Order

Michigan Supreme Court
Lansing, Michigan

January 31, 2025

167535

In re JMG/JGG/JMG, Minors.

SC: 167535
COA: 368147
Genesee CC Family Division:
23-139045-NA

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On order of the Court, the application for leave to appeal the July 25, 2024 judgment of the Court of Appeals is considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE Section IV of the judgment of the Court of Appeals addressing the statutory grounds for termination as to JMG-2 and JGG and Section V of the judgment of the Court of Appeals addressing the best-interests determinations as to JMG-1, JMG-2, and JGG, VACATE the Genesee Circuit Court's September 29, 2023 order terminating respondent's parental rights as to JMG-2 and JGG, along with the trial court's best-interests determinations as to JMG-1, JMG-2, and JGG, and REMAND this case to the trial court for reconsideration of those issues in light of this order.

Regarding the statutory grounds for termination, the trial court failed to articulate whether there is clear and convincing evidence that "there is a reasonable likelihood that" JMG-2 and JGG "will suffer injury or abuse in the foreseeable future if placed in the parent's home." MCL 712A.19b(3)(b)(*ii*). On remand, the trial court shall make an individualized determination and articulation as to whether such reasonable likelihood of injury or abuse exists specifically as to JMG-2 and JGG.

If the trial court concludes there is clear and convincing evidence that there is a reasonable likelihood that JMG-2 and JGG will suffer injury or abuse in the foreseeable future if placed in respondent-mother's home, the trial court shall then reconsider whether terminating respondent-mother's parental rights is in the best interests of JMG-2 and JGG. MCL 712A.19b(5). The trial court shall also reconsider whether terminating respondent-mother's parental rights is in the best interests of JMG-1. *Id*. In conducting these analyses, the trial court shall make an individualized best-interests determination as to each child, *In re Olive/Metts*, *Minors*, 297 Mich App 35, 42 (2012), while recognizing that relative placement weighs in the respondent-mother's favor, *In re Mason,* 486 Mich 142, 164 (2010). Conducting a best-interests analysis in the context of termination is not the same as deciding whether one parent should receive full custody or deciding a dispute over parenting time. Rather, the best-interests analysis in the termination context must consider whether retaining the parent-child relationship, in some form, is in each child's best interests.

The trial court shall receive additional evidence from the parties and hold such hearings as are necessary to make these determinations. In all other respects, leave to

appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.

CLEMENT, C.J. (*concurring in part and dissenting in part*).

I believe that a middle ground is warranted in this case. I agree with Justice ZAHRA's conclusion that the trial court did not clearly err by finding statutory grounds for termination of respondent-mother's parental rights. And I agree with the majority insofar as they conclude that a remand is appropriate so the trial court can reconsider whether terminating respondent-mother's parental rights is in the best interests of JMG-2 and JGG, the two children who had not been abused. I write separately to elaborate on my reasoning regarding the best-interests issue and to question the Court of Appeals' current approach to determining when individualized best-interests determinations are required in cases involving multiple children.

At the outset, if at least one statutory ground for termination of parental rights exists, the trial court must then determine whether "termination of parental rights is in the child's best interests . . . ." MCL 712A.19b(5). Courts consider a variety of nonexhaustive factors when making this determination. Some of these factors 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." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42 (2012) (citations omitted). Other factors examine "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." *In re White*, 303 Mich App 701, 714 (2014). In any event, trial courts must "weigh *all* the evidence available to determine the children's best interests," *id*. at 713 (emphasis added), and "decide the best interests of each child individually," *Olive/Metts*, 297 Mich App at 42.

With these principles in mind, I share the majority's concerns about how the trial court conducted its best-interests analysis as to JMG-2 and JGG. Despite the statutory command that a trial court determine whether "*termination* of parental rights is in the child's best interests," MCL 712A.19b(5), the trial court seemed to treat its best-interests inquiry as an all-or-nothing *custody* contest, focusing primarily on how the father provides structure, a good home, care, and so on. Although these facts are relevant, it does not necessarily follow that permanently terminating respondent-mother's parental rights as to JMG-2 and JGG is the *best* course of action.[1] Indeed, there remains an undisputed bond

[1] Michigan, unlike many other states, lacks a statutory mechanism for reinstating terminated parental rights.

between these young children and respondent-mother, and the children bonded with respondent-mother during their formative years. So a proper best-interests determination under the present facts must be more nuanced and consider whether *some* kind of a parent-child relationship is in JMG-2 and JGG's best interests.[2] For these reasons, I concur with the majority in remanding the best-interests issue as to JMG-2 and JGG to the trial court for reconsideration.

Setting aside the facts of this case, I write further to question the Court of Appeals' current approach to determining when individualized best-interests analyses are required in multichild termination proceedings. Although *Olive/Metts* rightly requires trial courts to "decide the best interests of each child individually," *Olive/Metts*, 297 Mich App at 42, the Court of Appeals in *White* watered down this requirement by effectively holding that individualized best-interests inquiries are required only when "the best interests of the individual children *significantly* differ," *White*, 303 Mich App at 715 (emphasis added).[3] *White* reached this conclusion by observing that the needs of the children in *Olive/Metts* significantly differed, such that *Olive/Metts*' otherwise broad holding actually meant that individualized best-interests findings are not always required.

But *White* and its progeny rest on shaky ground. To borrow a basic principle from the law of logic, just because X led to Y does not necessarily mean that Y is limited to X. And here, *Olive/Metts* did not cabin its holding to cases involving similar facts. Rather, *Olive/Metts* stated that "the trial court has a duty to decide the best interests of each child *individually*," that it is "incumbent on the trial court to view each child *individually* when determining whether termination of parental rights is in that child's best interests," and that "the same principle—that each child be treated as an *individual*—applies with equal force in termination-of-parental-rights cases under the juvenile code." *Olive/Metts*, 297 Mich App at 42 (emphases added). These clear statements of law are unqualified and unambiguous. As a result, I am concerned that the factual underpinnings of *Olive/Metts* have been used to artificially limit its broad and sensible holding.

Together with its questionable application of *Olive/Metts*, *White*'s holding seems out of step with the plain text of MCL 712A.19b(5). That provision does not permit a trial

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[2] The trial court also erred by failing to consider that JMG-2 and JGG's placement with a relative is an "explicit factor to consider in determining whether termination was in the children's best interests" that "weighs *against* termination." *In re Mason*, 486 Mich 142, 164 (2010) (emphasis added).

[3] The Court of Appeals below reaffirmed *White*'s proposition in its best-interests analysis, continuing the trend of relying on *White* when a respondent-parent challenges a trial court's best-interests determinations. See *In re JMG/JGG/JMG, Minors*, unpublished per curiam opinion of the Court of Appeals, issued July 25, 2024 (Docket No. 368147), p 7.

court to lump together several children when analyzing whether termination of parental rights is in their best interests. Instead, MCL 712A.19b(5) requires a trial court to consider whether "termination of parental rights is in *the* child's best interests[.]" And "the" is a definite article that typically refers to something specific—here, each specific child. See *Robinson v Lansing*, 486 Mich 1, 14 (2010). So the plain text of MCL 712A.19b(5) casts further doubt on *White*'s modification of *Olive-Metts*' individualize-the-inquiry principle.

At bottom, I believe that *Olive/Metts* meant what it said. In 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. I fear that *White*'s added gloss too often excuses abdication of this responsibility, leading to shallow, one-size-fits-all determinations. This fear is heightened considering that one possible outcome of termination proceedings is total and permanent revocation of parental rights—or, as Nevada's high court more colorfully put it, the "imposition of a civil death penalty." *In re Parental Rights as to AJG & ACW*, 122 Nev 1418, 1423 (2006) (quotation marks and citations omitted).

In conclusion, I respectfully dissent from the majority's conclusion that the trial court clearly erred by finding statutory grounds for termination of respondent-mother's parental rights as to the three children and that termination was not in the best interests of JMG-1, the abused child. But I concur with the majority that a remand is appropriate so that the trial court can reconsider whether terminating respondent-mother's parental rights is in the best interests of JMG-2 and JGG, who were not abused. Finally, I hope that the Court of Appeals—or this Court—will someday reconsider *White*'s holding regarding individualized best-interests determinations in termination proceedings involving multiple children. Families across this state deserve our closer scrutiny on that score.

ZAHRA, J. (*dissenting*).

I dissent. The trial court did not clearly err by finding statutory grounds for termination of respondent-mother's parental rights to the three minor children involved in this appeal or by finding that termination was in the children's best interests.[4] Based on the evidence presented at trial, there was ample support for the trial court's findings that respondent-mother knew or should have known that her husband was sexually abusing her 11-year-old daughter, JMG-1, and that she could have prevented the abuse. The trial court did not clearly err by finding that the record evidence of respondent-mother's inaction in response to her husband's abuse of JMG-1 was clear and convincing evidence of "a reasonable likelihood" that the other two children would "suffer injury or abuse in the

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[4] *In re Trejo*, 462 Mich 341, 356-357 (2000) ("We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest.").

foreseeable future if placed in [respondent-mother's] home."[5] The connection between her failure to protect one child and the likelihood that she would fail to protect her other children is plain. Further, I see no authority for the majority order's requirement that the trial court make an "individualized determination" as to each child under MCL 712A.19b(3)(b)(*ii*).[6] Nor is it clear what such determinations would accomplish, given respondent-mother's proven indifference to the abuse of JMG-1 and the lack of any indication in the record that the other two children's situations and needs differ from JMG-1's in a way that would reduce the inferential value of respondent-mother's neglect.[7]

Finally, although the trial court did not articulate its best-interests analysis as thoroughly as it could have, respondent-mother identifies no clear error in the analysis. She faults the trial court for not considering the bond between her and the children, not making an individualized determination for each child, and not considering the children's placement with a relative (their father).[8] As the Court of Appeals explained, however, the trial court *did* consider the parent-child bond and the children's placement with their father,[9] and it is not error if a trial court fails to explicitly make individual best-interests findings when, as here, the children's individual best interests do not significantly differ.[10]

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[5] MCL 712A.19b(3)(b)(*ii*).

[6] The "individualized determination" language seems to have been imported from the best-interests step of the termination analysis. See, e.g., *In re Timon*, 501 Mich 867, 867 (2017).

[7] See *In re Kellogg*, 331 Mich App 249, 259 (2020) (stating that the inferential value of a parent's treatment of one child for determining how the parent will treat other children "is decreased by differences between the children, such as age and medical conditions"); *In re LaFrance*, 306 Mich App 713, 730-732 (2014) (holding that parental neglect of an infant with serious medical problems did not support the termination of parental rights to older children with no similar medical needs).

[8] The majority order seems to raise its own objections to the trial court's analysis beyond those raised by respondent-mother, insinuating that the trial court treated this case akin to a custody or parenting-time dispute.

[9] *In re JMG/JGG/JMG, Minors*, unpublished per curiam opinion of the Court of Appeals, issued July 25, 2024 (Docket No. 368147), p 9.

[10] *Id*. at 8-9, citing *In re White*, 303 Mich App 701, 715 (2014).

Because respondent-mother fails to show clear error in the lower courts' decisions, I dissent from the Court's order. I would deny leave to appeal.

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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 31, 2025

Clerk