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STATE OF MICHIGAN

COURT OF APPEALS

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In re T. SCHMIEGE, Minor.

Nos. 371505; 371506
Bay Circuit Court
Family Division
LC No. 22-013376-NA

Before: BOONSTRA, P.J., and O'BRIEN and YOUNG, JJ.

PER CURIAM.

In Docket No. 371505, respondent-mother appeals by right the termination of her parental rights to her child under MCL 712A.19b(3)(c)(*i*) (failure to rectify the conditions leading to the adjudication), (g) (failure to provide proper care and custody), and (j) (risk of harm to the child). In Docket No. 371506, respondent-father appeals by right the termination of his parental right to the same child under the same statutory grounds. We affirm.

I. FACTUAL BACKGROUND

Respondents' child was removed from their home two days after she was born, following concerns about respondent-mother's compliance with care for her mental-health issues, respondent-father's lack of insight into how those issues affect respondent-mother's parenting capabilities, both respondents' failure to sufficiently feed their child at the hospital, and a statement by respondent-mother that respondent-father used cocaine. A Children's Protective Services employee testified that, while she was attempting to make a safety plan with respondents, respondent-father seemed unable to focus. Respondent-father agreed to take a drug test, which was positive for cocaine. The court exercised jurisdiction over the child after an adjudication trial on petitioner's allegations.

Respondent-mother's initial psychological evaluation recommended that she reside in an adult foster-care home, which she repeatedly refused to do, and indicated that she was not a good candidate for traditional psychotherapy. During the case, respondent-mother's mental-health issues caused her to lose track of where she was or what time it was, and respondent-mother often engaged in paranoia-based emotional outbursts that frightened her child and made her cry.

Respondent-father repeatedly indicated that he did not intend to separate from respondent-mother. Both respondents intermittently tested positive for cocaine in late 2023, and the court ordered petitioner to seek to terminate respondents' parental rights.

Following termination hearings, the court found that the previously stated statutory grounds supported termination. It found that respondent-mother had not made progress toward emotional stability, which affected her parenting time, and that respondent-mother had made only superficial strides in addressing her substance abuse. It found that respondent-father had made progress in therapy, but he continued to test positive for cocaine during the case and did not believe that it affected his ability to parent. The court was the most concerned with respondents' commitment to staying together as a couple. It found that respondent-father knew that respondent-mother could not provide for the children, but stated multiple times that he was unwilling to separate from her. He stated that he was not sure if he could parent on his own without respondent-mother, although he opined it might be easier if he was the child's full-time parent. Respondent-father had also expressed that he was exhausted by a two-hour parenting visit. After considering respondents' compliance with their case service plans, the length of time their child had been in care, her needs for permanency, stability, and finality, the likelihood that she would be adopted, and her well-being in foster care, the court terminated respondents' parental rights.

This appeal followed.

II. STANDARDS OF REVIEW

This Court reviews de novo questions of constitutional law, including whether the trial court's proceedings protected the parent's rights to procedural due process. *In re Sanders*, 495 Mich 394, 403-404; 852 NW2d 524 (2014). This Court reviews for clear error a trial court's finding of fact regarding whether petitioner made reasonable efforts to provide respondents with reunification services. *In re Smith*, 324 Mich App 28, 43; 919 NW2d 427 (2018). This Court reviews for clear error the trial court's decision that petitioner has proven a ground for termination by clear and convincing evidence. *In re Curry*, 505 Mich 989, 991; 938 NW2d 735 (2020).[1] This standard is "the most demanding standard applied in civil cases[.]" *Id*. (quotation marks and citation omitted, alteration in original). Clear and convincing evidence is clear, direct, and weighty evidence that allows the finder of fact to reach a conclusion without hesitancy. *Id*. "Clear error exists when some evidence supports a finding, but a review of the entire record leaves the reviewing court with the definite and firm conviction that the lower court made a mistake." *Id*. (quotation marks and citation omitted). This Court also reviews for clear error the trial court's best-interests determination. *In re Rippy*, 330 Mich App 350, 360; 948 NW2d 131 (2019).

If a parent does not raise a constitutional challenge in the trial court, it is not preserved. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). This Court reviews unpreserved issues in cases involving the termination of parental rights for plain error affecting the parent's substantial rights. *In re MJC*, 349 Mich App 42, 48; 27 NW3d 42 (2023). To meet the plain-error standard,

[1] Supreme Court orders that have an understandable rationale are binding on this Court. *People v Giovannini*, 271 Mich App 409, 414; 722 NW2d 237 (2006).

an error must have occurred, it must have been clear or obvious, and it must have affected the outcome of the proceedings. *Id*. at ___; slip op at 2.

III. REASONABLE EFFORTS

Parents have a significant constitutional liberty interest in the care and custody of their children. *In re Miller*, 433 Mich 331, 346; 445 NW2d 161 (1989); *MLB v SLJ*, 519 US 102, 119; 117 S Ct 555; 136 L Ed 2d 473 (1996). To make a reasonable effort to reunify the family, DHHS must modify its standard procedures to accommodate a parent's known disabilities. *In re Hicks/Brown Minors*, 500 Mich 79, 86; 893 NW2d 637 (2017). However, a parent has the responsibility to engage with and benefit from the services that petitioner provided. *Smith*, 324 Mich App at 45. Further, a parent who has raised a reasonable-efforts argument must establish that the parent would have fared better if other services had been offered. *In re Sanborn*, 337 Mich App 252, 264; 976 NW2d 44 (2021). The record must establish that there were specific services that DHHS failed to provide. *Id*. at 266.

A. RESPONDENT-MOTHER

Respondent-mother argues that the court erred by finding that petitioner provided reasonable efforts to reunify her with the child because, despite her known mental-health and intellectual-capacity disabilities and her requests for accommodation, petitioner did not put programming into place to address these disabilities. We conclude that respondent-mother did not engage with the programming designed to ensure that her specific needs were being met.

First, respondent-mother argues that her intellectual-capacity disability was not addressed because petitioner did not attempt to give respondent-mother an IQ test, reschedule the appointments that respondent-mother missed, or provide her with reunification information in a way that she could understand and remember. The record does not support these arguments because petitioner attempted to accommodate respondent-mother's disabilities, but she refused to participate in IQ evaluations until late in the case. In August 2022, at respondent-mother's psychological evaluation, the evaluator attempted to assess respondent-mother's intellectual abilities but had to discontinue the test. When respondent-mother was later asked why she had been unable to finish the test, she testified that she had written all over it, threw it away, and stated that she did not care. Respondent-mother was subsequently referred for IQ testing three different times and failed to appear at all three tests. Respondent-mother only participated in an IQ test after the court ordered petitioner to initiate termination proceedings.

As the case proceeded, a caseworker testified that petitioner was attempting to accommodate respondent-mother's intellectual functioning by trying to work with respondent-mother's providers in identifying extra services and by providing her with an outlined treatment plan to review with her. The caseworker explained that the outline provided respondent-mother with detailed steps about what she needed to do, and that the caseworker had worked with respondent-mother's other providers to identify her specific needs. In light of respondent-mother's failure to participate in testing that would help assess her abilities and specific needs, and the attempts that petitioner made to accommodate respondent-mother's deficiencies, we are not definitely and firmly convinced that the trial court made a mistake when it found that petitioner made reasonable efforts to accommodate respondent-mother's intellectual capacities.

Second, respondent-mother argues that petitioner did not make reasonable efforts to accommodate her mental-health disabilities because she received insufficient therapy. Again, the record does not support this argument. Respondent-mother's initial psychological evaluation recommended that respondent-mother reside in an adult foster care or group home and emphasized that she was not a candidate for traditional psychotherapy. Respondent-mother repeatedly refused to consider residing in adult foster care. Respondent-mother's intensive case manager testified that she wanted to meet with respondent-mother twice a month, but that respondent-mother preferred to meet only once monthly and failed to attend sessions. The case manager testified that respondent-mother could not be considered for therapy designed to address her behaviors until she could maintain a long-term relationship with a therapist, which she had not been able to do. We conclude that petitioner attempted to accommodate respondent-mother's disabilities, but that respondent-mother did not engage with the services that were provided. Further, respondent-mother has not established that she would have fared better had other services been offered.

B. RESPONDENT-FATHER

Respondent-father argues that the lower court clearly erred by terminating his parental rights, as he participated in services, except when they were not timely provided or he had no insurance. He argues that he was not responsible for respondent-mother's mental-health issues and that petitioner did not provide reasonable efforts to reunify him with his child because he was not given clear directions about how to parent separately despite being willing to separate from respondent-mother.

First, respondent-father's unpreserved argument that petitioner did not provide him with reasonable efforts to reunify with the child lacks merit. Early in the case, the court ordered petitioner to reach out to respondent-father's individual counselor to ensure that he understood that respondent-mother's mental-health issues affected her ability to care for the child. Respondent-father's caseworker testified that she personally had not done so but that respondent-father had raised the issue with his therapist. Respondent-father later reported that he had not gotten anything out of that therapy, and he stopped attending therapy for a time before starting again later that year. Most important, respondent-father told his therapist that he thought that his chances of being reunified with the child were lower if he stayed with respondent-mother and yet he also testified as to his unwillingness to end the relationship. Respondent-father has not demonstrated that any additional service would have helped him rectify this issue.

Second, respondent-father argues on appeal that petitioner should have, but did not, help him with his insurance issues. There is no clear or obvious error regarding the reasonableness of petitioner's efforts to address respondent-father's insurance coverage. Respondent-father did not raise this issue before the trial court, and there is no record regarding what respondent-father's insurance issues were or how petitioner could have helped him. Further, a gap in coverage between September and November does not explain respondent-father's failure to attend therapy following two sessions in May. Accordingly, we find no clear error in the trial court's findings related to respondent-father.

IV. TRANSCRIPT ISSUES

Respondent-mother argues that the numerous audio issues that were identified in the transcript of one of her termination hearings impedes her due-process right to an appeal. A party's inability to obtain complete transcripts of a proceeding may be considered to be a due-process issue. *In re Contempt of Pavlos-Hackney*, 343 Mich App 642, 666; 997 NW2d 511 (2022) (citing *People v Craig*, 342 Mich App 217, 228; 994 NW2d 792 (2022)).[2] It may be impossible to review a record for an alleged error without a transcript or satisfactory replacement. *Craig*, 342 Mich App at 233. If the existing record is sufficient to allow this Court to review the issues on appeal, an assertion that a transcript is inaccurate does not warrant relief. *Pavlos-Hackney*, 343 Mich App at 679. A failure to articulate how the appellant has been prejudiced also precludes relief. *Id*.

Respondent-mother's argument fails because the transcript that has been provided is sufficient for appellate review. We have had no difficulty reviewing respondent-mother's reasonable-efforts argument from the existing record. While there were frequent "audio drop" and "unintelligible" notations throughout the transcript, they are largely limited to single words or syllables, and it is easy to determine the missing words from context. Most importantly, respondent-mother has not identified any way in which she was prejudiced by this issue. Merely noting the large number of transcription issues does not warrant relief.

V. STATUTORY GROUNDS

Before we address the statutory grounds, we note that respondent-father also argues that the court violated his due-process rights by failing to consider alternative safety plans before the child's removal. Because respondent-father received an adjudication hearing and did not appeal the order of adjudication, he may not now raise whether the child was properly removed from the home. *In re Collier*, 314 Mich App 558, 576; 887 NW2d 431 (2016).

Regarding the statutory grounds, respondent-father argues that the trial court clearly erred by terminating his parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j) because petitioner did not help him rectify insurance and relationship issues during the case. He also argues that the court clearly erred by finding that respondent-father could not parent the child alone, used substances in a way that affected his parenting, did not engage in services, and made inappropriate statements. We are not definitely and firmly convinced that the trial court made mistakes in its factual findings or ultimate finding that statutory grounds supported terminating respondent-father's parental rights.

Before terminating a parent's parental rights, the court must find that clear and convincing evidence establishes at least one statutory ground for termination. *In re Jackisch/Stamm-Jackisch*, 340 Mich App 326, 333; 985 NW2d 912 (2022). To determine whether a parent made meaningful improvement, the court may consider the totality of the evidence presented during the proceedings. *Id*. at 334. The termination of parental rights must be based on the behaviors of the parent whose

[2] In cases involving the termination of parental rights, this Court has applied constitutional standards consistent with those applied in criminal cases. See *In re Martin*, 316 Mich App 73, 85; 896 NW2d 452 (2016).

rights are being terminated. *Id*. When considering whether terminating the parent's rights was appropriate, a court may consider whether a parent has put their own desires before the child's welfare. *In re Gonzales/Martinez*, 310 Mich App 426, 432; 871 NW2d 868 (2015).

The court may terminate a parent's parental rights if the parent has not addressed the conditions under which the court exercised its jurisdiction, the parent cannot provide the child with proper care and custody, or it is reasonably likely that the child will be harmed if returned to the parent's home:

> 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:
>
> * * *
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> (i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
>
> * * *
>
> (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 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 the child is returned to the home of the parent.

A court may consider a parent's failure to participate with and benefit from a service plan when determining whether a parent will be able to provide a child proper care and custody or whether it is reasonably likely that the child will be harmed if returned to that parent's home. *In re White*, 303 Mich App 701, 710-711; 846 NW2d 61 (2014).

Respondent-father argues that terminating his parental rights was inappropriate because he should not be held responsible for respondent-mother's mental-health issues, and regardless, he did gain insight into those issues. Respondent-father's insight argument is not supported by the record, and his responsibility argument does not recognize the negative effects that respondent-mother's mental-health issues had on the child.

The trial court may consider the potential psychological harm to the child caused by the parent's conduct or capacity. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). A

parent's mental illness can affect that parent's ability to parent a child. See *In re Utrera*, 281 Mich App 1, 23; 761 NW2d 253 (2008). The trial court may consider a parent's tendency to engage in relationships that may pose a danger to the children when determining whether statutory grounds exist to terminate a parent's parental rights. *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119 (2011). Finally, the court may also consider whether a parent put their own desires over the child's welfare. *Gonzales/Martinez*, 310 Mich App at 432.

In this case, the court found that respondent-father's largest barrier to reunification was that he wanted to remain in a relationship with respondent-mother. It found that respondent-father knew that respondent-mother could not provide for the child, but he remained in a relationship with respondent-mother. Despite one statement that respondent-father believed himself capable of parenting alone, he was exhausted after a two-hour visit. The case aide who supervised parenting time testified that, at the time of the termination hearings, respondents would argue with each other and respondent-mother would have outbursts that scared their child and made her cry. The child's daycare informed her foster parent that on days with parenting visits, the child would sometimes wake up from naps upset and shaking.

Further, respondent-father demonstrated that he was not willing to put his child's needs before his desire for a relationship with respondent-mother. Early in the case, respondent-mother's parenting time was suspended, and respondent-father refused to attend visits without her. Although he resumed visits later in the case, a parenting session was ended early because of respondent-mother's behavior in front of the child. Respondent-father expressed that he wanted separate parenting time, but when approached by a caseworker and his case supervisor, he indicated that he did not want separate visits. Numerous witnesses—including respondents—testified that they intended to remain in a relationship. A caseworker testified that he spoke with respondent-father about the likelihood that he would be unable to reunify with the child if he remained in a relationship with respondent-mother. Respondent-father testified at the termination hearing that he was willing to separate from respondent-mother to care for the child independently, but the record did not support that he was actually willing to do so. We are not definitely and firmly convinced that the trial court made a mistake.

Next, respondent-father argues that his continued substance use did not support terminating his parental rights because it did not affect his ability to parent. The court found that respondent-father lacked insight about how his substance abuse affected the child, and we are not definitely and firmly convinced that it was mistaken.

Regarding the trial court's findings of fact, it is well-established that "regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). See *Miller*, 433 Mich at 337. At the inception of the case, respondent-father was distracted when the parties were attempting to create a safety plan for the child. He testified that he did not have a substance-abuse problem and that he had not used substances since the child was born. The trial court does not appear to have believed respondent-father, and we defer to its credibility determination, which is supported by the record. Respondent-father tested positive for cocaine in September, October, and November 2023. Respondent-father testified that he used cocaine a couple of days before the first termination hearing. Respondent-father and respondent-father's case supervisor testified that respondent-father would not attend peer support meetings.

Respondent-father also argues that the court erred by finding that he did not begin to engage in services until November 2023. The court found that respondent-father did not begin to engage in *therapy* until that time, but he then engaged and made progress, and that respondent-father refused to participate in substance abuse services except for attending one meeting. Respondent-father testified that he attended one meeting for his substance abuse program, but that there were people there who used drugs and had drug problems, so he did not see the sense of going. Between August 10, 2023, and November 17, 2023, he missed 21 drug screens and tested positive for cocaine four times. Regarding parenting skills, respondents continued to argue during parenting time. Further, respondent-father argues that the court should not have considered that respondent-father made inappropriate statements to the case aide and about his children during earlier parenting time sessions. We agree with respondent-father that the behavior improved after the issue was raised with him, and the court clearly stated that its primary concern was respondent-father's desire to maintain a relationship with respondent-mother. It also emphasized his unwillingness to engage in his service plan with respect to that, and not necessarily a lack of improvement in other areas. Ultimately, we are not definitely and firmly convinced that the trial court made a mistake when it found facts that supported terminating his parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j).

VI. BEST INTERESTS

Respondent-father argues that the trial court clearly erred by terminating his parental rights because he and the child shared a strong bond and he had good parenting abilities. This argument lacks merit because the court considered the bond between him and the child when issuing its decision, and the remainder of the best-interest factors weighed in favor of terminating his parental rights.

To determine whether termination of a parent's parental rights is in a child's best interests, the court should consider a wide variety of factors that may 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 Mota*, 334 Mich App 300, 321; 964 NW2d 881 (2020) (quotation marks and citation omitted). The trial court may also consider "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." *Id*. (quotation marks and citation omitted).

Respondent-father argues that the court failed to recognize that he and the child shared a bond, but we do not agree with this characterization of the court's findings. The court found that there was a "lack of unhealthy parent bond." Accordingly, the court recognized that respondent-father and the child *did* have a healthy bond, and we agree with respondent-father that the record supports that he and the child were strongly bonded and that their bond did not appear unhealthy.

However, the strength of the bond between the child and the parent is only one factor for the court to consider. See *White*, 303 Mich App at 714. The court also found that the child spent almost her entire life in foster care and needed permanency and stability to develop physically and mentally. It noted that parenting time had been suspended during the case and that it was being supervised by the agency at the time of the court's opinion. It found that respondents participated in services sporadically but had not benefited. Further, the court found that the child was thriving

in foster care, the foster family was willing to adopt her, the foster family was providing for her needs, and her placement provided stability and consistency. The court also found that termination would provide "a sense of finality."

For the reasons previously discussed, respondent-father did not comply with his case service plan, and some aspects of respondent-father's parenting were concerning, including whether he was capable of caring for the child full-time as a single father. It is undisputed that the child spent the vast majority of her life in childcare. When the case commenced, she was a few days old, and at the time of the termination hearings, she was 18 months old. Further, the child began to show signs of being stressed, such as difficulty sleeping on days where she had parenting visits. She was placed in a home with her brother, and the foster family indicated that it was willing to adopt her. We are not definitely and firmly convinced that the trial court made a mistake when it found that terminating respondent-father's parental rights was in the child's best interests.

We affirm.

/s/ Mark T. Boonstra
/s/ Colleen A. O'Brien
/s/ Adrienne N. Young