights if it finds from a preponderance of evidence on the whole record that termination is in the children's best interests." *In re Brown/Kindle/Muhammad Minors*, 305 Mich App 623, 637; 853 NW2d 459 (2014) (cleaned up); see also MCL 712A.19b(5) ("If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made."). The focus of the best-interest determination is on the child, not the parent. *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016). "Accordingly, at the best-interest stage, the child's interest in a normal family home is superior to any interest the parent has." *In re Moss*, 301 Mich App 76, 89; 836 NW2d 182 (2013).

Factors to be considered for purposes of the best-interest analysis include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (cleaned up). A court may also consider whether it is likely that a child could be returned to a parent's home "within the foreseeable future, if at all." *In re Frey*, 297 Mich App 242, 249; 824 NW2d 569 (2012). Other relevant factors include "a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714. Because a child's placement with a relative militates against termination, "the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *In re Olive/Metts*, 297 Mich App at 43.

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Respondent argues that the trial court violated its statutory and constitutional mandates by finding that termination of her parental rights was in SJ's best interests without first considering other less-restrictive means, such as a juvenile guardianship, in lieu of termination. Respondent did not argue in the trial court that due process required the trial court to consider and rule out less restrictive alternatives, such as a guardianship, before terminating respondent's parental rights, nor did the trial court decide whether due process required such a consideration. Therefore, her constitutional challenge is unpreserved. We review unpreserved issues for plain error affecting substantial rights. *In re Sanborn*, 337 Mich App at 258. "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id*. (cleaned up). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *Id*. (cleaned up).

Parental rights, as a constitutional matter, encompass parents "fundamental liberty interest in the care, custody, and control of their children." *In re Beck*, 488 Mich 6, 11; 793 NW2d 562 (2010) (cleaned up). However, a parent's right to control the care and custody of their children is not absolute; "the state has a legitimate interest in protecting the moral, emotional, mental, and physical welfare of the minor and in some circumstances neglectful parents may be separated from their children." *In re Sanders*, 495 Mich 394, 409-410; 852 NW2d 524 (2014) (cleaned up). Once the trial court determines that there is jurisdiction over the child, it "has broad authority in effectuating dispositional orders" that are "appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained." *Id*. at 406. The state's interests in protecting the child prevail over the parent's constitutional rights when jurisdiction over the child is assumed. *Id*. at 406, 409-410. And upon the establishment of a statutory ground for termination under MCL 712A.19b(3) by clear and convincing evidence, a parent's liberty interests "no longer include[] the right to custody and control of the children." *In re Moss*, 301 Mich App at 88 (cleaned up). Even if a trial court finds that statutory grounds for termination are established by clear and convincing evidence, "it cannot terminate the parent's parental rights unless it also finds by a preponderance of the evidence that termination is in the best interests of the children." *In re Gonzales/Martinez Minors*, 310 Mich App 426, 434; 871 NW2d 868 (2015).

Respondent's argument that the trial court erred by failing to consider a guardianship for SJ is without merit. "Under appropriate conditions, a trial court may forego termination and instead place children in a guardianship." *In re Lombard*, __ Mich App __, __; __ NW3d __ (2024) (Docket No. 367714); slip op. at 6. A guardianship enables the parent and the child to maintain a relationship while placement with the parent is not possible. *Id*. The appointment of a guardian is generally done in an effort to avoid termination of parental rights. *In re Rippy*, 330 Mich App 350, 359; 948 NW2d 131 (2019). One of two conditions must be met for a court to consider a guardianship before termination: "either DHHS must demonstrate under MCL 712A.19a(8) that initiating the termination of parental rights to the child is clearly not in the child's best interests or the court must not order the agency to initiate termination proceedings under MCL 712A.19a(8)." *Id*., citing MCL 712A.19a(9) (cleaned up). And the court may only appoint a guardian if it finds that it is in the child's best interests *Id*. In other words, "the appointment of a guardian is only appropriate after the court has made a finding that the child cannot be safely returned to the home, yet initiating termination of parental rights is clearly not in the child's best interests." *In re TK*, 306 Mich App 698, 707; 859 NW2d 208 (2014). It is undisputed that termination was sought with the initial petition; thus, MCL 712A.19a is inapplicable here.

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Further, SJ's father had sole legal and physical custody of SJ at the time that DHHS filed its initial petition seeking termination of respondent's parental rights. Accordingly, there was absolutely no factual or legal basis to appoint a guardian for SJ. Respondent has not established plain error.

Although the trial court did not consider guardianship, it did consider allowing respondent to have parenting time with SJ in lieu of termination. But the court found that allowing parenting time was not in SJ's best interests in light of her need for safety, security, permanency, and the ability to move forward in a positive environment.

Respondent also claims that the trial court erred by failing to consider the fact that SJ was placed with her father in determining whether termination was in SJ's best interests. This argument is not supported by the record. The trial court expressly acknowledged that SJ was placed with her father and found that SJ's father had provided her with appropriate care. The trial court found that SJ benefited from the security, stability, and support her father offered. Further, the trial court found that SJ's anxiety and performance in school improved while in her father's care.

A preponderance of the evidence in the record supports that termination of respondent's parental rights was in SJ's best interests. The record reflects that SJ had anxiety about seeing or living with respondent again. The record further reflects that SJ did not ask about respondent. The trial court focused on SJ's need for support, stability, and long-term safety in determining that termination of respondent's parental rights was in SJ's best interests. We are not left with a definite and firm conviction that a mistake has been made.

Affirmed.

/s/ Stephen L. Borrello
/s/ James Robert Redford
/s/ Sima G. Patel

Approved, SCAO

JIS CODE: AGL

STATE OF MICHIGAN SUPREME COURT	ACCEPTANCE OF APPOINTMENT AND REPORT OF GUARDIAN AD LITEM	FILE NO. 167745

In the matter of Barber/Espinoza Minors

1. I have been appointed by the court as guardian ad litem for CB and ME
(Name)

and I accept this appointment.

2. I report to the court as follows:

Over the last few months the minor child CB has demonstrated concerning behavior that is likely linked to the abuse and neglect CB was subject to by her mother. CB has demonstrated behavior that is oversexualized and often directly relates back to the abuse she suffered that was facilitated by her mother. This behavior includes constantly watching porn and showing it to her younger siblings. CB has had inappropriate sexual relations with multiple partners at the same time who were much older than her. CB's behavior has affected her at school as she has no boundaries with her peers, and has regularly found herself in trouble.

Also, of concern is the lingering mental health issues that CB faces. CB recently attempted suicide by taking 98 hydroxyzine, and is currently recovering in the hospital. At this point in her life CB is not only a danger to others, she is also a danger to herself.

The effects of the sexual abuse that CB was subjected to by her mother is demonstrated by CB's younger sibling ME who is 11-year old. ME came into his father's care behind on his reading level and in school. Since coming into his father's care he now presents as a typical 11-year old with no concerns in school and is actively involved in multiple extracurricular activities. ME was not subject to the sexual abuse that his older sibling was, just the emotional abuse, and neglect. The stark difference in their mental and physical wellbeing is telling of the drastic impact this abuse had on CB's life.

3. I recommend:

That the court reverse the court of appeals decision and affirm the trial courts order terminating tbe respondent's parental rights. The court specifically consider these two children, and the lasting affects the abuse their mother subjected them to impacted their lives.

4/11/2025
Date

Signature

Carson Howatt
Name (type or print)

113 W. Front Street
Address

Adrian, MI 49221
City, state, zip

517-264-5348
Telephone no.

NOTE: See other side for partial duties of the guardian ad litem in conservatorship.

Do not write below this line - For court use only

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PC 643 (9/07) ACCEPTANCE OF APPOINTMENT AND REPORT OF GUARDIAN AD LITEM

MCL 700.1403(d), MCL 700.5406, MCR 5.121