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STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
August 18, 2026
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In re JW BLACK, Minor.

Nos. 378199; 378574
Lapeer Circuit Court
Family Division
LC No. 23-013102-NA

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

PER CURIAM.

In Docket No. 378199 of these consolidated appeals,[1] respondent-father appeals by right the trial court's order terminating his parental rights to JWB under MCL 712A.19b(3)(c)(*i*) (failure to rectify conditions that led to adjudication), (g) (failure to provide proper care or custody although financially able), and (j) (reasonable likelihood of harm if returned to parent). In Docket No. 378574, respondent-mother appeals the same order terminating her parental rights to JWB under the same statutory grounds. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner, the Michigan Department of Health and Human Services (DHHS), petitioned to remove JWB from respondents' care after respondent-mother overdosed in JWB's presence while she, respondent-father, and JWB were in a car. At the time, respondent-father was driving, although neither respondent had a valid driver's license. A glass smoking pipe and marijuana cigarette were found in JWB's car seat.

Respondents pleaded no contest to the allegations in the petition, and the trial court assumed jurisdiction over JWB. Throughout the proceedings, the primary barrier to reunification for both parents was their continued substance abuse. Although respondent-mother's overdose

[1] *In re JW Black Minor*, unpublished order of the Court of Appeals, entered February 4, 2026 (Docket Nos. 378199 and 378574).

precipitated the petition, respondent-father also acknowledged his own struggles with substance abuse. During the proceedings, respondent-father made sufficient progress such that the trial court authorized JWB's return to his care. At that time, respondent-father lived with his mother-in-law, who is JWB's maternal grandmother. Respondent-mother was not living with them initially, but later began the process of reintegrating into JWB's life. Shortly thereafter, however, both respondents relapsed, and the family was sent to a rehabilitation facility with JWB. Respondent-mother left the rehabilitation facility before completing treatment. Respondent-father also expressed a desire to leave but ultimately remained after receiving additional support from his caseworker.

Respondent-father successfully completed his programming at the rehabilitation facility and returned to his mother-in-law's home with JWB. According to respondent-father, respondent-mother was not permitted to reside in or visit the home. During the proceedings, respondent-mother was incarcerated on multiple occasions, including on a felony charge for uttering and publishing, for which her mother was the alleged victim. But shortly after respondent-father and JWB returned home, respondent-father tested positive for controlled substances.[2] As a result, DHHS removed JWB from his care for a second time. Witness testimony established that the removal was highly emotionally charged, resulting in JWB vomiting from stress.

After 28 months had passed since the trial court assumed jurisdiction, DHHS filed a supplemental petition seeking termination of both respondents' parental rights to JWB. Following a three-day dispositional hearing, the trial court found clear and convincing evidence supporting statutory grounds for termination. When responding to respondent-father's arguments, the trial court acknowledged his contention that the second removal resulted from a single positive drug screen. The trial court nevertheless found that the positive test reflected a relapse, albeit a relatively minor one, and concluded that the relapse demonstrated respondent-father had not achieved a meaningful sobriety. The trial court also rejected respondents' assertions that they had

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[2] Respondent-father challenged the results of this drug screen. But the sample was retested with the same result. In the trial court, he argued that the positive screen leading to JWB's second removal indicated a concentration of 9 ng/mL, which fell below the 20 ng/mL cutoff value used for an initial screening test.

The result document provides a "Terminology Index" defining "cutoff" as "[t]he concentration level above which the presence of a drug or drug class in the sample will be reported as Presumptive Positive or Positive." A "Presumptive Positive" results from the "[p]reliminary unconfirmed analytical result indicating presence of drug or drug class above the applicable [c]utoff[,]" while a "Positive" is the "[c]onfirmatory analytical result indicating presence of drug or drug class above the applicable [c]utoff." By contrast, a "Negative" is an "[a]nalytical result indicating drug or drug class not detected above the applicable [c]utoff."

While the record does not explain why the disputed sample was sent for confirmatory testing, given these definitions, the confirmatory test used has a cutoff value of 4 ng/mL, which is below the 9 ng/mL value in question. Respondent-father presented no evidence challenging the reliability of the confirmatory testing. Accordingly, the trial court did not err by relying on the result as evidence of another relapse.

ended their relationship and that respondent-father intended to file for divorce. Although respondents maintained that respondent-father was not going permit respondent-mother around JWB or in their lives, the trial court noted that respondent-father maintained regular contact with respondent-mother while she was incarcerated and provided money for her inmate account, and that the two exchanged expressions of affection during their telephone conversations. Based on this evidence, the trial court did not believe that respondent-father was going to file for divorce or that the two were no longer together.

The trial court further expressed concern that, because respondent-father resided with JWB's maternal grandmother, and given their ongoing relationship, respondent-father and JWB's grandmother would permit respondent-mother back in the home. The trial court found this situation particularly problematic because respondent-father identified respondent-mother throughout the proceedings as the primary trigger for his recurring drug abuse and relapse. The trial court concluded that the statutory grounds for termination had been established and that termination of both respondents' parental rights was in JWB's best interests. Respondents now appeal.

II. STANDARDS OF REVIEW

We review the trial court's factual findings and ultimate determinations of statutory grounds and whether termination is in the child's best interests for clear error. *In re White*, 303 Mich App 701, 709, 713; 846 NW2d 61 (2014). "The trial court's factual findings are clearly erroneous if the evidence supports them, but we are definitely and firmly convinced that it made a mistake." *Id*. at 709-710. "A reviewing court must defer to the special ability of the trial court to judge the credibility of witnesses." *In re LaFrance*, 306 Mich App 713, 723; 858 NW2d 143 (2014).

III. LEGAL FRAMEWORK

"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). In this case, the trial court found statutory grounds for termination of both respondents' parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j), which state:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
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> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

> (g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
>
> * * *
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> (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.

"Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App at 32.

"Once a statutory basis for termination has been shown by clear and convincing evidence, the court must determine whether termination is in the child's best interests." *In re LaFrance*, 306 Mich App at 732-733, citing MCL 712A.19b(5). "Best interests are determined on the basis of the preponderance of the evidence." *In re LaFrance*, 306 Mich App at 733. "The focus at the best-interest stage has always been on the child, not the parent." *In re Atchley*, 341 Mich App 332, 346; 990 NW2d 685 (2022) (quotation marks and citation omitted). "The trial court should weigh all the evidence available to determine the [child's] best interests." *In re White*, 303 Mich App at 713.

> To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. 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 citations omitted).]

"If the 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[.]" *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144, quoting MCL 712A.19b(5).

IV. DOCKET NO. 378574

Respondent-mother argues that the trial court erred by finding statutory grounds to terminate her parental rights and by finding that termination was in JWB's best interests. We disagree.

A. STATUTORY GROUNDS

Termination of a respondent's parental rights is proper under MCL 712A.19b(3)(c)(*i*) when 182 days or more have passed since the initial dispositional order and the conditions that led to adjudication continue to exist with no reasonable likelihood of being rectified in a reasonable time given the child's age. Here, it is undisputed that more than 182 days had elapsed since the initial dispositional order. It is also undisputed that, in the 28 months this case was pending, respondent-mother failed to rectify the substance-abuse issues that led to JWB's removal. Throughout the proceedings, respondent-mother repeatedly entered and then left rehabilitation facilities, relapsed multiple times, and, at the time of the termination hearing, admitted that she was still abusing substances and could not provide proper care for JWB.

Respondent-mother nevertheless argues that termination was premature because there remained a reasonable likelihood that she could rectify the conditions that brought JWB into care. She points to her continuous engagement with rehabilitation programs and her compliance with the majority of the services offered by DHHS. Her participation alone, however, does not establish that she benefited from those services. A respondent has a duty to not only participate in services, but also to benefit from them. See, e.g., *In re MJC*, 349 Mich App 42, 50; 27 NW3d 122 (2023). Respondent-mother's repeated relapses and admitted substance abuse at the time of termination demonstrate that she failed to make meaningful progress in addressing the issues that led to JWB's removal. As the trial court explained, by the time her rights were terminated, JWB was already three years old, but respondent-mother was "still absolutely in square one" and "it [did not] seem [like] she wants to quit[.]" Given respondent-mother's lack of progress over the nearly two-and-a-half years this case was pending and JWB's age, the trial court did not clearly err by finding that was no reasonably likelihood she would rectify her substance-abuse issue within a reasonable time. Accordingly, the trial court did not err by concluding that MCL 712A.19b(3)(c)(*i*) was established by clear and convincing evidence.[3]

B. BEST INTERESTS

The trial court properly emphasized JWB's need for permanency, noting that he had been in care most of his life and was already three years old. Respondent-mother's failure to address her substance abuse problem and noncompliance with her treatment plan further supported that it was not in JWB's best interests to remain in her care. By contrast, JWB was thriving in his foster placement, where his foster parents were meeting his needs and were willing to adopt him.

Respondent-mother argues that the trial court improperly compared her home with the foster parents' home, but such a comparison is expressly permitted when determining a child's best interests. See *In re White*, 303 Mich App at 713. She also contends that the trial court failed to give sufficient weight to her efforts towards addressing her barriers to unification and partial compliance with her case service plan. But the record does not support her claim. Despite

[3] Because "[o]nly one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights," *In re Ellis*, 294 Mich App at 32, we need not address the trial court's findings as to the other statutory grounds.

receiving many services over the course of over 28 months, respondent-mother was no better able to provide proper care and custody for JWB than she was when he was removed. Most significantly, she made no meaningful progress in addressing the substance abuse issues that led to the court's intervention. Given respondent-mother's lack of any meaningful progress, the trial court reasonably determined that she would not be able to rectify the conditions in a reasonable time. It also reasonably found that prolonging the proceedings would undermine JWB's need for permanency and stability—a need that was already being met in his foster placement. In sum, the record supports the trial court's finding that termination of respondent-mother's parental rights was in JWB's best interests.

V. DOCKET NO. 378199

Respondent-father similarly argues that the trial court erred by finding statutory grounds for termination and finding that it was in JWB's best interests to terminate his parental rights. We disagree.

A. STATUTORY GROUNDS

Termination of a respondent's parental rights is proper under MCL 712A.19b(3)(j) when "[t]here 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." The harm contemplated in MCL 712A.19b(3)(j) includes emotional as well as physical harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). "[A] parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home." *In re White*, 303 Mich App at 711.

Respondent-father argues that, even assuming the contested drug screen is accepted as credible, one positive drug screen was insufficient to outweigh his otherwise substantial compliance with his treatment plan. But the trial court's concerns extended well beyond this contested drug screen. Despite respondent-father's claim that he and respondent-mother had separated and that he intended to file for divorce, the trial court was understandably persuaded by evidence showing that they continued to maintain a significant relationship, particularly given the fact that respondent-father repeatedly identified respondent-mother as his primary trigger for relapse. Jail-call recordings revealed that the two exchanged expressions of affection, like "I love yous," and that respondent-father deposited money in respondent-mother's inmate account while she was in jail. Furthermore, although the parties dispute the reason for the inquiry, multiple witnesses indicated that respondent-father asked about allowing JWB to see respondent-mother despite court orders prohibiting such contact. Even if we were to accept respondent-father's explanation that he asked because JWB had become upset after seeing a mother on television, the caseworker testified that the correct course of action in that situation would have been to redirect

JWB using parenting techniques, not to try to reintroduce a parent who the court had determined posed a risk of harm to the child.[4]

Moreover, the trial court questioned whether respondent-father had actually severed respondent-mother's access to the home. Although respondent-father claimed that his mother-in-law wanted nothing to do with respondent-mother and would not allow her in the home, respondent-mother nevertheless still referred to her mother's home as "my home." The trial court was unconvinced that respondent-father and his mother-in-law would actually prevent respondent-mother from returning or from having contact with JWB. The record therefore supports the trial court's finding that, despite respondent-father's claims of separation, respondents' lives remained intertwined notwithstanding their acknowledged unhealthy relationship.

As noted above, the trial court properly terminated respondent-mother's parental rights. If respondent-father's parental rights were not terminated, he would be responsible for ensuring that respondent-mother had no role in JWB's life. The trial court reasonably questioned whether respondent-father could or would fulfill that obligation. His continued contact with respondent-mother, together with his unwillingness to establish boundaries despite knowledge that she was his primary relapse trigger, supported the trial court's concern that she would eventually reenter JWB's life.

The record therefore supports the trial court's conclusion that returning JWB to respondent-father presented a reasonable likelihood of harm. If respondent-mother resumed a role in respondent-father's life, as the evidence suggests was likely, JWB would be exposed both the emotional harm associated with renewed contact with respondent-mother and the high risk that respondent-father would relapse. Those concerns were well-founded considering JWB had returned to respondent-father once, resulting in an emotionally traumatic separation for JWB when he had to be removed again. Given the pattern shown throughout these proceedings, the trial court reasonably concluded that returning JWB to respondent-father's care would create a substantial risk of yet another removal, resulting in further emotional trauma and instability. Additionally, respondent-father's failure to refrain from drug use, in violation of his service plan, provided further evidence that JWB would be harmed if returned to his care. While there were periods during the 28-month pendency of this case in which respondent-father consistently tested negative for illicit substances, he also relapsed at least three times, based on the objective evidence contained in the record. Witness testimony indicated that, during these periods of drug use, JWB

[4] The record presents testimony in this case that distinguished JWB's relationships with each parent. While JWB shared a recognizable close bond with respondent-father, his bond with respondent-mother was weaker, and he often expressed not wanting to see her. Indeed, his teacher noted that, when respondent-mother came to pick JWB up on her own, he would sometimes seem unhappy and would hide from her, crying that he "didn't want to go with her[.]" Moreover, after JWB would have these meltdowns, respondent-father—who was sometimes waiting in the car—would often have to come calm JWB down. Respondent-father does not dispute that respondent-mother has had a harmful influence on JWB, so his attempts at reintegrating her into JWB's life instead of helping JWB process her absence were proper and legitimate concerns for the trial court.

was left in the care of his maternal grandmother, who was not physically capable of safely caring for the very active toddler.

Accordingly, the trial court did not clearly err by finding statutory grounds for termination under MCL 712A.19b(3)(j).[5]

B. BEST INTERESTS

The same considerations support the trial court's best-interest determination. If JWB were returned to respondent-father after respondent-mother's parental rights are terminated, his stability would depend on respondent-father's willingness and capacity to permanently exclude respondent-mother from their lives. For the reasons set forth above, the trial court reasonably found that respondent-father had not demonstrated that he could do so. Despite respondents' repeated assertions that they had separated, the record showed that they continued to maintain an ongoing relationship.

Further, while respondent-father shared a close bond with JWB, the trial court observed that neither respondent had seen JWB for several months by the time of the termination hearing. The trial court reasonably opined that the bond "would be significantly damaged at this point in time," and that JWB likely had a stronger bond with his foster family than his parents by the time of termination. JWB often had behavioral problems while in respondent-father's care that significantly improved with his foster family, and he was happy to be there. The foster family was willing to adopt JWB and provide him stability and permanency—needs that respondent-father could not ensure given his continuing relationship with respondent-mother.

Finally, as the trial court noted, respondent-father failed to demonstrate that he could refrain from drug use. As discussed, although he had periods of consistently clean drug screens, he relapsed three times in the 28-month pendency of this case.

Considering all these factors, the trial court did not err when it found that termination of respondent-father's parental rights was also in JWB's best interests.[6]

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[5] Again, because "[o]nly one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights," *In re Ellis*, 294 Mich App at 32, we need not address the trial court's findings as to the other statutory grounds.

[6] In his brief on appeal, respondent-father states in a footnote that he "preserves for collateral review his claim that trial counsel was ineffective for failing to make stronger efforts to retain a toxicology expert after the court invited such a motion, and for failing to move for a *Ginther* [*People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973)] hearing." But, aside from this brief footnote, respondent-father does not assert any argument in support of his ineffective-assistance claim, nor does he list it in his statement of questions presented. By failing to brief the merits of his claim of error and failing to include it in his statement of questions presented, respondent has abandoned this issue. *In re Rippy*, 330 Mich App 350, 362 n 5; 948 NW2d 131 (2019).

Affirmed.

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