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STATE OF MICHIGAN

COURT OF APPEALS

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In re M. D. FOSTER, Minor.

No. 379318
Wayne Circuit Court
Family Division
LC No. 2024-000005-NA

Before: LETICA, P.J., and O'BRIEN and REDFORD, JJ.

PER CURIAM.

Respondent-father appeals as of right the order terminating his parental rights to his minor child, MDF. On appeal, respondent argues that the trial court clearly erred in finding that statutory grounds were established by clear and convincing evidence under MCL 712A.19b(3)(c)(*i*) and (j) and that termination of respondent's parental rights was in MDF's best interests. We affirm.

I. FACTS

MDF was born in September 2020 and placed with his maternal aunt about three days later during a Delta County child neglect proceeding. The 39-year-old respondent had a criminal history that included several drug-related ordinance violations, misdemeanors, and felonies, among other crimes. In May 2022, respondent was convicted of delivering and manufacturing cocaine, heroin, or another narcotic and was incarcerated until May 2024. Although the Delta County court terminated MDF's mother's parental rights in February 2023, it did not terminate respondent's rights. Instead, the Delta County court arranged for a guardianship with MDF's paternal aunt in June 2023.

By early November 2023, however, Children's Protective Services (CPS) received a complaint alleging MDF's paternal aunt was physically abusing him.[1] The following month,

[1] MDF was placed with his paternal grandmother during the investigation into the allegations against his paternal aunt. The paternal grandmother allowed MDF to continue contact with and

petitioner, the Department of Health and Human Services (DHHS), petitioned the Wayne County court for MDF's removal, alleging that respondent abandoned MDF, and it asked the court to find that it was contrary to MDF's welfare to be placed in respondent's care and custody because respondent was incarcerated. The petition was authorized and MDF was returned to his maternal aunt's home in January 2024.

The adjudication took place shortly after respondent was released from prison in May 2024. Respondent admitted to the factual allegations in the petition by plea: "I am willing to admit that I was incarcerated at the time. And, at the time of the alleged abuse, I could not . . . protect [MDF]. I am willing to admit that because of my incarceration."

Foster-care worker Kasey Holman noted that respondent contacted her immediately after his release and scheduled parenting time. Holman supervised parenting time and indicated respondent had "done well so far." Respondent participated in all sessions he was able to, and a parent-child bond was developing. Holman also noted MDF had some behavioral concerns and recommended infant mental health services.

The court adopted a service plan requiring respondent to attend all hearings, medical appointments, parenting classes, and supervised weekly parenting time, obtain and maintain suitable housing and a legal source of income, maintain contact with DHHS, sign all necessary releases, and follow all recommendations. Respondent was living about an hour from MDF's placement and noted the distance presented difficulties, so Holman recommended a program available in both locations to alleviate the travel burden.

Throughout the dispositional review phase of the proceedings, parenting time generally went well, and a "rudimentary" parent-child bond was established. Before the second dispositional review hearing in October 2024, however, DHHS received an anonymous report alleging respondent was selling drugs. DHHS noted this report, "in conjunction with the fact that [respondent] ha[d] not verified his income, but seem[ed] to demonstrate income, put[] [it] in an odd position." At the next dispositional review hearing in December 2024, respondent provided a handwritten receipt from a person he said was his employer, but he did not know the name of the company he claimed to work for. Respondent explained it was difficult to find stable employment in the small community he lived in, so he took construction jobs to get by.

In addition to respondent's unverified source of income, his housing raised additional concerns for CPS. Respondent moved into a home in November 2024. When Holman evaluated the home, she noticed a small room in the basement near respondent's bedroom that contained drug paraphernalia and a scale. On the scale, there was white residue on top of a small piece of tin foil. Holman pointed it out to respondent, who said it was for marijuana and immediately threw it away. Respondent and his roommate, the homeowner, acknowledged having marijuana in the home. The homeowner "was actually bagging up marijuana at that time." The homeowner

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reside with the paternal aunt, who had refused to cooperate with the investigation into MDF's allegations that she hit him. Later, the paternal aunt's guardianship was voluntarily terminated.

explained that she used the scale to weigh marijuana for delivery to her mother, "so she doesn't smoke too much." This explanation "did not fit" what Holman observed.

And, in December 2024, respondent was arrested on drug distribution charges. A federal grand jury indicted respondent with distributing fentanyl on or about December 5, 2024, distributing fentanyl and methamphetamine on or about December 16, 2024, distributing methamphetamine on or about December 19, 2024, and possession with intent to distribute methamphetamine and cocaine on or about December 28, 2024, after having been convicted of a Michigan drug felony. Respondent intended to contest his federal criminal charges at his trial scheduled for September 2025.

DHHS requested the court approve a concurrent plan of adoption because MDF was raised by successive guardians, primarily his maternal aunt, and respondent was repeatedly incarcerated for the same or similar offenses. For these reasons, MDF's life was "fraught with instability." The court found DHHS should initiate termination of respondent's parental rights because MDF was in his maternal aunt's care for a substantial part of his life, he could not be returned to his mother, whose rights were terminated, and respondent was incarcerated for the foreseeable future.

After a termination hearing and completion of a best-interests assessment, the trial court found statutory grounds MCL 712A.19b(3)(c)(*i*) and (j) were established by clear and convincing evidence because respondent failed to complete his court-ordered services, lived in a "drug house," and was facing additional federal drug charges. The court further found that termination of respondent's parental rights was in MDF's best interests. An order terminating respondent's parental rights followed. Respondent appeals.

II. STANDARD OF REVIEW

An appellate court reviews for clear error the trial court's factual findings and its determination regarding whether a statutory ground for termination of parental rights was established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). This Court also reviews for clear error the trial court's best-interests determination. *In re Sanborn*, 337 Mich App 252, 276; 976 NW2d 44 (2021). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id*. (quotation marks and citation omitted).

A. STATUTORY GROUNDS

"Under MCL 712A.19b(3)(c)(*i*), [DHHS] must show by clear and convincing evidence that '182 or more days have elapsed since the issuance of an initial dispositional order,' that the 'conditions that led to the adjudication continue to exist,' and that 'there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.' " *In re Mason*, 486 Mich at 164. The initial dispositional order in this matter was entered in August 2024 and the supplemental petition seeking termination was filed in June 2025. The requisite 182 days elapsed. MCL 712A.19b(3)(c)(*i*).

"The mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination." *In re Mason*, 486 Mich at 160. The respondent in

In re Mason was "*never* evaluated as a future placement or provided with services" because of his incarceration. *Id*. at 159 (emphasis in original). The same cannot be said in this case. Respondent was provided with a service plan and the goal was reunification until June 2025 when the supplemental petition was authorized.

In *In re Pops*, 315 Mich App 590, 594; 890 NW2d 902 (2016), the respondent's parental rights were terminated under MCL 712A.19b(3)(c)(*i*) "because criminal activity was present at the beginning of the case and criminal activity was still a concern in light of respondent's arrest and imprisonment for carrying a concealed weapon." "[J]ust as incarceration alone does not constitute grounds for termination, a criminal history alone does not justify termination." *In re Mason*, 486 Mich at 165. In *In re Pops*, 315 Mich App at 595, 598, though, this Court opined the evidence contradicted the trial court's finding that respondent did not participate in services when he had the opportunity. The "only remaining rationale articulated by the trial court was that [the] respondent committed another crime, which resulted in his incarceration a second time." *Id*. at 599. And the respondent's incarceration alone was an insufficient basis on which to find MCL 712A.19b(3)(c)(*i*) was established and to terminate his parental rights. *In re Pops*, 315 Mich App at 599.

In this case, however, respondent participated in services and made progress with *some* elements of his treatment plan when he had the opportunity. Respondent regularly attended in-person parenting time sessions and those generally went well. He was less consistent with parenting time on the phone after his incarceration because of his limited funds. He indicated he did not write MDF because he did not have a recipient's address. Respondent began in-person parenting classes near the end of November 2024 because the service was not immediately available. He participated in four of six weeks of the Parenting for Success program, but was unable to complete it because of his incarceration. Respondent completed some parenting classes remotely while in the Delta County Jail. He underwent a mental health evaluation and did not meet the criteria for requiring counseling services. Additionally, the drug screens provided to respondent's parole agent and reported to Holman were negative.

Nevertheless, respondent was noncompliant with critical elements of his treatment plan, including procurement and maintenance of a legal source of income and suitable housing. Respondent provided one legal source of income in early July 2024. But when Holman called the employer, he confirmed that respondent was no longer employed there. Respondent also provided an unverifiable source of income in November 2024. He did not provide information about income from the side jobs and other manual labor that he said he performed.

Respondent also did not comply with the portion of his service plan requiring him to obtain and maintain suitable housing. When Holman evaluated his home in November 2024, she noted a room with drug paraphernalia and a scale with a piece of tin foil beneath an unidentified white residue. Respondent claimed this was for marijuana before immediately disposing of it. The homeowner was dividing marijuana into bags and asserted it was for her mother. This "did not fit" what Holman observed. The home was determined to be unsuitable because there were substances at that location. And, in fact, respondent was arrested in December 2024 on multiple federal drug charges, violating his parole conditions on his Michigan drug conviction.

While respondent made some progress in his treatment plan, the conditions that led to the adjudication—respondent's incarceration and inability to provide for MDF—continued to exist. As *In re Pops*, 315 Mich App at 594, respondent's criminal activity was a concern at the beginning of the case and at termination. And, despite respondent's testimony that he was innocent of the federal drug charges, the trial court did not clearly err in determining that the evidence presented at the termination hearing demonstrated by clear and convincing evidence that respondent had resumed distributing drugs while on parole from his separate state drug conviction. Moreover, respondent's failure to comply with his treatment plan and remove significant barriers to reunification also support the trial court's determination that the conditions leading to adjudication were not rectified. See *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012) (The respondents' failure to demonstrate sufficient compliance with or benefit from services specifically targeted to address the bases for adjudication supported termination). Consequently, the trial court did not clearly err in finding clear and convincing evidence proving the conditions that led to adjudication remained and were unlikely to be rectified within a reasonable time considering MDF's young age. MCL 712A.19b(3)(c)(*i*).[2]

B. BEST INTERESTS

After the trial court finds at least one statutory ground for termination has been proven, "it cannot terminate the [respondent's] parental rights unless it also finds by a preponderance of the evidence that termination is in the best interests of the children." *In re Sanborn*, 337 Mich App at 276 (quotation marks and citation omitted). The court may consider the entire record in its best-interests determination. *Id*. The focus at the best-interests stage of termination proceedings is on the child, not the parent. *In re Moss*, 301 Mich App 76, 88; 836 NW2d 182 (2013). Factors courts may consider in determining a child's best interests include the parent-child bond, respondent's parenting ability and history of attending parenting time, and respondent's compliance with their service plan. *In re Sanborn*, 337 Mich App at 276-277. It may also consider the child's age, the child's need for permanence, stability, and finality, the child's well-being in care and advantages of the foster home compared to the parent's home, as well as the possibility of adoption. *Id*. Generally, placement with a relative weighs against termination and is a factor to consider in deciding whether termination is in the child's best interest. *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). Even when the child is placed with a relative, the court may conclude that termination is still in the child's best interest. *In re Gonzalez/Martinez*, 310 Mich App 426, 435; 871 NW2d 868 (2015).

In this case, despite respondent never living with MDF, a "rudimentary" parent-child bond existed. Holman observed parenting time and commented: "[Respondent] had the want and desire to be a good father to his son." He was generally prepared and receptive to redirection. There were many good parenting time sessions that allowed MDF to establish a bond with respondent. MDF recognized respondent as "Dad." MDF's maternal aunt indicated that MDF misses respondent and occasionally asks about him. Respondent failed to attend the Christmas parenting

[2] One statutory ground is sufficient to affirm termination of respondent's parental rights. *In re Sanborn*, 337 Mich App at 273. Therefore, we need not address whether termination was warranted under MCL 712A.19b(3)(j).

time session which was very distressing for MDF. After respondent was reincarcerated, however, parenting time sessions became infrequent and the relationship appeared to become "estranged." The development of a strong parent-child bond in this case was negatively impacted by the circumstances surrounding respondent's arrest and incarceration. Regardless, the existence of a bond arguably weighed against termination. *In re Sanborn*, 337 Mich App at 276.

Respondent also missed 9 of 68 parenting time sessions for various reasons, including car trouble and traveling elsewhere. After his incarceration, respondent's contact with MDF became sporadic and infrequent because of financial limitations. Respondent did not attempt to call MDF's maternal aunt for a phone parenting time session after the end of May 2025. He wrote several letters in August 2025 and September 2025. In-person sessions went well, but missed sessions were difficult for MDF to process. Because respondent attended parenting time and attempted to maintain contact with MDF to the extent possible, his history of attendance at parenting time weighs against termination. *Id*. at 277.

Respondent's noncompliance with critical elements of his service plan is discussed above. Respondent failed to obtain and maintain suitable housing and a legal source of income, which weigh in favor of termination. Respondent's criminal background and the federal drug charges against him suggest he was engaged in the distribution of illicit drugs. His repeated incarcerations for the same or similar conduct weigh in favor of termination because they negatively affect his ability to provide the stability, permanence, and finality MDF deserves in a reasonable time.

Further, there appear to be many advantages to MDF's maternal aunt's home in comparison to respondent's current environment, suggesting termination is in MDF's best interests. *Id*. at 276. Notably, respondent appears to be in denial about MDF's behavioral issues. Respondent declined to follow the school's recommendation to approve an individualized educational plan to address MDF's "significant behavioral and emotional concerns" because he did not believe MDF had speech or behavioral issues. MDF's issues included yelling, throwing himself on the floor, and being aggressive with his peers. These concerns were significant enough that the school investigated "behavior planning" for MDF. Respondent's refusal to acknowledge and address these issues only perpetuates them, causing MDF emotional distress leading to additional behavioral outbursts. In contrast, MDF's maternal aunt is frequently in contact with the school counselor and is proactive with the school about these issues. MDF's maternal aunt's willingness to address MDF's behavioral issues gives her home an advantage with respect to MDF's best-interests. *Id*.

Moreover, MDF reports that he enjoys living with his aunt and wants to remain with her. MDF's maternal aunt cared for MDF for most of his life and wanted to adopt him to give him permanence in a safe and loving environment. MDF's maternal aunt opined that termination of respondent's parental rights would be in MDF's best interests because MDF needed a healthy and safe environment like the one she provided. And MDF was "very much . . . bonded to [his maternal aunt], as if she was his biological mother," calling her "auntie mama." MDF's maternal aunt also has three other children who view MDF as a sibling. MDF refers to his maternal aunt's children as siblings and is especially bonded with her oldest son. "[T]hey do everything together as a family as if [MDF] has always and will always reside in that home." Holman had no concerns about MDF's maternal aunt meeting his needs. MDF was "thriving" in this environment. Consequently, MDF's need for permanence, stability, and finality, as well as his well-being in the care of his

maternal aunt, the advantages of the foster home, and MDF's maternal aunt's desire to adopt him suggest termination of respondent's parental rights is in MDF's best interests. *Id*. at 276-277.

And although placement with a relative generally weighs against termination, *In re Olive/Metts*, 297 Mich App at 43, several best-interests factors strongly support the trial court's conclusion that termination was in MDF's best interests. Significantly, MDF's emotional distress and behavioral concerns may be alleviated if he is provided with permanence and stability. MDF's maternal aunt is willing and able to adopt MDF into a safe, stable environment where he enjoys a bond with her and her children. Considering respondent's repeated incarcerations for the same or similar conduct, which obstructed development of a parent-child bond, the trial court did not clearly err by finding that termination of respondent's parental rights was in MDF's best interests despite his relative placement. *In re Gonzalez/Martinez*, 310 Mich App 435.

Affirmed.

/s/ Anica Letica
/s/ Colleen A. O'Brien
/s/ James Robert Redford