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STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
January 09, 2026
1:45 PM

In re HAWKINS Minors.

No. 374780
Wayne Circuit Court
Juvenile Division
LC No. 2024-000957-NA

Before: GADOLA, C.J., and REDFORD and RICK, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his minor children, AH and PMH, under MCL 712.A19b(3)(j). We affirm.

I. FACTS

In April 2024, the children in this case, AH and PMH, then ages ten and six, were removed from respondent's home after respondent was arrested and charged with second-degree murder following the beating death of a man whom respondent allegedly assaulted at respondent's home. Respondent allegedly was intoxicated with alcohol and fentanyl during an argument with the man. The children were in the home at the time of the alleged murder, though they did not witness the fight. Respondent was incarcerated awaiting trial, and the children were placed in the home of their paternal aunt.[1]

Petitioner, Department of Health and Human Services, petitioned the trial court seeking termination of respondent's parental rights. Child Protective Services (CPS) specialist Christina Taylor testified that respondent's house was unsuitable for the children; although she could not enter the home because it was boarded, the house had broken porch windows and excessive trash and clutter on the exterior. Taylor testified that the children's paternal aunt reported that the house had no working utilities, and the children had to use buckets as a toilet. The house was filled with

[1] The children's mother is deceased.

trash, there was no furniture, the roof leaked, the front door was missing, and the house was strewn with cat feces and urine.

Taylor also testified that respondent had a prior history with CPS involvement. In 2022, after CPS found the children alone without proper supervision, respondent was referred for substance abuse therapy, which he did not complete. Petitioner requested adoption as the permanency plan for the children in this case. At the conclusion of the preliminary hearing, the trial court authorized the petition, finding that it was contrary to the children's welfare to remain in respondent's care.

Respondent thereafter pleaded no contest to the trial court's jurisdiction under MCL 712A.2(b)(1) and (2), and stipulated to the trial court's finding of a statutory basis for termination under MCL 712A.19b(3)(j) (reasonable likelihood that child will be harmed if returned to home of parent). The trial court then conducted a hearing on the best interests of the children. Wanda Dawkins testified that she is the foster care case worker for the children and that termination of respondent's parental rights was in the best interests of the children in light of respondent's pending murder charges, the deplorable condition of respondent's home, and the stability provided by the aunt's home. Dawkins also testified that in the aunt's care, the children now were attending school regularly and were excelling, and were eating a proper diet. Dawkins testified that the children told her that they love their father but want to live with their aunt.

Pal Brooks Jones, forensic family clinician with Family Assessment Services, testified that she interviewed respondent and the children in this case and prepared a report for the trial court. Jones testified that termination of respondent's parental rights was in the best interests of the children. She testified that she based her opinion on the fact that the children were in the home when respondent allegedly killed the victim of his subsequent murder charge, and also based her opinion on the poor condition of respondent's home.

The children's aunt, with whom the children were placed, testified that she was aware that the condition of respondent's home was bad, with no electricity, plumbing, heat, working bathrooms, or a refrigerator. She testified that she had discussed the condition of the home with respondent and that he told her that he planned to work to fix the problems with the home. She testified that she had observed the children talking with respondent on the telephone and they generally shared with him information about school and holidays, and would tell him that they love him at the end of the call. The aunt testified that the children have some emotional difficulties; PMH had been suspended from school for being aggressive with the other children and told her aunt that respondent had said her aggressive conduct was "okay." She testified that AH had shown some aggressive behavior toward her. The aunt testified that the children were participating in therapy to help address their emotional issues.

At the conclusion of the best interests hearing, the trial court found that termination was in the children's best interests. The trial court reasoned that although the children were placed with a relative, respondent was unlikely to provide the children with a safe, stable home even if the pending criminal charges against him were resolved. The trial court noted that the children and respondent appear to love each other and want to see each other, but the children also stated that they did not want to live with respondent. The trial court reasoned that the children deserved to

have a stable home free from criminality. The trial court specifically rejected guardianship as an option. Respondent now appeals.

II. DISCUSSION

Respondent contends that the trial court erred by finding that termination of his parental rights was in the best interests of the children. Respondent argues that the trial court failed adequately to consider the children's bond with respondent, the children's placement with a relative, and the possibility of a guardianship in lieu of termination. We disagree.

We review the trial court's decision regarding a child's best interests for clear error, *In re Sanborn*, 337 Mich App 252, 276; 976 NW2d 44 (2021), focusing on the child, not the parent, *In re Atchley*, 341 Mich App 332, 346; 990 NW2d 685 (2022). A trial court's decision is clearly erroneous if, although there is evidence to support it, upon reviewing the entire evidence we are left with "the definite and firm conviction that a mistake has been made." *In re Keillor*, 325 Mich App 80, 93; 923 NW2d 617 (2018) (quotation marks and citation omitted).

Once 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 Lombard*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 367714); slip op at 5. When determining the best interests of a child in a termination proceeding, the trial court is required to 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 has been 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. The trial court must also consider if a child is placed with a relative. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Although a child's placement with a relative generally weighs against termination of parental rights, that fact alone is not determinative. See *In re Atchley*, 341 Mich App at 347.

In this case, the preponderance of the evidence supports the trial court's determination that termination is in the children's best interests. Contrary to respondent's assertions, the trial court considered the bond between the children and respondent, that the children were placed with a relative, and whether a guardianship would be appropriate. The trial court stated, in pertinent part:

> The Court . . . will weigh all evidence available to determine the children's best interests; determine whether the termination of parental rights is in the best interest of each child, individually. And some of those factors include the child's bond to the parent, the parent's parenting ability, the child's . . . need for permanence, stability, and finality, and the advantages of the foster home over the parent's home. Also [the court] consider[s] past history of service plans, compliance or lack thereof of such, visitation with the children, child's well-being while in care, possibility of adoption.

> [Respondent's counsel] is correct [] that the Court has to consider if the child is placed with a relative, whether or not that weighs in favor, or against, termination. Also, if there is a least restrictive outcome or plan, the Court has to consider that as well.
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> The Court does not doubt that the children love [respondent] – or [that respondent] loves his children, that they want to see him, have a relationship with him or even that [respondent] is amenable to services. However, the Court has to consider all totality of circumstances and determine [] the best interest of the children.
>
> These children were with [respondent], are now with the paternal relative where they're being cared for, and it came out, during the best interest hearing, that there was a substantial lack in parenting, if you would, by [respondent] in caring for the children before his current situation. Which his current situation is, there was an altercation, it appears that – at the home, children were present, and as a result someone is deceased. [Respondent] has been charged with that crime and has been incarcerated at the county jail, while that matter is pending, for some time. And, all the while, the children have been in care with the aunt.
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> * * *
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> Both the children deserve to be cared for in a way that makes them likely to be productive members of society, and I think that is what's best.
>
> The Court, in saying all of that, believes that termination is in the best interests of the children. [Respondent] has some criminal matters, that even if it resolves tomorrow, the care for these children – I do not believe that [respondent] is in a position or . . . has the ability to properly care for the children, and I don't believe it's best. And even considering that the children are with the relative, the paternal relative, the Court believes that it is still best.
>
> I do not believe that the guardianship is an option because guardianship gives – there's some type of hope that a parent would be able to properly parent a child, and quite frankly, these children – well, [AH], who's old enough to – to express, has indicated that he does not believe it [to] be best that he reside with his father. . . I believe it is best that [respondent's] parental rights be terminated.

We conclude that the evidence supports the trial court's determination that termination of respondent's parental rights best served the children's need for stability and permanence. Respondent, allegedly while under the influence of substances, quarreled and fought with another man at respondent's home while the children were present in the home, allegedly killing the other man and resulting in respondent being charged with second-degree murder. Even if respondent were to prevail in the criminal charges against him, it is unlikely that respondent would provide the children with stability and permanence. Before the children were removed from his care, respondent did not provide the children with safe and suitable housing; respondent's home lacked

basic necessities, such as water, sewer, and heat, and holes in the roof and windows let the elements into the home. The children reported not having adequate food and did not consistently attend school. Because the preponderance of the evidence supported the trial court's best interest determination, the trial court did not clearly err in terminating respondent's parental rights.

Respondent argues that the trial court should have considered a guardianship for the children rather than terminating his parental rights. MCL 712A.19a(9) authorizes a trial court to appoint a guardian for a minor child in a termination of parental rights case. However, a trial court may appoint a guardian only if a guardianship is in the child's best interests. MCL 712A.19a(9)(c); *In re Rippy*, 330 Mich App 350, 359-360; 948 NW2d 131 (2019). In this case, it was not demonstrated that guardianship was in the children's best interests, and we therefore find no error in the trial court's rejection of a guardianship in this case.

Affirmed.

/s/ Michael F. Gadola
/s/ James Robert Redford
/s/ Michelle M. Rick