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STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
August 21, 2026
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In re POLS, Minors.

No. 379193
Kent Circuit Court
Family Division
LC Nos. 23-052293-NA;
23-052294-NA

Before: CAMERON, P.J., and MALDONADO and WALLACE, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to her two children, DP2 and DP3,[1] under MCL 712A.19b(3)(c)(*i*) (failure to rectify conditions that led to adjudication), MCL 712A.19b(3)(g) (failure to provide proper care and custody when financially able to do so), and MCL 712A.19b(3)(j) reasonable likelihood of harm). She does not challenge the trial court's finding of statutory grounds for termination, but rather, only challenges the trial court's findings that a preponderance of the evidence indicated that termination of her parental rights was in the children's best interests. Because the trial court failed to consider the fact that DP2 and DP3 were in relative placement at the time of the termination, we vacate the trial court's best-interests determination and remand for its consideration of DP2 and DP3's best interests in light of this placement.

I. RELEVANT FACTS AND PROCEEDINGS

Respondent is the biological mother of DP1, DP2, and DP3. In fall 2023, the Department of Health and Human Services (the Department) sought authorization of a petition alleging that

[1] The proceeding also involved a third child, designated DP1, to whom respondent-mother's parental rights were not terminated. The trial court's order also terminated the parental rights of DP3's unknown father. The trial court's order did not terminate DP2's father's parental rights. Although he is not party to this appeal, he will be referred to as necessary for context and completeness.

respondent had: substance-abuse issues, acknowledged using methamphetamine at the end of her pregnancy with DP3, not engaged in substance-abuse or mental-health services, and failed to take DP3 to newborn appointments. Following a preliminary hearing, a referee found probable cause and recommended removing the children and placing them with a relative or in a licensed foster-care home. The trial court authorized the petition and adopted the referee's recommendations. DP1 was eventually returned to the care and custody of his father and is not a subject of this appeal. DP2 and DP3 were allowed to remain in the home of the fictive kin caregiver with whom they were living when the petition was filed.

Respondent admitted at an adjudication hearing that she used and tested positive for amphetamines and methamphetamines during her pregnancy with and at about the time of DP3's birth and that she resisted participating in a substance-abuse assessment and declined to provide the oral drug screen requested by a Children's Protective Services (CPS) a week before the petition was filed. Respondent also admitted that she avoided providing a release of information to verify mental-health services. The court exercised jurisdiction over the children; placed them with the Department for care and supervision; ordered respondent to comply with, and benefit from, her parent-agency treatment plan (PATP); and awarded her supervised parenting time. Respondent was required to submit to a substance-abuse assessment, a psychological evaluation, and random drug screens.

The testimonies at dispositional review hearings and permanency planning hearings held over the next approximately two years showed that respondent participated in substance-abuse and mental-health services, random drug screens, and supervised parenting times. But in none of these areas did respondent show benefit sufficient for the agency to recommend reunification, or even unsupervised parenting time. Random drug screens showed that respondent was free from methamphetamine for six months, but then she relapsed and tested positive for methamphetamine in January, February, March, and September 2025. Parenting times went well. The children were bonded with respondent, they were excited to see her and wanted to spend time with her, and respondent was very engaged with them. Yet, respondent missed approximately a quarter of her parenting-time opportunities, even though she knew that missed parenting times adversely affected DP2, who thought that she was at fault for the missed parenting times and reacted with defiant behaviors.

Before the petition was filed, respondent was participating in a two-year domestic-violence program with the YWCA, which paid for respondent's apartment and utilities and helped her apply for Social Security income on the basis of her mental health. The goal of the program was for respondent to become independent. When two years passed and respondent still did not have a stable income, she could no longer remain in the program. She went to live with her sister in a house that met respondent's immediate needs but in which respondent could not live if she and the children were reunited due to its occupancy limitation. Two months later, after respondent's sister moved out of state, respondent moved in with the children's maternal grandmother. After nearly two years of insufficient benefit from services, and given respondent's lack of appropriate housing and adequate income, the agency petitioned to terminate respondent's parental rights.

At the termination hearing, foster-care supervisor Jennifer Pelavin testified about: respondent's psychological evaluation, the up-and-down nature of respondent's progress, and the times during the proceedings when respondent's mental health was of particular concern. For

example, Pelavin recalled that respondent ran out of medication in January 2025, causing her to cancel a parenting time and miss a visit with her case manager, and that she missed eight visits in June and July of 2025 because of a mental-health crisis. Pelavin observed that respondent recently started specialized treatment for persons suffering with trauma and trauma responses, but dropped out because, according to respondent, it brought up too many traumatic memories. Pelavin opined that respondent's emotional stability interfered with her ability to safely parent her children and remained a barrier to reunification. As to substance abuse, Pelavin recalled that respondent took methamphetamine at the time of the children's removal; identified the substance-use services that respondent received; and reported that respondent tested positive for methamphetamine eight times during the case, most recently in September 2025; and missed over 50% of her random drug screens, knowing that a missed screen was presumed positive.

In addition to emotional instability and drug use, foster-care supervisor Pelavin identified employment, housing, and parenting skills as barriers to reunification. As to employment, respondent earned some income cleaning houses and delivering food, but transportation issues prevented her from working consistently. Also, respondent was expecting a decision on her reapplication for SSI by the end of the month. Regarding housing, respondent had been referred to the Salvation Army and to Dwelling Place and was currently looking into sober-living facilities, but as far as Pelavin knew, respondent did not presently have a solid plan for stable housing. With respect to parenting skills, Pelavin testified that the agency referred respondent to Foster Care Supportive Visitation, but that she only attended two sessions before being discharged. Respondent reported that the program was stressful and added to her anxiety, and declined further participation in parenting programs. Pelavin characterized respondent's overall progress toward the goals in her PATPs as being poor, and she believed that the termination of respondent's parental rights was in the children's best interests.

The children's maternal grandmother testified at the termination hearing that respondent has been living with her since September 2025. Regarding respondent's mental-health concerns, the grandmother indicated that it was "just anxiety" and that it "runs in our family." She denied ever seeing respondent use, or under the influence of, methamphetamine, and she believed that respondent's positive screen for methamphetamine in September was "a lie" and that the "test [was] messed up." The maternal grandmother asserted that she has wanted regular visits with the children since the beginning of the case and that CPS ignored her when she told them that she would take placement of the children as a foster parent. She said that she was willing to provide a guardianship for both children, even if it meant that respondent could not live with her, and she testified that she told this to the agency. On cross-examination by petitioner's attorney, the maternal grandmother explained what led to her 2024 conviction of breaking and entering.

Respondent's therapist testified that respondent had made a lot of progress over the last 18 months, and she recommended that respondent undergo at least one more year of therapy with her and a recovery coach to gain stability with respect to substance abuse and mental health.

Ruling from the bench, the trial court found with respect to mental health that respondent had not meaningfully benefited from therapy, used panic attacks and mental-health issues as an "excuse" for failing to follow through, and that emotional instability remained an unresolved barrier. Regarding substance abuse, the court relied on DP3's birth toxicology, respondent's eight methamphetamine-positive screens (most recently in September 2025), and less than 50%

attendance at random drug screens to find that substance abuse was an unresolved barrier. As to employment, the court found that respondent was "was unwilling or unable to take the necessary steps to support herself financially." The court also found that housing remained a "significant barrier" given respondent's unsuccessful discharge from the YWCA program and her failure to follow up on Salvation Army, Dwelling Place, and sober-living referrals. With respect to parenting skills, the court found that visits went well but that respondent's attendance was "highly inconsistent." In addition, respondent attended only one medical and one dental procedure and no school meetings and that she had not demonstrated ability to support the children's therapeutic needs. On the basis of these findings, the trial court concluded that clear and convincing evidence established statutory grounds to terminate respondent's parental rights under MCL 712A.19b(3)(c)(*i*), (3)(g), and (3)(j).

Regarding the children's best interests, although the trial court found a strong parent-child bond, the court found that the bond was "unstable" because of missed visitation and that therapy could help the children overcome the trauma from termination. The court found that respondent's parenting skills, the children's length of time in care, the advantages of the foster home, the children's well-being in care, respondent's lack of meaningful benefit from her PATPs, and the children's young ages all favored termination. The trial court noted that the current, pre-adoptive fictive kin caregiver was willing to serve as guardian for DP2 as to DP2's father (i.e., with DP's father's parental rights remaining intact) but not for DP2 and DP3 as to respondent because of difficulties that have arisen with interactions with respondent.

The trial court erroneously indicated that DP2 and DP3 were not in relative placement, finding the fact DP2 and DP3 were "not in relative placement does weigh against termination, but the Court finds that relative placement is not appropriate given the choices[, i.e., the children's maternal grandmother] at this time." In fact, DP2 and DP3 were in pre-adoptive placement with fictive kin at that time, which constitutes relative placement. See *In re CJM*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 367565); slip op at 5 (noting that MCL 712a.13a(1)(j)'s definition of "relative" was amended effective October 7, 2022, "to include certain 'fictive kin'—namely, any 'individual who is at least 18 years of age' and is '[n]ot related to a child within the fifth degree by blood, marriage, or adoption but who has a strong positive emotional tie or role in the child's life or the child's parent's life if the child is an infant, as determined by the department' ").[2] The court found that DP2 and DP3's placement in a pre-adoptive home with fictive kin weighed in favor of termination.

The court rejected potential relative placement with the maternal grandmother because of her lack of credibility, absence from prior hearings, recent homelessness and criminal activity, denial of respondent's September methamphetamine positive, and lack of insight into respondent's mental health. The trial court found that DP2's mixed wishes—wanting to live with respondent

[2] A foster-care case manager testifying at a continued adjudicative hearing on March 21, 2024 confirmed that DP2 and DP3 were residing with fictive kin. While we do not see that the court specifically considered whether this person meets the definition of "relative" found at MCL 712a.13a(1)(j), "the record in this case as it now stands, suggests that they do." *Id*. at ___; slip op at 6.

but also wanting to stay with her current fictive kin caregiver—also weighed in favor of termination. On the basis of all these findings, the trial court determined that (1) the termination of respondent's parental rights was in DP2 and DP3's best interests, (2) terminating the parental rights of DP3's unknown father was in DP3's best interests, and (3) placing DP2 in a guardianship with the current fictive kin caregiver with respect to DP2's father was in DP2's best interests, because it would keep those half-siblings together where DP3 was likewise placed there on a pre-adoptive basis. The trial court entered a corresponding order, from which respondent now appeals.

II. DISCUSSION

Respondent does not argue that the statutory grounds for termination were not proved. "The failure to brief the merits of an allegation of error is deemed an abandonment of the issue." See *In re JS & MS*, 231 Mich App 92, 98; 585 NW2d 326 (1998), overruled in part on other grounds *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). Accordingly, we assume for purposes of this decision that the trial court did not clearly err by finding clear and convincing evidence to establish the statutory grounds for termination under at least one of the grounds identified: MCL 712A.19b(3)(c)(*i*), (3)(g), or (3)(j).

Respondent's sole challenge is to the trial court's finding that termination of her parental rights was in the children's best interests. Specifically, respondent contends that the trial court erred by finding that respondent's parent-child bond with DP2 and DP3 was unstable and that the children would survive the trauma of having respondent's parental rights terminated.

"This Court reviews a trial court's determination regarding best interests for clear error." *In re Keillor*, 325 Mich App 80, 93; 923 NW2d 617 (2018). "A finding is clearly erroneous if[,] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake was made." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010) (quotation marks, citation and brackets omitted). We review for an abuse of discretion a trial court's determination regarding the propriety of a guardianship. *In re COH*, 495 Mich 184, 202; 848 NW2d 107 (2014). "An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes." *Id*. (quotation marks and citation omitted). We defer to a trial court's credibility determinations and acknowledge that a trial court is "entitled to give credence to" the testimony given by witnesses. *In re Kaczkowski*, 325 Mich App 69, 76-77; 924 NW2d 1 (2018).

If the trial court finds "that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "Whether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re CJM*, ___ Mich App at ___; slip op at 5 (quotation marks, citation, and brackets omitted). In making its best-interest determination, a trial court may consider "[t]he child's bond to the parent[;] the parent's parenting ability[;] the child's need for permanency, stability, and finality[;] and the advantages of a foster home over the parent's home." *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015) (quotation marks and citation omitted). The court may also consider "the parent's compliance with treatment plans, the child's well-being in care, and the possibility of adoption." *In re Sanborn*, 337 Mich App 252, 277; 976 NW2d 44 (2021). "Furthermore, 'a child's placement with

relatives is a factor that the trial court is required to consider' when making its best-interests determination and 'a child's placement with relatives weighs against termination . . . .' " *In re Mota*, 334 Mich App 300, 321; 964 NW2d 881 (2020) (internal citations and brackets omitted), quoting *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015), and *In re Mason*, 486 Mich at 164. As noted earlier, placement with fictive kin constitutes relative placement pursuant to MCL 712a.13a(1)(j)'s current definition of "relative." *In re CJM*, ___ Mich App at ___; slip op at 5.

A guardianship may be appropriate when termination is "clearly not in the child's best interests." MCL 712A.19a(9). See *In re TK*, 306 Mich App 698, 707; 859 NW2d 208 (2014). "[T]he appointment of a guardian is done in an effort to avoid termination of parental rights" and, unlike termination, "does not permanently separate a parent and child." *Id*. at 705. For a trial court "to consider a guardianship before termination one of two conditions must be met: either the DHHS must demonstrate 'under [MCL 712A.19a(8)] that initiating the termination of parental rights is clearly not in the child's best interests' or the court must 'not order the agency to initiate termination . . . [of parental rights to the child]' under MCL 712.19a(9)." *In re Rippy*, 330 Mich App 350, 359; 948 NW2d 131 (2015) (first alteration in original), quoting MCL 712A.19a(9). A guardianship is not warranted when no one petitioned for it, there was no indication that the proposed guardian would agree to the arrangement, and the Department did not demonstrate that initiating termination proceedings is clearly not be in the child's best interests. See *id*. at 359-360.

Respondent argues that the trial court's finding that the children's bond with respondent was unstable was clearly erroneous. Respondent's argument has merit with respect to DP3. The record indicates that the children had a close bond with respondent and that, although respondent's missing parenting time affected DP2, it appeared to have no effect on DP3 because of the child's young age. Nothing in the record suggests any strain on respondent's bond with DP3.

Even if the trial court clearly erred by finding that the parent-child relationship between respondent and DP3 was unstable, such "factual error does not . . . render the court's entire best-interests decision clearly erroneous." See *In re Gentry*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 376583); slip op at 3. The parent-child bond is only one factor that a trial court may consider when evaluating a child's best interests, and the fact that other factors weigh in favor of termination may ultimately support a trial court's termination order. See *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). The trial court considered and made findings about respondent's parenting ability; the children's need for permanency, stability, and finality; the advantages of the foster home; respondent's compliance with her service plan; respondent's visitation history; the children's well-being while in care; the possibility of adoption; relative placement; the opinions of experts; the children's ages and wishes; the length of time that the children had been in foster care; and the time required to remove the barriers to reunification. The court found that each of these factors favored termination. Respondent has not challenged the court's findings with respect to any of these factors, and our review of the record convinces us that the record supported the trial court's findings.

Respondent also argues that the trial court's finding that the children would survive the trauma of having respondent's parental rights terminated was clearly erroneous, as it was supported by nothing more than testimony from the agency worker rather than on testimony from DP2's therapist. The prosecutor asked foster-care supervisor Pelavin whether, "if [respondent's]

parental rights were terminated to both [children] that they could still develop in a healthy manner given the likely trauma that would result from termination." Pelavin answered: "I do believe that they were—would be able to. DP2 has been in therapy consistently as well as receiving Enhanced Foster Care program support. And so I believe that with time they would be able to." The trial court adopted this view, turning it into a finding. We believe that Pelavin's testimony may fairly be read as an acknowledgment of the therapeutic resources available to DP2 and a statement of their potential efficacy. That the agency and the court would expect that the therapeutic resources could potentially be helpful is implied by the fact that DP2 was referred to therapy in the first place. Viewed in this light, the trial court's finding was simply an articulation of the availability of therapeutic resources and the expectation that such resources could help. Accordingly, we detect no clear error.

Respondent next contends that placing DP2 in a guardianship relative to DP2's father would not achieve the permanency, stability, and finality that the trial court found to favor termination. Rather, it would result in each child having a different permanency plan: DP1 would be returned to DP1's father, DP2 would be in a guardianship, and DP3 would be available for adoption. Respondent argues that a better solution would have been to place the children in a legal guardianship with their maternal grandmother. This argument is unavailing.

As an initial matter, a guardianship with the maternal grandmother would provide no more stability than would a guardianship with the children's current fictive kin caregiver; DP2's father could still overcome his barriers to reunification and exercise his right as a natural parent to assume care of DP2, thereby separating DP2 and DP3. The trial court considered and rejected a guardianship with the children's maternal grandmother on the basis of the her relatively recent issues with homelessness and criminal activity, her denying and enabling respondent's substance abuse, her lack of insight into respondent's mental-health issues, and the trial court's assessment that she had from the beginning of the case wanted—and requested—placement of the children lacked credibility. The trial court determined that continued placement of the children with the current fictive kin caregiver was in the children's best interests, as they were closely bonded with her, she provided a stable environment in which all the children's needs were met, and the children were thriving in her care. Terminating respondent's parental rights and placing DP2 in a guardianship with the current fictive kin caregiver would allow DP2 and DP3 to stay together, would allow DP2 to maintain a positive relationship with DP2's father, and would provide the children with permanency, finality, and stability relative to respondent.

Respondent contends that having each child in a separate permanency plan cannot be the type of permanency that the child-neglect system was intended to provide. It is true that guardianship does not necessarily provide the permanence that termination and adoption give. *In re TK*, 306 Mich App at 705. Even so, there are instances in which a guardianship is in the best interests of a child. See MCL 712A.19a(4)(c) (illustrating the Legislature's expressed intent that permanency planning must include consideration whether a legal guardianship is appropriate). The trial court was required to consider the best interests of each child individually, *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012), to the extent that "the best

interests of the individual children *significantly* differ . . . ," *In re White*, 303 Mich App at 715.[3] That this would result in different permanency plans is attributable in part to the particular facts of this case. Respondent's proposed solution, i.e., a guardianship with the children's maternal grandmother, would not streamline matters. DP1 would still be in the care of DP1's father with respondent's parental rights to him intact, DP2's father could still elect to end the guardianship and take custody of DP2, thereby separating DP2 and DP3, and neither DP2 nor DP3 would have permanency, finality, and stability with respect to respondent.

The trial court considered each child's individual circumstances, concluding that DP3's best interests were served by adoption by the fictive kin caregiver, with whom DP3 had lived for all but a few weeks of DP3's life, that DP2 and DP3's best interests would be served by keeping them together, and that DP2's best interests were served by allowing the child to continue the relationship with DP2's father.

However, as noted earlier, the trial court at the termination hearing erroneously indicated that DP2 and DP3 were not in relative placement, finding the fact DP2 and DP3 were "not in relative placement does weigh against termination, but the Court finds that relative placement is not appropriate given the choices[, i.e., the children's maternal grandmother] at this time." Because all indications are that DP2 and DP3 were in relative placement at the time of the termination hearing, "the trial court, when making its best-interests determination, was required to expressly consider [such placement] as weighing *against* termination." *In re CJM*, ___ Mich App at ___; slip op at 6 (emphasis added), citing *In re Mota*, 334 Mich App at 321.

"[A] trial court's failure to explicitly address whether termination is appropriate in light of the child's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *In re CJM*, ___ Mich App at ___; slip op at 6 (quotation marks, citation and brackets omitted), quoting *In re Olive/Metts Minors*, 297 Mich App at 43.

In light of this, we vacate the trial court's best-interests determination and remand for further consideration of DP2 and DP3's best interests in light of their relative placement at the time of the termination.

We vacate the trial court's best-interests determination and remand for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Thomas C. Cameron
/s/ Allie Greenleaf Maldonado
/s/ Randy J. Wallace

[3] But see *In re JMG/JGG/JMG*, 516 Mich 960, 962-963; 16 NW3d 82 (2025) (CLEMENT, C.J., concurring in part and dissenting in part) (opining that, "[i]n a termination proceeding involving multiple children, a trial court must decide the best interests of each child individually, even if circumstances between the children do not *significantly* differ").

Court of Appeals, State of Michigan

ORDER

IN RE POLS MINORS

Docket No. 379193

LC Nos. 23-052293-NA; 23-052294-NA

Thomas C. Cameron
Presiding Judge

Allie Greenleaf Maldonado

Randy J. Wallace
Judges

For the reasons stated in the opinion issued with this order, we REMAND this case for further proceedings. We retain jurisdiction. After the remand proceedings conclude, we will review the decisions that the trial court made during those proceedings and consider any remaining issues in this appeal. Any challenges to the trial court's decisions on remand must be raised in this appeal. Therefore, the parties and the trial court must not initiate a new appeal from an order entered on remand within the scope of this appeal. The Clerk of the Court is directed to reject the initiation of a new appeal from such an order.

Appellant must initiate the proceedings on remand within 28 days of the Clerk's certification of this order, and the trial court must prioritize this matter until the proceedings are concluded. As stated in the accompanying opinion, we vacate the trial court's best-interests determination and remand for its consideration of DP2's and DP3's best interests in light of this placement. The proceedings on remand are limited to this issue.

The parties must serve copies of their filings in the trial court on this Court. Appellant must file with this Court copies of all orders entered on remand within seven days of entry.

Appellant must ensure the transcript of all proceedings on remand is filed in the trial court and this Court within 21 days after completion of the proceedings.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

August 21, 2026
Date

Chief Clerk