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STATE OF MICHIGAN

COURT OF APPEALS

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In re C. PACYGA, Minor.

No. 375267
Muskegon Circuit Court
Family Division
LC No. 17-000587-NA

Before: BOONSTRA, P.J., and YOUNG and KOROBKIN, JJ.

KOROBKIN, J.

Respondent, mother of CP, appeals by right the trial court's order terminating her parental rights.[1] This case requires us to consider an issue that arises not infrequently in child-protective proceedings: the extent to which a respondent's abuse or neglect of one child can provide statutory grounds to terminate that respondent's rights to another child. On appeal, respondent contends that the trial court erred by exercising jurisdiction, finding statutory grounds for termination, and finding that termination was in CP's best interests. For the reasons stated in this opinion, we conclude that the trial court properly exercised jurisdiction but erred by finding statutory grounds for termination.[2] Therefore, we affirm in part, reverse in part, vacate the termination order, and remand for further proceedings.

I. BACKGROUND AND FACTS

On March 13, 2024, petitioner, the Department of Health and Human Services (DHHS), filed a petition asking the trial court to exercise jurisdiction over CP, remove him from respondent's care, and terminate respondent's parental rights. At the time of the petition, CP was two days old and respondent reported to Children's Protective Services (CPS) that she did not have

[1] CP's father was also a respondent in the proceedings below, but he is not a party to this appeal.

[2] Because the trial court erred by finding statutory grounds for termination, we need not review the trial court's best-interest determination. See *In re LaFrance*, 306 Mich App 713, 733; 858 NW2d 143 (2014).

independent housing, did not have income, and was unable to meet CP's needs upon discharge from the hospital.

Respondent had been involved with CPS previously because, in February 2017, respondent's older child, MP, who was at that time an infant, was removed from her care after respondent admitted that while on a Facebook video chat she put her mouth on MP's penis and played with MP's penis with her fingers. For this conduct respondent was convicted in 2018 of child sexually abusive activity in violation of MCL 750.145c(2), was sentenced to six years in prison, was placed on the sex offender registry, and voluntarily released her parental rights to MP.

Regarding newborn CP, the trial court authorized DHHS's petition and ordered that CP be placed in foster care without parenting time.

On May 9, 2024, respondent filed a motion for supervised parenting time, supported by letters from the director and a manager of her housing program, her parole agent, recovery coaches employed by the probation/parole office, MP's grandmother (respondent's mother) who had adopted MP, and a member of respondent's church. According to the motion and supporting documentation, at the time of the 2017 offense, respondent was herself a victim of sex trafficking who was directed to perform the abusive act against MP by a man who had raped respondent and threatened to harm her and her family. During and after her imprisonment, respondent had turned her life around, and was now living in a housing program called the Hope Project whose mission was to support survivors of sex trafficking. Respondent was now gainfully employed, attending counseling regularly, had completed a parenting class, and was actively involved in her church. As described by her parole agent, respondent's first few months on parole were somewhat rocky and she had several parole violations, but she then built up a strong support system with the Hope Project and related programming and had no violations in the previous six months. Additionally, respondent's parole case management team had determined that respondent was not a threat to MP and, with the consent of MP's grandmother, gave respondent permission to have supervised contact with him. The grandmother, who had adopted MP, confirmed that she supported respondent rebuilding the relationship and that it was going well. Petitioner opposed the motion for parenting time, noting that it was still seeking termination. The motion was denied.

A combined trial on adjudication and termination was held on February 4 and March 17, 2025. Due to technical difficulties, the court reporter was unable to transcribe some of the proceedings, and an order settling the record has provided us with a combination of complete and incomplete certified and uncertified transcripts, attorneys' contemporaneous notes in place of a transcript for the testimony of one witness, and exhibits. The trial court has certified this combination of documents as "accurately, fairly and completely summariz[ing]" the proceedings and "compris[ing] the complete record . . . for purposes of appellate review."

At trial, the parties stipulated to the following facts regarding respondent's 2017 offense:

> 1. On August 14, 2018, [respondent] voluntarily released her parental rights . . . to [MP].
>
> a. On February 5, 2017, [respondent] was arrested regarding allegations of Criminal Sexual Conduct and Manufacturing/Distributing Child Pornography.

b. During the investigation (Muskegon Township Police Department[]), [respondent] admitted that while on a Facebook video chat with Nathan Osborne she played with [MP]'s penis with her fingers and she put her mouth on [MP]'s penis.

i. [Respondent] further admitted Nathan Osborne took a screenshot of her performing these acts with [MP] and sent them to one of her friends.

ii. At the time of the offense, [respondent] reported she did this due to threats from Nathan Osborne that he would post nude photos of her on Facebook and send them to people she knows. [Respondent] also reported Nathan Osborne agreed to pay her money to make the video of her performing acts on her son, but he never paid her.

Travis Rosema, who had been respondent's parole agent since her release from prison in May 2023, testified at trial consistently with his letter that respondent struggled at the beginning of her parole and was briefly jailed for violations, but stabilized after she became involved with the Hope Project and related programming, and had no violations since October 2023. Rosema testified that respondent has "been doing very well since the last violation" because "her support system really grew" and "you could see the change in her." Respondent was employed, saw a psychologist, completed parenting classes, was involved with her church, worked with recovery coaches, and was in training to become a recovery coach herself. Additionally, as stated, respondent's case management team determined that it would be safe for respondent to have supervised contact with MP, and Rosema had not encountered any attendant issues or concerns. He acknowledged that it was uncommon to allow parolees to have contact with their victims.

Lauren Paquin, petitioner's CPS investigator, testified that at the time of CP's birth, respondent told her that there was nowhere for her son to live because she was living in housing provided through the Hope Project, which did not allow children to reside in its housing. At the time, she was also unemployed and had no means to provide for CP's immediate needs. Paquin further testified that because of respondent's history, DHHS treated the case as a "mandatory" request for termination of parental rights and that she thus had no discretion in the matter.

Following Paquin's testimony, the trial court heard arguments on the issue of jurisdiction and then issued its decision orally, finding that it had jurisdiction over CP on two statutory grounds. First, the trial court found that respondent's home was an unfit place for the child to live because "[h]er statements made to the CPS worker at the time of the birth tell me that there wasn't a home to go to." Second, the trial court found that because of respondent's criminal history, "there is a substantial risk of harm to [CP] in the care of the mother."

The trial then immediately proceeded on petitioner's request for termination. The parties stipulated to the admission of respondent's psychological evaluation from July 2024. The evaluation stated that respondent "appeared open and forthcoming" and "took ownership of the part she played in the current CPS case." The evaluation recounted respondent's description of how she came to abuse MP, including that she was using drugs and that Osborne threatened her. The evaluation recognized that respondent had a history of substance abuse, which coincided with her run-ins with the law. Respondent completed the "Child Abuse Potential Inventory"

questionnaire. The evaluation noted that respondent's "response style met criteria for the Faking Good Index . . . suggesting that she attempted to endorse socially desirable responses in order to minimize negative personal characteristics in order to present herself in a positive light." The evaluation also stated that respondent "has shown a commitment to her recovery" and reported a "positive prognosis for change." The evaluation recommended that respondent participate in therapy, parenting classes, and NA meetings, that she illustrate her ability to obtain appropriate housing, employment, and financial stability, and that she submit to drug testing.

Jennifer Alexander, a foster care worker for DHHS, testified that she was assigned to the case.[3] Alexander was familiar with respondent's participation in the Hope Project program and confirmed that respondent was engaged and compliant with the program requirements but that children could not reside in the Hope Project housing facility. Alexander further confirmed that respondent was employed. She testified that it was the opinion of DHHS that terminating respondent's parental rights was in CP's best interests because of respondent's prior acts against MP, domestic violence incidents with MP and CP's father which led to a parole violation, her lack of housing, and "that there was not a reasonable likelihood that, even with services, [respondent] could demonstrate she would be safe to parent [CP] in the foreseeable future."

Elizabeth Campbell, a professor at the University of Michigan Law School, was qualified as an expert on whether someone meets the legal definition of being a victim of human trafficking. Professor Campbell described human trafficking as compelling an individual to engage in some sort of work or services, often including commercial sexual activity or a sexually explicit performance. The compulsion can come about from physical force, fraud, or coercion, with coercion being the most common and which includes making the victim engage in an act under the belief that refusing to do so would result in financial, emotional, or reputational harm to themselves or someone else. Trafficking frequently arises over time from a relationship that begins as one of trust and then develops into one involving abuse. Professor Campbell testified that, after meeting with respondent and reviewing relevant materials related to her case, it was her opinion that at the time of respondent's offense against MP, respondent met the legal definition of being a victim of human trafficking. As Professor Campbell explained, Osborne began by building trust with respondent, sexually assaulted her, and then threatened physical and reputational to harm her or her family if she did not engage in certain sexually exploitative acts with MP. Professor Campbell further testified that victims of human trafficking are able to overcome what happened to them and lead healthy lives. She also acknowledged that being a victim of human trafficking was not, under current law, an affirmative defense to the act respondent had been convicted of committing against MP.

Jessie Sortwell, who had been respondent's therapist at the Hope Project since November 2023, testified that she meets with respondent on a weekly basis. According to Sortwell, respondent "has made tons of progress" and Sortwell had seen "so much growth" in the time Sortwell had been working with her. Sortwell and respondent spoke frequently about parenting skills and respondent's progress in building a relationship with MP during their supervised visits.

[3] Alexander's testimony was not transcribed; the trial court's order settling the record refers us to notes taken contemporaneously during Alexander's testimony.

Respondent was also now able to speak openly and honestly about what happened in 2017, accept responsibility for it, and had gained insight into not repeating mistakes that she made before, protecting her children, and surrounding herself with healthy support. Sortwell described respondent as "definitely one of the rare few who has completely turned her life around." Sortwell acknowledged that she didn't have a "magic eight ball" and could not say "definitively" whether a child would "necessarily be safe" in respondent's care.

Sarah Johnson, the executive director of the Hope Project, testified that her organization provides services for survivors of sex trafficking. Johnson first met respondent in 2017 when respondent's attorney at the time reached out to Johnson "to see if she was a survivor of human trafficking." As Johnson got to know respondent, she "realized that [respondent] was a survivor of sex trafficking" and they kept in touch during respondent's prison term. Respondent shared with Johnson that she was raped by Osborne the night before he directed her to sexually abuse MP on Facebook "and that she felt like she had no choice in the matter because he also threatened her." Johnson confirmed that respondent moved into Hope Project housing in October 2023 and participated fully and successfully in individual and group therapy, drug testing, recovery classes and coaching, and related programming. Johnson testified that she had seen "tremendous growth" in respondent and described respondent as "a natural leader." Respondent had full-time employment and had been promoted to manager at her job. Johnson further testified that normally, participants live at the Hope Project for two years and are then provided with support services to transition to independent housing. Respondent could continue participating in the Hope Project's counseling, support groups, and other services after she found independent housing.

Respondent testified at length about her circumstances in 2017 and her recovery journey since that time. When MP was born, respondent was 19 years old, addicted to heroin, had dropped out of school, had no parenting skills or job skills, and was struggling with severe depression. Osborne, whom respondent had met on Facebook, offered her drugs and money to have sex with him, raped her, and threatened to harm her or her family if she did not comply with his request to lick MP's penis on a Facebook video chat. Respondent admitted that she did not immediately report the rape because she was scared that she wouldn't be believed. Respondent also admitted that she had failed to protect MP and that she was the one who harmed him.

Respondent confirmed that after she left prison, she initially struggled and briefly resumed a relationship with MP's father, which led to the conception of CP. (The father had not been involved in trafficking respondent or abusing MP.) But that relationship was unhealthy and led to domestic violence and respondent's violation of her parole. After respondent was released from jail for her last parole violation in October 2023, she separated from the children's father and moved into transitional housing, which eventually led to her participation in the Hope Project program. At that point, respondent testified, her life began to turn around as she found a support structure in the programming and community. She regularly attended individual therapy and group therapy, had a recovery coach and began training to become a recovery coach for others, joined bible study and other classes and activities through her church, completed parenting classes, became employed full-time as a manager at Lee's Chicken, and began to rebuild her relationship with MP under supervision from MP's grandmother. She had remained sober and had no further parole violations.

When asked what her plan for housing was, respondent explained:

[*Respondent*:] Honestly, I've been waiting for the outcome of this case. I have safety there, I have consistency there in front of me. That is a very big part of my success today, the consistency of what I have around me, my structure, my routine.

I haven't felt the need to—to get independent housing because if for some reason the Judge terminates or, you know, whatever the Court decides to do, I know that I have The Hope Project, and I know that this is where I'm excelling right now. And so I've—I've decided to remain there.

[*Respondent's Counsel*:] But if the Court were to say, let's, you know, do a case service plan, are you in a position to go out immediately and look for and/or obtain independent housing?

[*Respondent*:] I'm not in a position to immediately obtain independent housing, but I am in a position to look for resources or any type of help that I may need.

I do have an advocate. We have been going over budgeting. We set goals.

* * *

I'm not in an immediate position, . . . no, but I do believe I would be able obtain independent housing.

[*CP's Counsel*:] Okay. And do you think you could provide for him independently?

[*Respondent*:] Yes.

Respondent further testified that she paid $500 per month in rent for housing with the Hope Project, that she was working full-time, and that she was trying to save as much money as possible for independent housing.

Despite her unsuccessful efforts to obtain supervised parenting time with CP in July 2024, respondent testified that she wanted to build a relationship with CP and wanted "the Court to be aware that" she loved both her children and that "what happened in the past will never happen again."

MP's grandmother, who is also respondent's mother, testified that she adopted MP, who was now eight years old and doing well. Allowing respondent to visit with MP was the grandmother's choice, she always supervises the visits, and there had been no concerns or problems with respondent seeing MP.

Additional witnesses, before the close of trial, were parole agent Rosema's supervisor and a DHHS manager. The parole supervisor testified that a case management team within the parole department can review a parolee's case and determine that it is acceptable for the parolee to have contact with a victim. The DHHS manager clarified that because MP had been adopted, MP's

case was closed and DHHS had no role in deciding whether respondent could have contact with MP.

Following closing arguments, the trial court took the matter under advisement and subsequently issued a written opinion and order dated April 2, 2025. In the opinion, the trial court found statutory grounds to terminate respondent's parental rights under MCL 712A.19b(3)(b)(*i*) and (*ii*), (g), (j), and (k)*(ii)*. The trial court further found that termination was in CP's best interests. Accordingly, the trial court entered an order terminating respondent's parental rights. This appeal followed.

II. STANDARD OF REVIEW

In child-protective proceedings, "[w]e review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact." *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). Similarly, "this Court reviews for clear error a trial court's factual findings and ultimate determinations on the statutory grounds for termination." *In re White*, 303 Mich App 701, 709; 846 NW2d 51 (2014). "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009) (citation omitted). "Questions of statutory interpretation are reviewed de novo." *In re Lange*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 166509); slip op at 6.

III. ANALYSIS

A. JURISDICTION

Respondent first contends that the trial court clearly erred by determining that it had jurisdiction over CP. We disagree.

"Child protective proceedings consist of two distinct phases: the trial, also known as the adjudicative phase, and the dispositional phase." *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008). The adjudicative phase, which occurs first, is when the "trial court determines whether it may exercise jurisdiction over the minor child pursuant to MCL 712A.2(b)." *Id*. at 15-16. "To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists." *In re BZ*, 264 Mich App at 295. The relevant statute, MCL 712A.2, "speaks in the present tense, and, therefore, the trial court must examine the child's situation at the time the petition was filed." *In re MU*, 264 Mich App 270, 279; 690 NW2d 495 (2004).

"During the adjudicative phase, a trial may be held to determine whether any of the statutory grounds alleged in the petition have been proven." *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). "Jurisdiction must be established by a preponderance of the evidence." *In re BZ*, 264 Mich App at 295. "A preponderance of the evidence is evidence that, when weighed with that evidence opposed to it, has more convincing force and the greater probability of truth." *In re Boshell/Shelton*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 371973); slip op at 3 (cleaned up).

MCL 712A.2(b) provides, in pertinent part, that a trial court has

> [j]urisdiction 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:
>
> * * *
>
> (B) "Neglect" means that term as defined in . . . 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 . . . MCL 722.602.

"Neglect," as defined in MCL 722.602(1)(d), 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.

"Negligent," for purposes of MCL 722.602(1)(d), means "failing to exercise the care expected of a reasonably prudent person in like circumstances." *In re Lange*, ___ Mich at ___; slip op at 13. " '[A]ble to do so' as used MCL 712A.2(b)(1) means that a parent must have 'sufficient power, skill, or resources' to provide necessary care or necessary support." *Id*. at ___; slip op at 9.

In this case, DHHS filed the petition after respondent reported that she did "not have independent housing," was "unable to meet the immediate needs of her newborn child," had "no income," and had "been involved in a domestically violent relationship with [CP]'s putative father." At adjudication, the trial court found that respondent was CP's biological parent and that the home where respondent lived, by reason of neglect or criminality, was an unfit place for CP to live. The trial court found that respondent's statements to CPS established by a preponderance of the evidence that, at the time the petition was filed, "there wasn't a home to go to" and that respondent "was unable to provide proper care and custody for this very young child."

The trial court did not clearly err in this determination. A preponderance of the evidence supports the trial court's finding that respondent, "by reason of neglect," failed to provide CP a fit "home or environment." MCL 712A.2(b)(2). Respondent reported to CPS immediately after CP was born "that there wasn't a home to go to" and failed to seek other reasonable housing alternatives. See MCL 722.602(1)(d). Therefore, the trial court properly assumed jurisdiction.

Respondent argues that the trial court clearly erred in this jurisdictional finding because respondent "was not homeless," as she was living at the Hope Project facility, but that the Hope Project's rules did not allow children to live on site. That is, respondent's position is that *she* had a home—it was her newborn child, CP, who did not. This argument is unpersuasive because the trial court's task was not to determine whether it had jurisdiction over *respondent* or assess respondent's situation; it was to determine whether it had jurisdiction over the minor child by assessing the "*child's* situation at the time the petition was filed." *In re MU*, 264 Mich App at 279 (emphasis added); see also *In re Utrera*, 281 Mich App at 15-16. At the time the petition was filed, respondent had been living at the Hope Project for several months and had not sought to secure or provide different living arrangements for herself or her soon-to-be-born child. Thus, although respondent had a place to live, she was not providing a home for CP.

Respondent also asks us to apply *In re Lange* to this case. In *In re Lange*, ___ Mich at ___; slip op at 13, our Supreme Court held that the respondent-mother in that case was not "negligent" under MCL 712.A2(b)(2) because she attempted to get her son the psychiatric treatment he needed and acted reasonably in refusing to take him home from the hospital when doing so would endanger other members of the household. This case is different. As stated, respondent chose to participate in the Hope Project program knowing that it did not accommodate children, and respondent did not seek out alternative living arrangements for herself or her soon-to-be-born child. *In re Lange* is therefore distinguishable and not controlling.

In sum, the trial court did not clearly err by finding by a preponderance of the evidence that it had jurisdiction over CP under MCL 712A.2(b)(2) because respondent failed to provide a fit place for the child to live.[4]

B. STATUTORY GROUNDS FOR TERMINATION

Next, respondent contends that the trial court clearly erred by finding statutory grounds to terminate her parental rights. We agree.

Once a trial court determines at the adjudicative phase that it may exercise jurisdiction over a child, "the dispositional phase determines what action, if any, will be taken on behalf of the child to ensure the child's safety and well-being." *In re Barber-Espinoza*, ___ Mich ___, ___; ___

[4] Because the trial court properly exercised jurisdiction on these grounds, it is unnecessary to decide whether the trial court clearly erred by additionally finding that it had jurisdiction because respondent's past abuse of MP made CP "subject to a substantial risk of harm," MCL 712A.2(b)(1). See *In re BZ*, 264 Mich App at 295 ("the trial court must find that *a* statutory basis for jurisdiction exists") (emphasis added).

NW3d ___ (2025) (Docket No. 167745); slip op at 2-3. "One of the actions that the trial court may take is to terminate parental rights." *Id*. at ___; slip op at 3. In "most circumstances," termination at the initial disposition hearing is improper because, except under "rare circumstances provided by statute," DHHS must make reasonable efforts to achieve reunification between parent and child before seeking to terminate parental rights. *Id*. One such exception is when the parent is required by court order to register under the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq*. MCL 712A.19a(2)(d). Here, there is no dispute that respondent was ordered to register under SORA in connection with her conviction for abusing MP. Therefore, the trial court was allowed to consider termination of parental rights, as it did here, at a "combined adjudicative and disposition hearing." *In re Barber-Espinoza*, ___ Mich at ___; slip op at 3.

But even though SORA registration allows DHHS to seek—and the trial court to consider—termination at the initial disposition, the state carries a heavy burden in proving that termination is warranted. "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 Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).[5] "The clear and convincing evidence standard is the most demanding standard applied in civil cases." *In re Pederson*, 331 Mich App 445, 472; 951 NW2d 704 (2020) (cleaned up). It must be "evidence so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (cleaned up).

The standard is high because the United States Constitution requires it. *Santosky v Kramer*, 455 US 745, 769-770; 102 S Ct 1388; 71 L Ed 2d 599 (1982). As this Court has recognized, "[t]here is a strong public policy favoring the preservation of the family because the family unit is deeply rooted in our nation's history and tradition." *In re B & J*, 279 Mich App 12, 18; 756 NW2d 234 (2008). "Natural parents have a fundamental liberty interest in the care, custody, and management of their children, and the state must therefore meet a high burden before terminating an individual's parental rights." *Id.* The presumption that custody with natural parents serves a child's best interests is a "presumption of the strongest order" that must be "heavily weighted in favor of the parent." *In re LaFrance*, 306 Mich App 713, 724; 858 NW2d 143 (2014) (quotation marks and citation omitted).

Statutory grounds for termination are enumerated in MCL 712A.19b(3). In this case, the trial court found statutory grounds for termination under MCL 712A.19b(3)(b)(*i*) and (*ii*), (g), (j), and (k)(*ii*). We begin by considering whether clear and convincing evidence supported termination under MCL 712A.19b(3)(g) (proper care and custody), and then consider whether clear and convincing evidence supported termination under the remaining statutory grounds, MCL 712A.19b(3)(b)(*i*) and (*ii*), (j), and (k)(*ii*).

[5] The trial court must also find, by a preponderance of the evidence, that termination is in the child's best interests. *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015); MCL 712A.19b(5).

1. PROPER CARE AND CUSTODY

MCL 712A.19b(3)(g) provides for termination if:

> 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.

Under this statutory subdivision, petitioner was required to prove two separate elements by clear and convincing evidence. See *In re Ellis*, 294 Mich App at 32. First, petitioner was required to prove that the parent—although, in the court's discretion, financially able to do so—failed to provide proper care or custody for the child. See *In re JK*, 468 Mich 202, 213-214; 661 NW2d 216 (2003). And second, petitioner was required to prove that there was no reasonable expectation that the parent would be able to provide such care and custody within a reasonable time considering the child's age. See *id.*

The trial court properly found that the first element was satisfied. At the time of trial, respondent remained in the Hope Project facility where children were not allowed. Respondent testified that she did not, at that moment, have housing for CP. She also testified that she had employment and income. Therefore, respondent was not presently providing proper care and custody for the child.

As to the second element, however, the record does not support a finding that there was no reasonable expectation that respondent would be able to provide such care and custody within a reasonable time considering the child's age. Respondent was participating successfully in a support and recovery program for victims of sex trafficking that provided housing for two years, and respondent was approaching the end of her two-year stay in the program. Respondent paid rent, and she had stable employment, income, and even savings. The program provided support and resources to assist participants in finding independent housing when they left the program. By all accounts, respondent had made tremendous progress in the program and was essentially described as a model participant. Respondent testified that although she was not in a position to "immediately" obtain independent housing, she was prepared to seek and use the resources that were available to her and believed she could obtain housing and otherwise provide for CP's needs. No testimony to the contrary was presented.

The trial court, in its opinion, stated that its findings under MCL 712A.19b(3)(g) were based on the testimony of the two witnesses from DHHS, Paquin and Alexander. Paquin testified about respondent's inability to care for the child at the time the petition was filed, but nothing in Paquin's testimony touches on whether respondent would be unable to provide such care and custody within a reasonable time. Alexander testified that it was DHHS's "opinion" that it was not reasonably likely that respondent would be able to safely parent CP in the foreseeable future, but there is no indication as to what facts formed the basis of that opinion.[6] The trial court's

[6] As previously noted, Alexander's testimony was not transcribed; the trial court's order settling the record refers us to notes taken contemporaneously during Alexander's testimony.

opinion suggests that Alexander's opinion was based on recommendations contained within the written psychological evaluation that was admitted at trial by stipulation and discussed by Alexander during her testimony. That evaluation recommended that respondent participate in therapy and NA, and the trial court stated in its opinion that this "has not been done." But the evaluation states that respondent *was* engaged in therapy and NA, multiple witnesses testified that respondent attends one-on-one therapy on a weekly basis, and there does not appear to be any record evidence to the contrary. Therefore, neither Paquin's nor Alexander's testimony support the trial court's finding.

The above considerations, and our review of the entire record, leave us with a definite and firm conviction that a mistake has been made. See *In re Boursaw*, 239 Mich App 161, 176; 607 NW2d 408 (1999). Although respondent was not able to provide proper care and custody for CP at the time of CP's birth, the record reflects that by the time of trial respondent had fully and successfully participated in multiple forms of educational and therapeutic programming, had made significant progress in striving toward stability and independence, and had support systems in place as she emerged from the Hope Project program. Our Supreme Court has recognized that a parent's compliance with a service plan is evidence of their ability to provide proper care and custody. *In re JK*, 468 Mich at 214. Although in this case there was no formal service plan because DHHS was excused from making reasonable efforts at reunification under MCL 712A.19a(2)(d), respondent essentially took it upon herself to engage in the kinds of programming that would be relevant to acquiring the ability to provide proper care and custody within a reasonable time, and the uncontroverted evidence at trial was that respondent was successful in, and benefited from, the programming. Her psychological evaluation, in fact, gave respondent a "positive prognosis." Additionally, other than the conclusory testimony of a DHHS witness who said it was DHHS's "opinion" that it was not reasonably likely that respondent would be able to safely parent CP in the foreseeable future, there is no testimony or other evidence in the record that the amount of time it would take for respondent to become capable of providing proper care and custody for CP was unreasonable.

Again, we emphasize that petitioner was required to prove statutory grounds for termination by clear and convincing evidence. We do not believe that sufficient evidence was offered. See *In re Boursaw*, 239 Mich App at 177. Therefore, it was clear error for the trial court to find grounds for termination under MCL 712A.19b(3)(g).

2. REMAINING STATUTORY GROUNDS

The remaining statutory grounds relied on by the trial court were MCL 712A.19b(3)(b)(*i*) and (*ii*), (j), and (k)(*ii*). Those portions of the statute provide for termination if:

> (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.

* * *

(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.

* * *

(k) The parent abused the child or a sibling of the child, the abuse included 1 or more of the following, and there is a reasonable likelihood that the child will be harmed if returned to the care of the parent:

* * *

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

It is undisputed that respondent sexually abused MP, the sibling of CP.[7] The issue in dispute is whether petitioner proved by clear and convincing evidence that "there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future," or otherwise "be harmed," "if placed in" or "returned to" respondent's "care" or "home." MCL 712A.19b(3)(b)(*i*) and (*ii*), (j), and (k).

"The doctrine of anticipatory neglect," or anticipatory abuse, "provides that how a parent treats one child is probative of how that parent may treat other children." *In re Mota*, 334 Mich App 300, 323; 964 NW2d 881 (2020). This Court has recognized that, in appropriate circumstances, the doctrine can be employed to find statutory grounds for termination. *In re KV*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 374236); slip op at 7; *In re LaFrance*,

[7] It does not appear that subparagraph (3)(b)(*ii*) applies because it "is intended to address the parent who, while *not* the abuser, failed to protect child from the other parent or nonparent adult who is the abuser." *In re LaFrance*, 306 Mich App at 725 (emphasis added). And it is not apparent from the stipulated facts describing respondent's abuse of MP that respondent's abuse conduct satisfies any of the penetration requirements of subparagraph (3)(k)(*ii*). Cf. *People v Lemons*, 454 Mich 234, 254; 562 NW2d 447 (1997) (stating that "penetration for the purpose of establishing fellatio requires actual penetration rather than mere kissing or contact where the defendant is engaging in contact with a child's penis"). However, the parties do not directly address these issues in their briefs, nor do these questions affect our resolution of this appeal.

306 Mich App at 730. At the same time, we have cautioned that "the probative value of such an inference is decreased by differences between the children, such as age and medical conditions." *In re Kellogg*, 331 Mich App 249, 259; 952 NW2d 544 (2020); see also *In re Boshell/Shelton*, ___ Mich App at ___; slip op at 6 (rejecting the application of the anticipatory-neglect doctrine in light of a "difference in the living situations" between the children).

Put another way, although the doctrine of anticipatory neglect or abuse recognizes that "how a parent treats one child is *probative* of how that parent may treat other children," *In re Mota*, 334 Mich App at 323 (emphasis added), "probative" does not mean dispositive or conclusive, and the probative *value* of the evidence in question depends on the circumstances of each individual case. Indeed, significant constitutional questions would be raised if a respondent's past misconduct, standing alone and without evidence of its continuing effect on a respondent's current fitness to parent, could be used as the sole grounds for terminating that respondent's parental rights in a new case. See *In re Jackson*, 498 Mich 943, 943-944 (2015) (MCCORMACK, J., concurring); *In re Gach*, 315 Mich App 83, 97-102; 889 NW2d 707 (2016).

Here, the trial court's opinion states that

> the egregiousness of [respondent's] past criminal behavior shows that her conduct would reasonably likely put a child at a risk of harm. She sexually assaulted her infant child. *This alone* is a compelling reason to find that another child placed in her care would be at a risk of harm . . . . [Emphasis added.]

Under the circumstances of this case, this was clear error. Although respondent's past abuse of MP is disturbing, the trial court was required to assess respondent's (and CP's) *current* situation to determine whether there is a *reasonable likelihood* that CP would be harmed in respondent's care. The record shows that respondent's abuse of MP occurred in 2017, eight years before trial, when respondent was a 19-year-old victim of human trafficking and directed by her own abuser to commit the abusive acts. It also shows that respondent is now far removed from that world, has successfully engaged in therapy and other relevant programming, has a support structure, is gainfully employed, and by all accounts is emerging as something of a success story. Although respondent's personal circumstances in 2017 did not excuse what she did, they are not her circumstances now. And just as the probative value of a parent's abuse or neglect of one child is decreased by differences between the children such as age, medical conditions, and living situations, see *In re Kellogg*, 331 Mich App at 259; *In re Boshell/Shelton*, ___ Mich App at ___; slip op at 6, the probative value of respondent's abuse of MP is significantly decreased by the passage of time, change in circumstances, and respondent's rehabilitative progress. In short, respondent's past conduct against MP is not, under the circumstances of this case, clear and convincing evidence that there is a reasonable likelihood that CP will be harmed in respondent's care. The trial court's finding to the contrary leaves us with a definite and firm conviction that a mistake has been made.

The trial court further stated in its opinion that its determination was based on the fact that respondent's abuse of MP was committed at the behest of her trafficker, which according to the trial court "shows [respondent's] lack of capacity to protect a vulnerable child." But again, the trial court was required to assess respondent's current situation as it existed at the time of trial. There was no evidence that respondent continued to associate with her trafficker or anyone else

who would be likely to exploit her or her child. No expert witness or treatment provider testified that respondent was likely to fall prey to such abuse or exploitation. To the contrary, the record reflects that respondent had removed herself from the circumstances of her previous offense, had successfully engaged in therapy, parenting classes, and other programming, had a support structure, and had a "positive prognosis." Professor Campbell testified that victims of human trafficking are capable of overcoming what happened to them and having success in building careers, families, and "healthy normalcy." Given the circumstances at the time of trial, respondent's previous offense conduct, although harmful to MP, was not clear and convincing evidence of a reasonable likelihood of harm to CP.

The trial court did identify some similarities between CP and MP, reasoning that "the child is an infant, unable to self-protect, and the child is a male, as was the victim of the previous sexual assault." But the probative value of these similarities between the children is slight in comparison to the differences between the two situations. See *In re Boshell/Shelton*, ___ Mich App at ___; slip op at 6 (reversing, as clear error, the trial court's use of the anticipatory-neglect doctrine due to a "difference in the living situations" between the children). The abuse of MP had occurred eight years ago under significantly different conditions. Given these differences, the trial court clearly erred in finding that the abuse of MP was clear and convincing evidence of a reasonable likelihood of harm to CP. See *id.*

The trial court further relied on several other findings that are unsupported by record evidence, inaccurate, or otherwise leave us with a definite and firm conviction that a mistake has been made. The trial court's opinion states:

> The Court also considered the "Risk of Harm" assessment findings in the psychological evaluation. [Respondent's] responses to the "Child Abuse Potential Inventory" met the criteria for the "faking good index". [Parole agent] Rosema testified that the "Sexual Assault Risk" assessment completed by probation was "unscoreable" due to [respondent's] answers and circumstances.

We have reviewed respondent's psychological evaluation and are unable to locate any " 'Risk of Harm' assessment findings." The psychological evaluation does state that respondent's "response style" to the Child Abuse Potential Inventory questionnaire met criteria for "faking good," which indicates that respondent "attempted to endorse socially desirable responses in order to minimize negative personal characteristics in order to present herself in a positive light." But neither the evaluation nor any testimony suggests that this result indicates a higher potential for respondent to commit child abuse. To the contrary, as stated, the psychological evaluation states that respondent had a "positive prognosis." Similarly, parole agent Rosema's testimony was that under the risk assessment tool for sexual abuse prevention used by the Michigan Department of Corrections (MDOC), "all female offenders are unscorable." Therefore, it is respondent's gender, not her "answers and circumstances," that make the risk assessment tool unscorable for her. So neither the psychological evaluation nor MDOC's risk assessment tool can be said to provide clear and convincing evidence of a reasonable likelihood that CP would be harmed in respondent's care.

The trial court's opinion also states that the testimony of MP's grandmother and respondent's parole agent "show that they have continuing concerns with [respondent's] risk of harm to an elementary school aged child," referring to MP. But there is nothing in the record to

support this finding. To the contrary, despite respondent's past abuse of MP, both MP's grandmother (who adopted MP) and parole agent Rosema (in consultation with respondent's case management team) supported respondent having contact with MP and rebuilding a relationship with him. In essence, Rosema testified that allowing such contact was unusual in cases of past abuse but was determined to be safe and appropriate under respondent's unique circumstances. And MP's grandmother, who consented to the contact, specifically testified that there had been *no* problems or concerns with respondent seeing MP. Rosema and MP's grandmother also provided letters in support of respondent's motion for parenting time with CP. Although the trial court noted that respondent's contact with MP was supervised and limited to once per week, these limitations are not surprising given that respondent is no longer MP's legal parent, was on parole, lived elsewhere, and was just beginning a process of rebuilding a relationship with him. The fact that such limits were in place for respondent's contact with MP does not demonstrate a likelihood that CP will be harmed in respondent's care.

It was petitioner's burden to prove statutory grounds for termination by clear and convincing evidence, "which in turn requires more than speculative opinions regarding what *might* happen in the future." *In re LaFrance*, 306 Mich App at 732 (cleaned up). On the record before us, we conclude that it was clear error for the trial court to find grounds for termination under MCL 712A.19b(3)(b)(*i*) and (*ii*), (j), and (k)(*ii*).

IV. CONCLUSION

For the reasons stated, we conclude that the trial court did not clearly err by exercising jurisdiction under MCL 712A.2(b)(2) but did clearly err by finding that there were statutory grounds to terminate respondent's parental rights.[8] We therefore affirm in part, reverse in part, vacate the termination order, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Daniel S. Korobkin
/s/ Mark T. Boonstra
/s/ Adrienne N. Young

[8] As previously noted, because we hold that the trial court erred by finding statutory grounds for termination, reversal is required and we need not consider respondent's argument that the trial court erred by finding that termination was in the child's best interests. See *In re LaFrance*, 306 Mich at 733.