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STATE OF MICHIGAN

COURT OF APPEALS

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In re A. ULLMAN, Minor.

Nos. 374790; 374792
Calhoun Circuit Court
Family Division
LC No. 2021-000019-NA

Before: GADOLA, C.J., and BOONSTRA and PATEL, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the termination of their parental rights to their minor child, AU, under MCL 712A.19b(3)(i) and (j). We affirm.

I. FACTS

Two days after AU was born in August 2024, petitioner, the Department of Health and Human Services (DHHS), petitioned to take AU into protective custody and to terminate respondents' parental rights to the child. The petition alleged that, in September 2023, respondents' parental rights were terminated to their five minor children, KS, JU, LU, AKU, and KU,[1] because respondents failed to rectify conditions that led to the adjudication in that case, which included respondents' chronic unstable housing, domestic violence, unresolved mental-health issues, and failure to meet the children's educational and mental-health needs. In addition, respondent-mother was substance-addicted and had a felony conviction for possession of methamphetamine. The petition further alleged that when AU was born, Children's Protective Services (CPS) could not confirm that respondents had housing nor that respondents had engaged in any services to rectify the conditions that led to the termination of their parental rights to their other children.

At the adjudication trial in this case, CPS investigator Courtney Matson testified that when AU was born, respondents both stated that they had housing at Arbors of Battle Creek, but neither

[1] Respondent-father is the father of JU, LU, AKU, and KU.

respondent could provide the address. Matson offered to assist with housing services, but respondents insisted that they had housing. Upon investigation, Matson discovered that respondents did not live at the Arbors of Battle Creek, nor at the address on Orleans Avenue that respondents provided to the hospital. Matson testified that respondent-father denied engaging in any services since his parental rights were terminated in September 2023. Respondent-mother stated that she was involved in a mother and infant program, but that information proved to be false. In addition, respondent-mother had an outstanding warrant for attempting to kidnap KS, to whom her parental rights had been terminated.

The trial court found that petitioner had produced evidence sufficient to establish statutory bases for the court to assume jurisdiction of AU under MCL 712A.2(b), namely, that respondents had failed to provide, when able to do so, support, education, medical, and other necessary care for their children, and that respondents' home or environment was unfit due to neglect, cruelty, drunkenness, criminality, or depravity on the part of the parent.

At the disposition hearing, foster care worker Alexis Cole testified that respondents refused to give their home address even though she explained that petitioner thereby was prevented from verifying whether they had stable and appropriate housing for AU. Cole testified that although the 2023 termination case was pending for over 800 days during which petitioner offered respondents numerous services including housing resources, respondents refused to participate and failed to rectify any conditions that led to the termination of their parental rights.

Cole also testified that by refusing to sign authorization forms, respondent-father had thwarted petitioner's efforts to have Early On assess AU's developmental progress. Cole further testified that AU had a digestive condition and that her foster parents were diligent in providing the child with proper healthcare. Cole opined that AU needed permanency and safety, which respondents had not shown they could provide.

Respondent-father testified that he signed up for parenting classes but did not attend. He also testified that although he agreed to a psychological evaluation, the doctor conducting the evaluation ended the evaluation when respondent-father declined to answer certain questions. He testified that he did not have a job, but that he was applying for work and also had applied for social security disability benefits. Respondent-father testified that shortly before the hearing, he moved to a home on Orleans Avenue and that respondent-mother sometimes lived there. He admitted that he had been driving the vehicle when respondent-mother tried to kidnap KS and that he knew what respondent-mother had planned to do. Respondent-mother did not testify at the disposition hearing.

The trial court terminated respondents' rights under MCL 712A.19b(3)(i) (parental rights to the child's sibling terminated due to serious and chronic neglect) and (j) (reasonable likelihood child will be harmed if returned to the parent). The trial court determined that petitioner was not required to make reasonable efforts to reunify AU with respondents because aggravated circumstances existed under MCL 712A.19a(2), namely, that respondents' parental rights to AU's siblings were terminated in 2023 and respondents failed to rectify the conditions that led to that

termination. The trial court further found that termination of respondents' parental rights was in AU's best interests. Respondents now appeal, and this Court has consolidated the appeals.[2]

II. DISCUSSION

A. RIGHT TO JURY TRIAL

Respondent-father contends that the trial court erred by conducting a bench trial for the adjudication even though his attorney initially advised the trial court that respondent-father planned to request a jury trial. Respondent-father failed to preserve this issue by raising it before the trial court. We review unpreserved claims of error in a termination of parental rights case for plain error affecting substantial rights. *In re Pederson*, 331 Mich App 445, 463; 951 NW2d 704 (2020). We review de novo issues involving the interpretation and application of court rules. *In re Mason*, 486 Mich 142, 152, 782 NW2d 747 (2010).

Under MCR 3.971 and MCR 3.972, once a petition is authorized in child protective proceedings, a respondent may admit to the allegations of the petition, plead no contest to the allegations, or demand an adjudication trial to contest the allegations at which the petitioner must establish by a preponderance of the evidence a statutory basis for jurisdiction as alleged in the petition. *In re Sanders*, 495 Mich 394, 405; 852 NW2d 524 (2014). Under MCR 3.911(A), a respondent is entitled to have a jury determine the adjudication trial. *In re Sanders*, 495 Mich at 405. MCR 3.911(B) provides:

> (B) A party who is entitled to a trial by jury may demand a jury by filing a written demand with the court within:
>
> (1) 14 days after the court gives notice of the right to jury trial, or
>
> (2) 14 days after an appearance by an attorney or lawyer-guardian ad litem, whichever is later, but no later than 21 days before trial.
>
> The court may excuse a late filing in the interest of justice.

During the preliminary hearing in this case held August 29, 2024, the trial court's referee asked whether the parties wished to demand a jury trial. Respondent-father's counsel replied: "At this time our clients wish to preserve their right to a jury trial. We will file the demand after the hearing." Thereafter, the trial court issued a summons ordering the parties to appear for a trial-management conference on September 24, 2024. The summons provided:

> 6. RIGHT TO TRIAL BY JURY: If you want a jury to decide the facts at the trial, you must file a written request with the court within 14 days after the court gives notice of the right to jury trial or 14 days after an appearance by an attorney,

[2] *In re Ullman Minor*, unpublished order of the Court of Appeals, entered March 25, 2025 (Docket Nos. 374790 and 374792).

> whichever is later, but no later than 21 days before trial. There is no right to a jury at a termination of parental rights hearing.

Neither party filed a request or demand for a jury before the adjudication trial. Although respondent-father initially stated that he planned to demand a jury trial, he did not invoke that right by filing a written request as required by the trial court's summons and MCR 3.911(B). MCR 3.911(C) further provides that the procedures for jury trials are governed by civil court rules, including MCR 2.508. Under MCR 2.508(D)(1), "[a] party who fails to file a demand . . . waives trial by jury." The plain language of the applicable court rules establishes that respondent-father waived his right to a jury trial by failing to demand one.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent-father contends that his trial counsel was ineffective because she failed to demand a jury trial for the adjudication. A parent has the right to counsel in a child protective proceeding, *In re Burns*, ___Mich App ___, ___; ___ NW3d ___(2025) (Docket No. 373903); slip op at 2, which includes the right to the effective assistance of counsel, *In re HRC*, 286 Mich App 444, 458; 781 NW2d 105 (2009). In Michigan, the law governing the right to effective assistance of counsel in criminal proceedings applies by analogy to proceedings seeking termination of parental rights. *In re MJC*, 349 Mich App 42, 59; 27 NW3d 122 (2023). In this case, respondent father failed to preserve this claim by raising it before the trial court or by moving this Court for remand for an evidentiary hearing. See *In re Burns*, ___ Mich App at ___; slip op at 3. We therefore review respondent-father's unpreserved claim of ineffective assistance of counsel limited to errors apparent on the record. *Id*.

To establish ineffective assistance of counsel, a respondent must demonstrate that (1) counsel's performance fell below an objective standard of reasonableness, and that (2) the deficient performance prejudiced the respondent, meaning that there is reasonable probability that but for counsel's deficient performance, there would have been a different outcome. *People v Jurewicz*, 506 Mich 914, 915; see also *In re Mota*, 334 Mich App 300, 318-319; 964 NW2d 881 (2020). A reasonable probability is one sufficient to undermine confidence in the outcome of the proceedings. *Id*. at 319. "The effective assistance of counsel is presumed, and a party claiming ineffective assistance bears a heavy burden of proving otherwise." *In re Casto*, 344 Mich App 590, 612; 2 NW3d 102 (2022). "The Court cannot substitute its judgment for that of counsel on matters of litigation strategy, and counsel's performance must be judged based on the knowledge, expertise, and information reasonably available when counsel formulated and implemented the litigation strategy." *Id*.

In this case, defense counsel initially informed the trial court that respondent wanted to preserve the right to request a jury trial, but at some point, the defense made the decision not to do so. We note that the record does not demonstrate that the decision not to seek a jury trial was contrary to respondent-father's wishes. But whether that decision was made with or without the approval of respondent-father, respondent-father offers no proof to overcome the presumption that his counsel's decision to proceed with a bench trial was not sound trial strategy. See *id*. at 612. For example, it would have been reasonable for counsel to conclude that a jury would be unsympathetic to respondents' failure to make any effort to rectify the conditions that resulted in the termination of their parental rights in 2023 and therefore be likely to determine that the

evidence supported a finding of jurisdiction under MCL 712A.2(b). Moreover, respondent-father has not demonstrated that the result would have been different if his counsel had demanded a jury trial; respondent-father merely asserts that a jury "could" have reached a different result. We conclude that respondent-father has not established that he was prejudiced by his counsel's decision not to request a jury trial and therefore has failed to establish that his counsel was ineffective. See *In re Sanborn*, 337 Mich App 252, 258; 976 NW2d 44 (2021).

C. JURISDICTION

Respondent-father contends that the trial court erred by assuming jurisdiction of AU because petitioner did not prove that "when able to do so," respondent-father neglected AU, or that respondent-father's home or environment was unfit by reason of neglect. We review "the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact." *In re Lange*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 166509); slip op at 6, quoting *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). We review de novo questions of statutory interpretation. *In re LaFrance*, 306 Mich App 713, 723; 858 NW2d 143 (2014).

Generally, child protective proceedings are divided into two phases, the adjudicative phase and the dispositional phase. *In re Lange*, ___ Mich at ___; slip op at 6. In the adjudicative phase, the trial court determines whether it can assume jurisdiction over the child, and during the dispositional phase, the trial court determines what action it will take regarding the child. *Id*. To assume jurisdiction over the child, the trial court must find that a preponderance of the evidence demonstrates that one of the bases for jurisdiction set forth in MCL 712A.2(b) applies, *id*., which may be established either by plea or at trial. See *In re Sanders*, 495 Mich at 405. MCL 712A.2(b) provides, in relevant part:

> The court has the following authority and jurisdiction:
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> * * *
>
> (b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:
>
> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:
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> * * *
>
> (B) "Neglect" means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.
>
> * * *

> (2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in. As used in this sub-subdivision, "neglect" means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.

MCL 722.602(1)(d) defines neglect as follows:

> "Neglect" means harm to a child's health or welfare by a person responsible for the child's health or welfare that occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care, though financially able to do so, or the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care.

In this case, the trial court determined that a preponderance of the evidence supported the trial court assuming jurisdiction of AU under MCL 712.A(2)(b) on the bases that respondents, when able to do so, failed to provide support, education, medical, and other necessary care for the child and that respondents' home or environment was unfit due to neglect, cruelty, drunkenness, criminality, or depravity on the part of the parent. The trial court reasoned:

> There's clear evidence from the previous case that housing instability was a serious issue. . . . Unfortunately, based upon the unrefuted testimony, and I do agree that this is a pattern for the parents to say they have something but not be able to verify, and based upon their history, certainly that information was needed.
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> * * *
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> Both parents were asked for verification of housing, both parents were asked for verification of any services that had changed since the last hearing.
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> Again, in the last hearing, you heard the testimony that the issues were domestic violence, mental health, criminality, and housing. Well, mom had a bench warrant at the time of the birth of the child, . . .
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> There was no indication that the parents had obtained any form of stable housing. There were efforts to confirm that, including going to the Arbors, attempting to see if there was a lease, going to the former residence, trying to verify housing there.
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> * * *
>
> There is no indication that they've done anything to resolve the domestic violence circumstances, and there's no indication that they've done anything to resolve the concerns.
>
> And I need to indicate, this hearing was a short time ago. It was September of 2023, so it was less than a year before at the time of removal. So based upon that, the court will find that there is evidence in this matter, after trial, there is clear and

> convincing evidence, since it was unrefuted in the matter, there are statutory grounds, including in this matter, failure, when able to do so, to provide support, education, medical or other necessary care for the child, and an unfit home by reason of neglect, cruelty, drunkenness, criminality, or depravity.
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> * * *
>
> [I]n looking at this matter, the court does find reasonable efforts were made. There were efforts to verify housing and stability, there were efforts to locate housing, and there's testimony that there were efforts to verify previous services, as well as efforts to make contact and engage the parents. There was housing offered, mom said she didn't need it, had housing, they tried to verify any infant – maternal/infant services. Again, not able to do that.

The record supports the trial court's determination. Less than one year before AU was born, respondents' parental rights to their children were terminated because respondents lacked adequate housing and failed to remedy that situation or to address their substance use, mental health, criminality, or their ongoing neglect of their children. At the adjudication trial in this case, CPS investigator Matson testified that she investigated respondent-father's claim that he had acquired housing and discovered that respondent-father was not living at the location he had represented to her.

Although AU was temporarily cared for in the hospital after she was born, respondents were responsible for her health and welfare and did not provide shelter under MCL 712A.2(b)(2). For purposes of MCL 712A.2(b)(2), "neglect" includes the failure to provide shelter although financially able to do so or the failure to seek financial or other reasonable means to provide shelter. *In re Lange*, ___ Mich at ___; slip op at 11. A review of the record demonstrates that the trial court did not err in assuming jurisdiction of AU under MCL 712A.2(b)(2).

D. AGGRAVATED CIRCUMSTANCES

Respondent-father contends that the trial court erred by finding aggravated circumstances at the disposition hearing without first finding that there was risk of harm, child abuse, or child neglect under MCL 722.638(1)(b). He argues that it was impossible for petitioner to establish risk of harm, abuse, or neglect because AU was being cared for at the hospital. We review for clear error a trial court's factual determinations, *In re Mason*, 486 Mich at 152, while reviewing de novo questions of statutory interpretation. *In re LaFrance*, 306 Mich App at 723.

A finding of aggravated circumstances under MCL 722.638 excuses the DHHS from making reasonable efforts to reunify the child with the parent under MCL 712A.19a(2) and permits the trial court to consider termination of parental rights at the initial disposition. *In re KV*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 374236); slip op at 4. Under MCL 712A.19a(2), reasonable efforts to reunify a parent with a child in a child protective proceeding must be made in all cases except those enumerated in the statute. Reasonable efforts at reunification are not required if, under MCL 712A.19a(2)(b), the trial court determines "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," which states in relevant part:

> (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:
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> * * *
>
> (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.

A finding of aggravated circumstances under MCL 722.638 must be supported by clear and convincing evidence. *In re Barber/Espinoza*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 167745); slip op at 4. In this case, petitioner demonstrated that AU was at risk of harm if placed in respondent-father's care because respondent-father was unable to demonstrate that he had adequate housing for AU, had a history of chronic housing insecurity, and had failed to comply with the case service plan in the previous case to address the conditions that led to termination in that case. We are unpersuaded by respondent-father's assertion that there could be no risk to AU because initially she was being cared for in the hospital; the risk to the child existed the moment the child would be released by the hospital into respondents' care. It is undisputed that respondents' rights to their other children were terminated in the months before AU was born, and respondents had failed to rectify any of the conditions that led to the prior termination. We conclude that the trial court did not err by finding aggravated circumstances.

E. STATUTORY BASIS

Respondent-father contends that the trial court erred by finding that a statutory basis existed to terminate his parental rights to AU. We review a trial court's finding of a statutory basis for termination for clear error. *In re Atchley*, 341 Mich App 332, 343; 990 NW2d 685 (2022).

The trial court determined that petitioner demonstrated that termination of respondents' parental rights was warranted under MCL 712A.19b(3)(i) and (j). Ample evidence established that respondent-father's "parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect . . . and the parent has failed to rectify the conditions that led to the prior termination of parental rights." MCL 712A.19b(3)(i). It is undisputed that respondent-father's parental rights to his four minor children were terminated in September 2023. Evidence showed that the children were chronically and severely neglected, were exposed to domestic violence, and did not have a safe or stable home with respondent-father. The same evidence supports the finding that termination was warranted under subsection (j) because a reasonable likelihood existed that the child would be harmed if placed in respondent-father's care in light of his failure to rectify the conditions that led to the 2023 termination. We observe that under the doctrine of anticipatory neglect, how a parent treats one child is probative of how the parent will treat another child. *In re Mota*, 334 Mich App at 323.

Again, the barriers to respondent-father's reunification with his children included chronic homelessness, domestic violence, mental-health problems, lack of a legal source of income, and the failure to meet the children's educational and mental-health needs. Respondent-father refused to participate in the numerous services offered in the 2023 termination case to rectify those conditions, including mental-health evaluation and treatment, counseling, in-home services, parenting classes, and housing assistance and referrals. We further disagree with respondent-father's assertion that the trial court clearly erred by finding that "criminality" was a concern after the 2023 termination. Contrary to respondent-father's assertion that respondent-mother's attempt to kidnap KS should not be imputed to him, respondent-father admitted at the disposition hearing that he knew that respondent-mother was attempting to kidnap KS and assisted her by driving her to the location where she attempted to kidnap the child.

We further reject respondent-father's assertion that he rectified his lack of financial resources by applying for work and for disability benefits; on the contrary, he admitted that he was unemployed and was not approved for any benefits at the time of the termination hearing. We conclude that the trial court did not clearly err by finding that petitioner presented clear and convincing evidence to terminate respondent-father's parental rights under MCL 712A.19b(3)(i) and (j). See *In re Atchley*, 341 Mich App at 343.

F. BEST INTERESTS

Both respondents contend that the trial court erred by finding that termination of their parental rights was in AU's best interests. We disagree.

When the trial court finds that a statutory basis for terminating a parent's rights has been established, the trial court must terminate the parent's rights if a preponderance of the evidence demonstrates that termination is in the child's best interests. MCL 712A.19b(5); *In re Medina*, 317 Mich App 219, 236-237; 894 NW2d 653 (2016). We review for clear error the trial court's decision regarding a child's best interests, focusing on the child, not the parent. *In re Atchley*, 341 Mich App at 346.

To determine the best interests of a child in a termination proceeding, the trial court must weigh the available evidence and consider a wide variety of factors, including the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, the advantages of the foster home over the parent's home, the length of time the child was in care, the likelihood that the child could be returned to the parent's home in the foreseeable future, and the parent's compliance with the case service plan. See *In re Sanborn*, 337 Mich App at 276-277.

In this case, respondent-mother argues that she demonstrated that she could provide a safe and stable home for AU and that her parenting ability had been demonstrated by raising her five older children for several years. Respondent-mother argues that the trial court should not have considered her substance use because other Americans also use drugs. In addition, she argues that the trial court should not have considered her lack of bond with AU because the trial court's removal of the child from her care prevented a bond from forming. Respondent-mother also argues that the trial court should not have given preference to the foster home on the basis of affluence. A review of the record, however, demonstrates that the trial court found that termination of respondent-mother's parental rights was warranted. Respondent-mother's drug use was found to

be a reason for her chronic, severe neglect of her five other children, and she refused drug tests or treatment to remedy that issue. Because respondent-mother showed no past or current intention to discontinue her substance abuse, the trial court could reasonably conclude that AU would be at risk of harm if returned to respondent-mother's care.

Respondent-mother did not have any verifiable source of income during the pendency of this case or the 2023 termination case. The record reflects that respondent-mother's substance use, mental health, and domestic violence issues were barriers to her reunification with her five children in the 2023 termination case and that she did not take any steps to overcome those barriers to ensure that AU would be safe in her care. Considering respondent-mother's failure to engage in the many services offered to her over a period of years, it was reasonable for the trial court to conclude that AU could not be returned to respondent-mother's care within a reasonable time, if ever. See *id*. We reject respondent-mother's contention that the trial court improperly determined that AU should remain in foster care because of the economic advantages of the foster home. Respondent-mother did not demonstrate either a home or a legal source of income, nor any inclination to obtain either; it was plainly in AU's best interests to be raised in a home with reliable shelter, food, and medical care.

Similarly, the trial court did not err by determining that termination of respondent-father's parental rights was in the child's best interest. The record demonstrates that respondent-father did nothing to rectify the conditions that led to the termination of his parental rights to his other four children, namely his mental-health issues, domestic violence, his lack of a legal source of income, and his failure to establish safe and stable housing. We also reject respondent-father's assertion that the trial court unfairly cited his lack of bond with AU as a basis for determining the child's best interests, arguing that DHHS removed the child before he had the opportunity to bond with her. Contrary to respondent-father's assertion, the trial court did not cite his lack of bond with the child as a reason that termination would be in AU's best interests. Rather, the trial court noted that AU had a bond with her foster parents, properly focusing on the child rather than the parent. Respondent-father has not shown that this finding was contrary to the evidence or that it otherwise amounted to clear error.

Affirmed.

/s/ Michael F. Gadola
/s/ Mark T. Boonstra
/s/ Sima G. Patel