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STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
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In re A. J. GILMORE, Minor.

No. 376681
Shiawassee Circuit Court
Family Division
LC No. 24-014802-NA

AFTER REMAND

Before: KOROBKIN, P.J., and RIORDAN and MARIANI, JJ.

PER CURIAM.

This case, involving the termination of respondent's parental rights to his minor child under MCL 712A.19b(3)(b)(*i*) (sexual abuse and reasonable likelihood of further abuse if returned to parent), (j) (reasonable likelihood of harm if returned to parent), and (m) (parent convicted of specified crime and termination is in child's best interests), returns to this Court after remand. We previously affirmed the trial court's decision to deny respondent's motion for adjournment, but vacated the termination order and remanded for further proceedings because the trial court failed to consider the child's placement with a relative when deciding whether termination was in the child's best interests. On remand, the trial court complied with this Court's remand order. We now affirm the termination of respondent's parental rights.

I. BACKGROUND AND FACTS

Our previous opinion laid out the basic facts underlying the termination of respondent's parental rights as follows:

> The Department of Health and Human Services filed the petition in this matter requesting termination at initial disposition after it received allegations that respondent sexually abused the minor child, who was placed with her mother. While this case was pending and about a month before the termination trial, a jury convicted respondent of two counts of first-degree criminal sexual conduct [and he was sentenced to 25 years in prison]. The child protective proceedings were

> adjourned seven times before respondent's termination hearing on July 18, 2025. Although no appeal had been filed or briefed at the time, respondent orally requested another adjournment until this Court could decide his criminal appeal because respondent's criminal attorney believed that his convictions may be overturned. Recognizing the speculative nature of respondent's request, as well as the child's need for finality, the trial court denied respondent's oral motion.
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> At the termination hearing, the trial court admitted the child's testimony from respondent's criminal trial under MRE 803(6). The child's caseworker read an excerpt of the testimony about the sexual abuse and testified that terminating respondent's parental rights was in the child's best interests. Respondent did not testify or present any witnesses. Ultimately, the trial court found statutory grounds to terminate respondent's parental rights under MCL 712A.19b(3)(b)(*i*) (sexual abuse and reasonable likelihood of further abuse if returned to parent), (j) (reasonable likelihood of harm if returned to parent), and (m) (parent convicted of specified crime and termination is in child's best interests), and it concluded that terminating respondent's parental rights was in the child's best interests. [*In re Gilmore*, unpublished per curiam opinion of the Court of Appeals, issued May 7, 2026 (Docket No. 376681), pp 1-2.]

We remanded because the trial court erred when it failed to consider the child's relative placement in determining whether termination was in the child's best interests. See *id.* at 4, citing *In re CJM*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 367565); slip op at 5; *In re Boshell/Shelton*, ___Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 371973); slip op at 10. On remand, the trial court found that the child was placed with her mother and that this fact weighed against terminating respondent's parental rights. However, the trial court concluded that a preponderance of the evidence supported its determination that termination was in the child's best interests. Addressing respondent's arguments that the child would be unable to access respondent's social security benefits if he died and that because of his incarceration respondent would not be able to access the child, the trial court found that these considerations were not pertinent to the child's best interests. Instead, the trial court explained that the child's sworn testimony and respondent's conviction for sexual assault evidenced a lack of bond between child and parent because the child does not feel safe with respondent due to the sexual assault. Although the trial court weighed the child's relative placement against termination, this consideration did not outweigh the other factors favoring termination. The trial court pointed to *In re Schadler*, 315 Mich App 406; 890 NW2d 676 (2016), as a comparator in which a parent's sexual assault of a child outweighed relative placement when considering a child's best interests. The court emphasized that *In re Schadler* involved mere allegations of sexual assault, whereas here, respondent's conviction and the child's sworn testimony provided an even stronger basis for terminating parental rights. The trial court also observed that absent termination, the child will not be able to recover from the trauma respondent caused and that the child's interests in permanency, stability, and finality will not be served.

The trial court then entered a new order terminating respondent's parental rights. The parties provided supplemental briefing on appeal.

II. ANALYSIS

Respondent again contends that the trial court clearly erred when it found by a preponderance of the evidence that termination was in the child's best interests. We disagree.

As we previously explained:

> "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review a trial court's best-interest determination for clear error. *In re Baham*, 331 Mich App 737, 751; 954 NW2d 529 (2020). A 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 omitted).
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> "When determining whether termination is in the best interests of the child, the court should place its focus on the child rather than the parent." *In re CJM*, ___ Mich App [at ___]; slip op at 4 (quotation marks and citation omitted). Trial courts should weigh all available evidence to determine what is in the child's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). In doing so, courts consider
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> > 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. 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*. at 713-714 (quotation marks and citation omitted).]
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> "[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) (quotation marks and citations omitted). [*In re Gilmore*, unpub op at 3 (footnote omitted).]

Respondent first argues that the trial court erred by focusing on the allegations in the petition rather than the impact of the termination on the child. It is true that when considering the child's best interests, the "focus [is] on the child rather than the parent." *In re CJM*, ___ Mich App at ___; slip op at 4. But respondent's contention is unsupported by the record. The trial court explicitly stated, "my focus is on the child and takes into account all the evidence that I have available." Moreover, the trial court considered the child's well-being and safety by observing

that the evidence demonstrated that the child did not feel safe with respondent because of the sexual assault and that termination would allow the child to recover from the resulting trauma.

Respondent next claims error because the trial court heard no additional testimony on remand, such as an expert on emotional injury who could perform a psychological evaluation on the child. As an initial matter, in our previous opinion we instructed that "[o]n remand, the trial court *may* make additional findings of facts as needed . . . ." (Emphasis added.) Given this, the trial court was not required to take additional testimony. Nor has respondent offered any legal or factual basis for his suggestion that expert testimony was required to support the trial court's finding that the child experienced emotional injury. Cf., e.g., *In re Gentry,* ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 376583); slip op at 6 (finding no clear error in trial court's recognition of emotional trauma to child from parent's sexual abuse, with no mention of expert testimony to that effect). And, we previously rejected respondent's argument that the trial court erred in its best-interest determination because it did not have sufficient evidence to adequately consider the child's bond with respondent. *In re Gilmore*, unpub op at 3. As we explained, "[t]he child's caseworker testified to the child's description of being sexually abused by respondent and the child not feeling safe with respondent. This record was sufficient for the trial court to adequately consider the parent-child bond." *Id*. For the same reason, we reject respondent's current argument that the evidence before the trial court was lacking.

Respondent next complains that the trial court made no particularized findings regarding the child's placement with her mother. Relative placement is one factor a court considers when determining the best interests of the child, but it is not dispositive. *In re Atchley*, 341 Mich App 332, 347; 990 NW2d 685 (2022). Although "a trial court must 'explicitly address' a child's relative placement, its underlying reasoning need not be so specific." *In re Gentry*, ___ Mich App at ___; slip op at 4, quoting *In re Olive/Metts*, 297 Mich App at 43. " 'Brief, definite, and pertinent findings and conclusions on contested matters are sufficient.' " *In re Gentry*, ___ Mich App at ___; slip op at 4, quoting MCR 3.977(I)(1). And "a trial court's findings are generally sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law, and where appellate review would not be facilitated by requiring further explanation." *Id.* at ___; slip op at 5 (quotation marks and citation omitted). Here, the trial court explicitly found that the child was placed with her mother and that such placement weighed against termination. The court went on to conclude that despite this relative placement, the child's interests in permanency, stability, and finality weighed more heavily toward termination. Thus, because the trial court explicitly addressed and appropriately weighed relative placement against termination, its findings were adequate to facilitate appellate review. See *id.*

Respondent also argues that the trial court did not consider that while he is incarcerated, there is no risk to the child. On the other hand, respondent takes issue with the trial court's failure to address that his convictions are on appeal and that reunification could be possible. However, the trial court properly considered the enduring risk of emotional trauma despite respondent's lengthy sentence and without regard to respondent's incarceration status, as it found that if respondent's rights were not terminated, "the minor child will not be able to thrive and prosper and recover from the trauma that she has sustained at the hands of her father." Indeed, "there are many harms that can arise from contact with a parent who has sexually abused his children. That includes emotional trauma." *In re Gentry*, ___ Mich App at ___; slip op at 6; see also *In re Schadler*, 315 Mich App at 411. Further, the trial court did not err by failing to discuss the

speculative possibility of respondent successfully appealing the criminal case, as the focus is on the child's interest in finality regardless of the outcome of respondent's appeal. See *In re White*, 303 Mich App at 713. Thus, respondent's arguments lack merit.

Respondent also claims that the trial court's permanency and stability findings are not supported by the record because the child will continue residing with her mother regardless of whether respondent's rights are terminated as respondent will be incarcerated until after the child reaches the age of majority. The flaw in this argument is that it presupposes that the child's living situation is the only consideration pertinent to the child's best interests. As discussed above, the trial court did not clearly err by considering the emotional harm to the child of continuing to have a parent-child relationship with her abuser, regardless of respondent's incarceration status, and that finding supports the trial court's conclusion that the child's interest in permanency, stability, and finality would be served by termination of respondent's parental rights.

Finally, respondent argues that the trial court failed to address how modifying a custodial order to give sole legal and physical custody to her mother would be inadequate to protect the child. As an initial matter, this issue is not preserved because respondent never raised the alternate possibility of giving the child's mother full custody in the trial court. See *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). This Court reviews for plain error unpreserved claims in termination proceedings. *In re Beers*, 325 Mich App 653, 677; 926 NW2d 832 (2018). The party alleging error must establish that the trial court made a clear error that affected substantial rights. *Id.* "[A]n error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich App at 9. Respondent does not explain or support with legal authority how the trial court plainly erred by failing to consider a custodial arrangement as an alternative to termination, especially one that was not brought to the trial court's attention. And our caselaw is clear that a trial court "may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests." *In re Olive/Metts*, 297 Mich App at 43. Accordingly, the trial court did not plainly err. See *id.*

In sum, the trial court addressed the child's relative placement in making its best-interests determination, and we are not left with a definite and firm conviction that the court made a mistake. See *In re Baham*, 331 Mich App at 751. The trial court therefore did not clearly err by finding that the preponderance of the evidence showed that termination was in the child's best interests.

Affirmed.

/s/ Daniel S. Korobkin
/s/ Michael J. Riordan
/s/ Philip P. Mariani