STATE OF MICHIGAN
IN THE SUPREME COURT

IN THE MATTER OF D.N. DAILEY, A MINOR,

Supreme Court No. 165889

Court of Appeals No. 363164

Wayne Circuit Court No. 19-000790

____/

DEPARTMENT OF HEALTH AND HUMAN SERVICES' SUPPLEMENTAL BRIEF IN OPPOSITION TO RESPONDENT'S APPLICATION FOR LEAVE TO APPEAL

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Dated: April 8, 2024

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STATEMENT OF JURISDICTION

MCL 600.212, MCL 600.215(3) and MCR 7.303(B)(1) confer jurisdiction on this Court to review the unpublished per curiam opinion of the Court of Appeals, issued May 18, 2023 (Docket No. 363164), affirming the trial court order terminating Dailey's parental rights.

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

On January 31, 2024, the Court issued an order asking the parties to address the following three questions:

I. Whether, when a child is in the care of a relative, the trial court is required to consider and eliminate available alternative remedies short of termination as a matter of constitutional due process, see generally *Washington v Glucksberg*, 521 US 702, 721 (1997) (The government may not infringe on fundamental liberty interests "unless the infringement is narrowly tailored to serve a compelling state interest.")?

Appellant's answer:	Yes.
Appellee's answer:	No.
LGAL's answer:	No.
Trial court's answer:	No.

II. Whether, when a child is in the care of a relative, the trial court is required to consider and eliminate available alternative remedies short of termination by statute, see MCL 712A.19b(5)?

Appellant's answer:	Yes.
Appellee's answer:	No.
LGAL's answer:	No.
Trial court's answer:	No.

III. Whether the trial court erred in this case?

Appellant's answer:	Yes.
Appellee's answer:	No.
LGAL's answer:	No.
Trial court's answer:	No.

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INTRODUCTION

Under Michigan's child welfare laws every family that comes before the trial court is unique and should be evaluated for permanency that is in each child's best interests. The applicable statutory scheme and case law considers these interests for children individually. There is a recognition built into the law that even when statutory grounds for termination of parental rights are present, a termination of parental rights will not always be in a child's best interests and therefore should not always happen. But the law also recognizes that in cases where a respondent parent poses a danger to the child, termination of parental rights may be the only appropriate outcome, even if it temporarily disrupts the safe care of a child by a non-respondent parent or a potential guardian. The Legislature envisioned and intended that trial courts terminate only one parent's parental rights when circumstances warrant it.

In this way, the law is child-centered, and it already weighs less restrictive outcomes for best-interest determinations where appropriate, on a case-by-case basis. And there are some cases where a termination of parental rights is necessary for a child's protection and well-being, regardless of alternative options. It is important that this Court honor the statutory framework and not impose a rule that will not serve the interests of children.

Applying these standards here, this Court should affirm the decision below. DD came to the attention of the Department of Health and Human Services (DHHS) following his birth in March 2019. At birth, DD tested positive for opiates

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and experienced severe withdrawals. For approximately two weeks following his birth, DD was administered morphine to help control his withdrawals. His mother, Carolina Mootispaw, admitted to her continuous use of heroin during her pregnancy because she believed that, had she stopped using heroin completely, her lack of using would have hurt DD more.

Given the seriousness of the allegations, DHHS filed a temporary custody petition with the trial court against Mootispaw and Dailey due to his failure, as DD's father, to protect DD from harm because he knew or should have known of Mootispaw's prenatal substance abuse yet failed to intervene. Additionally, Dailey also struggled with substance abuse.

After giving Dailey almost three years to plan for DD's return, during which time he was court-ordered to participate in and benefit from substance abuse treatment, the trial court properly found clear and convincing evidence to terminate Dailey's parental rights and found termination to be in DD's best interests due to Dailey's continued drug use.

Considering Dailey's failure to complete and benefit from court-ordered services to address his substance abuse for nearly three years, the Court of Appeals, in a unanimous unpublished decision, correctly determined that there was clear and convincing evidence to terminate Dailey's parental rights under MCL 712A.19b(3) and agreed that termination was in DD's best interests.

This Court should deny Dailey's application because there was no error in the trial court's findings and the Court of Appeals' opinion was correct in its analysis.

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COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

In addition to those facts stated below, DHHS incorporates by reference the "Factual Background" set forth in the unpublished per curiam opinion of the Court of Appeals, issued May 18, 2023 (Docket No. 363164).

Events leading to court involvement.

DD came to the attention of the trial court in April 2019 due to allegations against his parents of substance abuse and failure to protect to him. (4/18/2019 DHHS Pet.) DD tested positive for opiates at birth and experienced severe withdrawals. (4/22/2019 Tr., p 7.) The severity of his withdrawals forced DD to be fed intravenously and, for approximately two weeks following his birth, DD was administered morphine to help control his withdrawals. (*Id.*, pp 7, 12.) His mother, Mootispaw, admitted to her continuous use of heroin during her pregnancy to hospital staff because she believed that had she stopped using heroin completely, she would have hurt DD more. (*Id.*, p 7.)

Approximately two weeks after DD's birth on April 4, 2019, Mootispaw completed a drug screen for Child Protective Services (CPS) and tested positive for opiates 6-Acetylmorphine (heroin metabolite) 22.2ng/mL, morphine 36.9ng/mL, fentanyl 16.4ng/mL, and norfentanyl 1.2ng/mL. (*Id.*; 4/18/2019 DHHS Pet.)

Given the seriousness of the allegations and Mootispaw's admissions, DHHS filed a temporary custody petition with the trial court against Mootispaw. (*Id.*) DHHS also filed a temporary custody petition with the trial court against DD's legal father, Dailey, due to his failure to protect DD from harm because he resided with

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Mootispaw during her pregnancy and knew or should have known of her prenatal substance abuse yet failed to intervene. (*Id.*; 4/22/2019 Tr, p 8.) Additionally, like Mootispaw, DHHS was concerned that he had a substance abuse issue. (*Id.*) Dailey disclosed to DHHS that he was taking Percocet to help alleviate his foot pain from a work-related injury for which he had no prescription, and he completed two drug screens for CPS and tested positive for the following nonprescription drugs: fentanyl 11.0ng/mL and norfentanyl 1.0ng/mL on March 22, 2019, and opiates 6-acetylmorphine (heroin metabolite) 25.6ng/mL, morphine 24.8ng/mL, and fentanyl 4.0ng/mL on April 8, 2019. (4/18/2019 DHHS Pet.; 4/22/2019 Tr, pp 8–9.) At the preliminary hearing held on April 22, 2019, the trial court authorized the petition and placed DD in the care and custody of DHHS. (*Id.*, p 18.)

Mootispaw and Dailey make admissions of neglect.

At the pretrial hearing held on May 13, 2019, Mootispaw and Dailey made admissions of neglect for the trial court to take temporary jurisdiction. (5/13/2019 Tr, pp 6–19.) Among Mootispaw's many admissions, she specifically admitted that DD was born drug positive and that while she was pregnant, she used illegal substances, including heroin. (*Id.*, p 11–13.) Mootispaw also admitted that she had a substance abuse problem and that it affected her ability to take care of DD. (*Id.*)

In like manner, Dailey admitted that he and Mootispaw had been living together for three years prior to DD's birth and that the two of them lived together when DD was born. (*Id.*, p 15.) Dailey admitted that he knew Mootispaw used illegal substances during her pregnancy and that her use of illegal substances

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affected DD. (*Id.*, p 17.) Dailey also admitted that he tested positive for fentanyl, morphine, and various forms of heroin metabolites. (*Id.*, p 16.) Chiefly, Dailey admitted to having a substance abuse issue and that his use of illegal substances affected his ability to properly care and provide for DD. (*Id.*, p 17.)

After Mootispaw and Dailey made their admissions, the trial court indicated that all parties were satisfied and accepted the parents' admissions, taking jurisdiction over DD. (*Id.*, p 19.) The matter was then placed on the "Baby Court" docket that is reserved for parents who have children under age three and want to have their children returned to their care as soon as possible. (*Id.*) Unlike the traditional child abuse and neglect docket, Baby Court meets every four to six weeks instead of every three months. (*Id.*)

DHHS offers reasonable efforts to reunite Mootispaw and Dailey with DD.

At the initial dispositional hearing held on May 30, 2019, DHHS Foster Care Specialist Heather Huber presented the trial court Mootispaw and Dailey's proposed Parent-Agency Treatment Plan. (5/30/2019 Tr, pp 6–8.) Per DHHS's recommendation, Mootispaw and Dailey were to complete the following court-ordered services: undergo a substance abuse assessment and follow all recommendations of the assessment; participate in therapy and weekly, random drug screens to evidence sobriety; obtain and maintain full sobriety; complete and benefit from Infant Mental Health (IMH) therapy that includes a parenting instruction component; attend all court hearings; visit the child; and obtain and maintain housing as well as a legal source of income. (*Id.*, pp 6–7; 7/31/2019 Tr, p

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3.) Moreover, Mootispaw was ordered to undergo a mental health assessment and follow any recommendations of the assessment, and Dailey was required to obtain medical care or insurance. (*Id.*, pp 6–7; 7/31/2019 Tr, p 3.) Considering Mootispaw and Dailey's long history of significant drug use, the trial court emphasized that the substance abuse therapy or assessment needed to determine if Mootispaw or Dailey needed to attend inpatient drug treatment. (5/30/2019 Tr, pp 7–8.)

After DHHS presented its proposed Parent-Agency Treatment Plan to help preserve and reunify the family, the trial court, without any objection from counsel, authorized the treatment plans and ordered Mootispaw and Dailey's compliance. (*Id.*, p 12.)

At the first dispositional review and permanency planning hearing held on July 31, 2019, Huber informed the trial court that IMH services for the parents had not begun due to a funding issue. (7/31/2019 Tr, pp 3, 6–7, 12.) Huber explained that because DD was placed in an Oakland County home and the parents resided in Wayne County, Oakland County refused to authorize payment for IMH services to be appointed and funded because DD is a Wayne County court ward. (*Id.*) Despite the funding issue, however, Huber confirmed that Mootispaw and Dailey completed their Substance Abuse Assessment with Dr. Veda Siorentiono and submitted drug screens performed by Forensic Fluids. (*Id.*, p 4.)

Huber testified that the Substance Abuse Assessments recommended that Mootispaw and Dailey continue to provide drug screens and attend substance abuse counseling and inpatient treatment that included a detox program. (*Id.*, pp 8, 12.)

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The drug screen results revealed that Dailey tested positive for opiates, morphine, and fentanyl on June 20, 2019, and Mootispaw tested positive for cocaine, benzodiazepine, morphine, and fentanyl on July 18, 2019. (*Id*., pp 4–5, 13.)

Considering Mootispaw and Dailey's positive drug screens, Huber informed the trial court that Infant Mental Health services, the chief service provider for the Baby Court docket, would not be appropriate or beneficial for the family if Mootispaw and Dailey were "still heavy into their addiction issues." (*Id*., p 12.) Therefore, she recommended that if the parents continued to screen positive for illegal substances – particularly fentanyl – she, at the next scheduled dispositional review hearing, would request that the case leave the Baby Court docket and return to the judge of record on the general child abuse and neglect docket. (*Id*., pp 7, 11.)

Despite the reasonable efforts DHHS made to reunite Mootispaw and Dailey with DD, Mootispaw and Dailey continued to test positive for illegal substances.

At the next dispositional review hearing held on October 7, 2019, Huber testified that Mootispaw originally entered a 21-day substance abuse treatment program at Sacred Heart in August 2019, but had left after approximately 26 hours. (10/7/2019 Tr, p 7.) Huber informed the court that as of the previous night, October 6, 2019, Mootispaw had entered a three-to-five-day detox program on her own accord. (*Id*.) Unlike Mootispaw, Dailey had not sought rehab or a detox program. (*Id*.)

Huber submitted 13 drug screens for Mootispaw and 11 drugs screens for Dailey to the trial court. (*Id*., pp 8–9.) All screens for Mootispaw and Dailey were

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positive for various drugs. (*Id.*, p 8.) Mootispaw and Dailey tested positive for fentanyl and heroin on every screen and both parents tested positive for codeine and morphine on other screens. (*Id.*)

Given Mootispaw and Dailey's continued drug use, DHHS requested that the trial court remove the case from the Baby Court docket and set a dispositional review hearing for the matter before the judge of record on the general child abuse/neglect docket. (*Id.*, p 11.) The trial court granted DHHS's request and set the matter for its next dispositional review hearing on November 25, 2019. (*Id.*, p 13.)

On November 25, 2019, Huber provided the trial court a series of drug screen results for Mootispaw and Dailey that included positive results for fentanyl, morphine, and other drugs. (11/25/2019 Tr, p 5.) Huber informed the trial court that DHHS would be filing a supplemental petition for permanent custody of DD, requesting that the trial court terminate the parental rights of both Mootispaw and Dailey. (*Id.*, p 7.) Given DHHS's intent to file a supplemental petition, the trial court set the matter for an upcoming pretrial on January 21, 2020, during which Mootispaw made a judge demand. (1/21/2020 Tr, p 4.)

On June 12, 2020, the new Foster Care Specialist, Brittany Michael, reported to the trial court that DD, age one, remained placed with his maternal grandmother and received Early On services. (6/12/2020 Tr, p 6.) Mootispaw and Dailey visited DD, and both parents were engaged in their treatment plans. (*Id.*, pp 6–7.) Mootispaw was engaged in substance abuse therapy and individual therapy twice

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per week and Dailey was engaged in substance abuse therapy once per week. (6/12/2020 Tr, p 7.) Michael also reported that Dailey had begun working in April 2020 and provided her proof of his employment while Mootispaw remained unemployed. (*Id.*)

Permanent custody proceedings.

At the hearing held on July 30, 2020, the trial court opined that it was not going to conclude the matter that day. (7/30/2020 Tr, p 5.) In the interim, however, the trial court stated that Mootispaw and Dailey were to continue receiving services to help address their substance use. (*Id.*)

DHHS then moved to admit six drug screen results – three from each parent – from Averhealth and a screen shot sent from Averhealth proving that Mootispaw and Dailey did not appear for drug screens during the month of July 2020, knowing that missed screens are interpreted as positive screens. (*Id.*, pp 7–9.)

Through his counsel, Dailey told the trial court that there was a discrepancy between the positive drug screen results he received from Averhealth, and the drug screen results he received from his independent drug screening agency. (*Id.*, p 9.) Given the alleged discrepancy, the trial court told Dailey to continue to screen at Averhealth and that if Dailey and/or Mootispaw chose to have independent screens performed by another facility, it would consider all evidence in making its decision. (*Id.*, pp 9–10.)

In addition to providing drug screens, Mootispaw and Dailey participated in a Clinic for Child Study to help better inform the trial court whether termination of

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their parental rights is in DD's best interest. (*Id.*, pp 10–11.) According to the clinician's (Mr. Geiger's) report, Mootispaw told him that she "considered herself to be successful because she was cutting back on her usage and that at one point, [her usage] was out of control." (*Id.*) In response, the trial court emphasized that "While the parents recognize [cutting back] as some measure of progress, they need to get rid of the fentanyl and anything that is not prescribed from all screenings." (*Id.*, pp 11–12.)

On October 8, 2020, Foster Care Specialist Kejuana McCants reported to the trial court that Mootispaw and Dailey were engaged in therapy and still planning together for the return of DD. (10/8/2020 Tr, p 12.) Mootispaw and Dailey visited DD at the maternal grandmother's home daily, and both Mootispaw and Dailey continued to provide drug screens. (*Id.*, pp 13, 15–16.) Mootispaw provided more drug screens than Dailey during this three-month reporting period, but both individuals failed to appear for screens on occasion. (*Id.*, pp 13, 15.)

Dailey stated that he failed to appear for drug screens due to an alleged glitch in the screening calling-in system. (*Id.*, p 13.) When Dailey dialed the facility's number to see if he needed to provide a drug screen that day, Dailey said that he was often told that he did not have to provide a drug screen. (*Id.*) McCants told the trial court, however, that the drug screen results on her end showed that Dailey did, in fact, have to screen on the days he missed but had failed to appear. (*Id.*) Mootispaw tested positive for fentanyl on all the screens she completed since July 2020 and tested positive for opiates and THC on some screens. (*Id.*, p 15.)

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Despite the drug screen results, Mootispaw and Dailey reported to McCants and their substance abuse therapist that they were not using any substances. (*Id.*, p 19.)

At the dispositional review and best interests hearing on January 7, 2021, Foster Care Specialist Raven Walker testified that Mootispaw and Dailey visited DD daily, but the maternal grandmother had expressed concerns about both individuals nodding off during their visits. (1/7/2021 Tr, p 10.) The maternal grandmother was unsure if they were tired or nodding off due to their suspected substance use because they would often nod off while visiting DD early in the day. (*Id.*)

To Walker's knowledge, Mootispaw and Dailey were compliant with most of their court-ordered services, but Mootispaw and Dailey continued to miss many scheduled screens and the screens they did complete were positive for drugs. (*Id.*, pp 11, 13.) On December 20, 2020, January 1, 2021, and January 4, 2021, Dailey completed three separate drug screens at a hospital and sent Walker his results. (*Id.*, p 16.) Walker explained to Dailey that his screens were not random, considering that he chose the days he screened, and that he did not submit the screens at the site recommended by DHHS. (*Id.*) Thus, DHHS informed Dailey that it would not accept his hospital screen results as evidence of random drug screens. (*Id.*)

Mootispaw and Dailey continued to dispute their drug screen results from Averhealth and maintained that they were not using drugs. (*Id.*, pp 21–22.) In

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response, the trial court informed Mootispaw and Dailey that if they are not, in fact, using drugs but are frustrated that the drug screen results from Averhealth report that they are, DHHS and the court would either work on having their samples retested, or that other arrangements would be made to ensure its validity. (*Id.*, pp 22–24.)

On April 14, 2021, DHHS informed the trial court that Mootispaw and Dailey were participating in therapy and that the therapy also addressed substance abuse. (4/14/2021 Tr, p 8.) Mootispaw and Dailey lived together in suitable housing and consistently visited DD. (*Id.*) DHHS stated that the only concern was Mootispaw and Dailey's drug screen results. (*Id.*) Mootispaw and Dailey acknowledged their substance abuse history and Dailey admitted to using methadone that he received from the Rainbow Center of Michigan Rehabilitation Center. (*Id.*, pp 8, 16.) Dailey stated that he did not trust DHHS's drug screens performed by Averhealth and expressed his desire to test at a different facility. (*Id.*, pp 9, 16.)

Given that Mootispaw and Dailey received substance abuse services and submitted drug screens at the Rainbow Center of Michigan Rehabilitation Center, the trial court instructed them to get medical releases for their treatment records, drug screens, etc. from Rainbow so that they could share their treatment plans and results with DHHS. (*Id.*, p 22; 3/9/2022 Tr, p 32.)

At the dispositional review hearing on December 15, 2021, DHHS reported that Mootispaw and Dailey had both missed seven screens from October 22, 2021, to December 13, 2021, knowing that missed screens were interpreted as positive

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screens. (12/15/2021 Tr, p 10.) DHHS submitted drug screen results from Averhealth and the Rainbow Center of Michigan Rehabilitation Center to the trial court that showed both Mootispaw and Dailey tested positive for fentanyl. (*Id.*, p 11.)

Continued permanent custody proceedings.

At the continued hearing held on March 9, 2022, Mootispaw continued to deny her drug use, stating that she had not used heroin or any other drug aside from her methadone treatment since July 2020, yet she admitted to having had consistent positive drug screens throughout the case. (3/9/2022 Tr., pp 31, 34.) DHHS then presented Mootispaw her drug screen results from the Rainbow Center of Michigan Rehabilitation Center from January 2021 to July 2021. (*Id.*, pp 40–46.) While testifying, Mootispaw acknowledged her following drug test results: On January 1, 2021, Mootispaw tested positive for fentanyl and 6-MAM (heroin). (*Id.*, p 42.) On January 9, 2021, Mootispaw tested positive for fentanyl, methadone metabolite, opiates, and 6-MAM. (*Id.*, p 40.) On January 23, 2021, Mootispaw tested positive for fentanyl. (*Id.* p 42.) On January 30, 2021, Mootispaw tested positive for fentanyl and 6-MAM. (*Id.*) On February 6, 2021, Mootispaw tested positive for fentanyl and 6-MAM. (*Id.*) From February 2021 to September 2021, Mootispaw, per her Rainbow Center of Michigan Rehabilitation Center drug screens, continued to test positive for fentanyl and 6-MAM. (*Id.*, pp 43–45.)

Mootispaw disclosed to the trial court that she has struggled with addiction since age 18 or 19 and had received services or therapy in 2012 or 2013. (*Id.*, p 39.)

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Mootispaw is now 32 years old. (*Id.*) Mootispaw also told the trial court that over the past two years, she had received two different types of weekly drug addiction therapy – one through the Rainbow Center of Michigan Rehabilitation Center and the other through a DHHS counselor. (*Id.*, pp 38–39.) When Mootispaw admitted to having used drugs in the past, she also disclosed that she and Dailey used drugs together. (*Id.*, p 46.)

Dailey testified that three of his drug screens were positive for heroin or fentanyl. (*Id.*, p 51.) He admitted that he last used heroin or fentanyl six or seven months ago because he "slipped up." (*Id.*, pp 51–52.) From January 2021 to present, however, Dailey maintained that he only used drugs once or twice. (*Id.*, p 52.) DHHS presented Dailey with his drug screen results from the Rainbow Center of Michigan from November 14, 2020, through a collection date of May 22, 2021, that stated that Dailey had tested positive for fentanyl 26 times. (*Id.*, pp 63–65.) Despite this revelation, however, Dailey argued that the drug screens from Rainbow must have been wrong because he used heroin only two to five times from January 2021 to the time of the hearing, March 2022. (*Id.*, p 65.)

Dailey told the trial court that he never knowingly took fentanyl. (*Id.*) If he tested positive for fentanyl, it must have been laced in the heroin he purchased. (*Id.*, p 66.) Dailey stated that it only costs him five dollars to purchase heroin and that despite knowing fentanyl is lethal, he continued to use heroin. (*Id.*, p 67.)

DHHS then presented Dailey his drug screen results from the Rainbow Center of Michigan from November 2021 to February 16, 2022. (*Id.*, p 68.) The

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results reported that Dailey screened positive for fentanyl 13 out of 14 times and screened positive for heroin 7 out of 14 times. (*Id.*) Despite the results, Dailey maintained that he did not use heroin or fentanyl from November 2021 to February 16, 2022. (*Id.*) Dailey told the trial court that he attended therapy at the Rainbow Center of Michigan Rehabilitation Center twice a month for ten minutes to an hour with Mr. Duffy. (*Id.*, p 69.) Together, he and Mr. Duffy discuss his positive screen results that Dailey continues to refute. (*Id.*) Dailey also told the trial court that he has spoken with his DHHS counselor, Ashley, every Wednesday for about 20 minutes to an hour for the past two years to work on his addiction. (*Id.*, p 70.)

Dailey admitted that he became addicted to heroin in 2012 and that his past addictions were Percocet and alcohol. (*Id.*, p 71.) Dailey has been a drug addict for ten or more years and would be turning 40 years old in September 2022. (*Id.*) Given his substance use, Dailey told the trial court that he wanted to attend inpatient drug treatment. (*Id.*, p 83.)

During the hearing, Mootispaw and Dailey asked the trial court to appoint the paternal grandmother, with whom DD has never been placed, as DD's legal guardian because they did not want DD to be near Mootispaw's 28-year-old sister who they suspected was using drugs and overdosing in front DD. (*Id.*, pp 46, 55.) If the trial court was going to terminate Dailey and Mootispaw's parental rights, Dailey argued that DD needed finality and to not be exposed to drugs. (*Id.*, pp 55, 58.)

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Despite Mootispaw and Dailey's continued drug use, the trial court gives Mootispaw and Dailey additional time to address their substance abuse.

Given the evidence presented, the trial court opined that it recognized that Mootispaw and Dailey were very involved in DD's life and undoubtedly loved DD. (*Id.*, p 83.) Nevertheless, due to their substance abuse, DD has never lived in their home. (*Id.*, p 84.) The trial court indicated that it "doesn't just take admitted exhibits and [drug] screens and ignore them. There must be substance use, even if somebody denies using." (*Id.*) Because Mootispaw and Dailey were so involved in DD's life and Dailey indicated that he would attend inpatient drug treatment, the trial court decided to give Mootispaw and Dailey additional time to address their substance abuse and continued the hearing until April 28, 2022. (*Id.*)

Mootispaw and Dailey failed to attend inpatient drug treatment.

Since the last hearing, Walker made efforts to help Mootispaw and Dailey enroll in inpatient drug treatment, but both individuals never enrolled in any program. (4/28/2022 Tr, p 6.) Dailey stated that he did not enroll because he could not find a program that allowed him to take methadone. (*Id.*)

Ashley, Mootispaw and Dailey's substance abuse therapist, disclosed verbally and in her written report to Walker that Mootispaw and Dailey told her that they did not plan to participate in an inpatient substance abuse program. (*Id.*, p 7.)

Walker obtained drug screens from the Rainbow Center of Michigan Rehabilitation Center and Mootispaw continued to test positive for fentanyl and opiates. (*Id.*, p 8.) Mootispaw admitted that she has told the trial court that she

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stopped using drugs for a long time but acknowledged that her drug screens often came back positive and stated that she needed to address her denial of substance use in inpatient therapy. (*Id.*, p 23.)

Dailey's screens, dated April 2022, showed that he tested positive for fentanyl, methadone, and other opiates. (*Id.*) When Dailey was asked if he denied using fentanyl, he did not provide an answer and did not dispute the results. (*Id.*, p 16.)

The trial court then recited the definition of insanity, "Continue to do the same thing and expect different results," before it suspended the designee visits. (*Id.*, pp 24–25.) The trial court stated that the case has been before the court for over two and a half years with no new result. (*Id.*, p 24.) Therefore, to help motivate Mootispaw and Dailey to become sober, the trial court changed the parenting time schedule from designee visits to weekly supervised visits by DHHS at its office. (*Id.*, pp 24–25.)

The trial court's decision.

At the continued best interests hearing on July 20, 2022, Dailey failed to appear. (7/20/2022 Tr, p 5.) According to his counsel, Dailey sent his counsel a text message the night before the hearing informing him that he was on his way to rehab at the QBH Rehab Center in Detroit, Michigan. (*Id.*) Despite his absence, the trial court proceeded with the hearing. (*Id.*, p 6.)

DHHS then presented the trial court two drug screens – one for Mootispaw and one for Dailey – dated June 29, 2022, that were administered by Forensic

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Fluids. (*Id.*) Mootispaw tested positive for fentanyl, 80.3 nanogram, and Dailey tested positive for fentanyl, 41.3 nanograms. (*Id.*)

Mootispaw recognized that she tested positive for fentanyl and admitted to the trial court that she continued to struggle with her addiction. (*Id.*, p 9.) If the trial court were to consider placing DD into a legal guardianship with the maternal grandmother, Mootispaw would consent to it. (*Id.*, p 11.)

The trial court opined that it was "deeply concerned that [the parents] continue to test positive . . . for fentanyl." (*Id.*, p 23.) "Fentanyl is . . . something that could kill either one of them tomorrow and that's so concerning." (*Id.*) DD is now three years old, and the maternal grandmother has raised him. (*Id.*) While the trial court undoubtedly believed Mootispaw and Dailey loved DD, the trial court recognized that the maternal grandmother was the only real parent DD has known after being in her care for three years. (*Id.*, p 24.) Therefore, despite being placed with a relative, the trial court made a finding that it was in DD's best interest to terminate Mootispaw and Dailey's parental rights because it did not believe the parents' continued drug use would change. (*Id.*, pp 25–26.)

Proceedings in the Court of Appeals.

Dailey filed his claim of appeal following the trial court's July 30, 2022, order terminating his parental rights. On appeal, Dailey argued that the trial court erred in terminating his parental rights because DHHS did not make reasonable efforts to reunite him with DD and that termination was clearly erroneous and not in DD's

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best interest because the trial court failed to appropriately consider and weigh the fact that DD was in a relative placement. (*Id.*, pp 2–6.)

After considering all parties' briefs, the Court of Appeals released a per curiam, unpublished opinion on May 18, 2023. (See *In re Dailey*, unpublished per curiam opinion of the Court of Appeals, Docket No. 363164, rel'd 5/18/23, attached as Appendix A.) In its opinion, the Court of Appeals opined that Dailey's claim that DHHS failed to make reasonable efforts toward reunification was not supported by the record and agreed there was a preponderance of the evidence that termination was in DD's best interests. (*Id.*, pp 2–7.)

Specifically, the Court of Appeals said,

> A preponderance of the evidence supports the trial court's finding that termination of respondents' parental rights was in the child's best interests. It is readily apparent that the child would be at risk in respondents' unsupervised care. Both respondents had a longstanding history of substance abuse. They were addicted to heroin and fentanyl. Both received substance abuse counseling from an individual therapist and a drug counselor. They also participated in medication-based therapy through a methadone clinic. Despite these efforts, respondents were unwilling or unable to overcome their drug addictions.
>
> Moreover, the trial court reiterated, and respondents understood that the use of fentanyl, in particular, carried with it the risk of death. Further, respondent-father admitted engaging in risky behavior when he confessed to buying heroin off the streets with the understanding that it was likely laced with fentanyl. The child would clearly be at risk of harm if left in respondents' care. [*Id.*, p 5 (paragraph break added).]

Furthermore, the Court of Appeals emphasized that the trial court acknowledged that the child's placement with his maternal grandmother weighed against termination. (*Id.*, p 6.) However, it properly balanced relative placement with

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other relevant factors. Chiefly, "The trial court noted the child's young age, his need for permanency, stability, and finality, and the length of time the child had been in care–more than three years." (*Id.*) Additionally, the trial court considered the risk to the child in respondents' care considering their addiction to fentanyl and ultimately concluded that termination of parental rights was in DD's best interests. (*Id.*) "Although placement with a relative weighs against termination, and such a placement must be considered, 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." (*Id.*)

In the instant matter, Dailey, and DD's mother, have a well-established addiction to heroin and fentanyl and longstanding history of substance abuse. Their addiction to drugs rendered them, by their own admissions, unfit to care for DD. Shortly after his birth, DHHS placed DD with his maternal grandmother under court order. For over three years, DD remained in the care of his maternal grandmother while the parents continued their substance abuse. During that time, the trial court held regular hearings to assess the parents' progress towards overcoming their substance abuse in hopes that they would overcome their substance abuse to reunite with DD which they never did due to their unwillingness or inability to do so.

As the Court of Appeals noted, the trial court properly balanced relevant factors, and it did not clearly err by finding that termination of Dailey's parental

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rights was in DD's best interests despite him being placed with his maternal grandmother. (*Id.*)

STANDARD OF REVIEW

Appeal courts apply the de novo standard of review to questions of law. *Brockett v Focus Hope, Inc.*, 482 Mich 269, 275 (2008).

Regarding the issue of termination, a trial court must terminate a parent's parental rights to a child if it finds by clear and convincing evidence that DHHS has established at least one of the statutory grounds for termination under MCL 712A.19b(3) and that termination is in the child's best interests. *In re Powers*, 244 Mich App 111, 118 (2000). This Court reviews a trial court's decision to terminate parental rights using the clearly erroneous standard. MCR 3.977(K); *In re Hudson*, 294 Mich App 261, 264 (2011); *In re JK*, 468 Mich 202, 209–210 (2003). A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *Id.*

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ARGUMENT

I. Constitutional due process does not require the trial court to consider and eliminate available alternative remedies short of termination of parental rights when a child is placed in the care of a relative under court order.

In applying the correct constitutional standards, the interests of the child govern once the court determines that there are grounds for determination. The standards for the best interest of the child begin and end with the child. That is why termination of Bailey's parental rights was appropriate here for DD.

A. Trial courts must assess any best-interest outcome for children on a case-by-case basis, which anticipates that the termination of parental rights may be in the best interests of some children even when a less restrictive option is available.

Termination of parental rights is in the best interests of some children even when a less restrictive option is available. DHHS acknowledges that the Fourteenth Amendment of the United States Constitution forbids the government from infringing on Dailey's fundamental liberty interest to the care and custody of DD without due process of law. See generally *Washington v Glucksberg*, 521 US 702, 721 (1997). Due process precludes a government from infringing on the parent's rights absent a compelling state interest. *In re AP*, 283 Mich App 574, 592 (2009), citing *Troxel v Granville*, 530 US 57, 65–66 (2000). The Michigan Child Protection Law, however, recognizes the compelling state interest to protect the child from parental child neglect and/or abuse in the circumstances in which a parent has failed to that parent's obligations to care for a child. MCL 722.621–638. DHHS submits that Dailey's inability to provide proper care for DD because of his

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lengthy and continuous substance abuse provides a compelling interest for the state to protect DD's welfare.

Respondent now claims that even if termination is supported by statutory grounds, termination of parental rights cannot be in the children's best interest where it is not the least restrictive option. (See Dailey's Supp, pp 23–28.) But that intermixes the parents' rights with the child's best interests. The question of the parents' rights is answered through the rigorous process of finding statutory grounds that open the door to the possibility of termination. And the best-interest phase is, and should be, focused on the child. *In re Moss*, 301 Mich App at 87.

As respondent points out, the notion of the least restrictive option has been applied by various state courts in parental termination cases. See, e.g., *Fla Dep't of Child & Fams v FL*, 880 So 2d 602, 608, 611 (Fla, 2004) ("the termination of parental rights to the current child must be the least restrictive means of protecting that child from harm"); *Int of B.T.B.*, 472 P3d 827, 841, 842 (Ut, 2020) ("a court must specifically address whether termination is strictly necessary to promote the child's welfare and best interest"); *People in Int of Am v TM*, 480 P3d 682, 687, 689 (Colo, 2021) ("a trial court must consider and reject less drastic alternatives to termination as part of its overall consideration"). Respondent uses Alabama as an ideal model for this Court to adopt a strict scrutiny standard for termination of parental rights. (Dailey's Supp, pp 24–26.) Respondent does not give any examples of scenarios in which there is ever a circumstance where a trial court would have

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the authority to terminate parental rights because, according to Respondent, there will usually be an alternative outcome to termination of parental rights.

Like Michigan, Alabama requires a trial court's termination of parental rights be supported by clear and convincing evidence. *TDK v LAW*, 78 So 3d 1006, 1010 (Ala, 2011). Alabama also requires consideration of whether all viable alternatives to terminating parental rights have been exhausted. *Id.* at 1011. If there is a less drastic measure that will simultaneously protect the child from parental harm and preserve beneficial aspects of the family relationship, that alternative must be explored, especially when the respondent parent shares a deep and beneficial emotional relationship with the child. *Id.* at 1011. However, even Alabama does not require trial courts to reunite a family when a parent subjected a child to chronic physical abuse or when maintaining that relationship does a child more harm than good. *Id.*

In other states, even those that employ a least restrictive means analysis when considering best interests, courts are satisfied where the petitioner has made "a good faith effort to rehabilitate the parent and reunite the family." *Padgett v Dep't of Health & Rehab Servs*, 577 So 2d 565, 571 (Fla, 1991); see also *S.M. v Fla Dep't of Child & Fams*, 202 So 2d 769, 778 (Fla, 2016). Further, just because "some limited and highly restricted contact with a parent may pose no harm" this does not mean that a least restrictive outcome analysis is a bar to termination. *S.M. v Fla Dep't of Child & Fams,* 202 So. 2d at 779. The focus of a best interests hearing should be on the children's needs, not the parent's needs. *In re BTB*, 472 P3d 827

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(Utah 2020). Moreover, if trial court adhere to the statutory framework, a parent's due process rights will be protected because of the implicit rule out nature of the proceedings. *Id.* The court's focus should be firmly fixed on the child's well-being. *Id.* Any procedure that contemplates terminating a parent's parental rights must satisfy due process. *People ex rel AM v TM*, 480 P3d 682, 687 (Colo, 2021). If a trial court follows the required statutory framework, a trial court will have implicitly considered and ruled out less drastic measures to termination of parental rights. *Id.* Indeed, Colorado gives primary consideration to a child's physical, mental, and emotional needs and even though a parent's rights are at stake, the determination of what will serve the best interests and welfare of a child is paramount. *Id*. at 687, 689. In other words, "best" is a superlative and should be more than just adequate or good enough. *Id.*

What is in a child's best interests and a less restrictive option for a parent's rights may align and, on those occasions, an outcome short of termination may be appropriate. When a child's best interests and a less restrictive outcome do not align—especially when those outcomes do not adequately protect children from emotional, mental, or physical harm (including possible exposure and access to lethal narcotics like fentanyl)—there must be a balancing of the risk of harm posed by a respondent parent, the benefit of keeping parental rights intact, and, most importantly, a continuing focus on the child. For that reason, where there is clear and convincing evidence that termination is warranted, the court examining the best interests of the child begins with the *child's* welfare, and what will ensure the

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child's well-being and safety, rather than beginning with question of what is the least restrictive means.

Indeed, other options, including custody orders, will not always sufficiently protect children from harm. For example, such an order would be inadequate in protecting children from a dangerous respondent parent should the non-respondent custodial parent die. It allows for the unreasonable risk that the dangerous parent will have the opportunity to assume custody of the children without any assurance of court oversight to ensure they have resolved the issues that brought the family to the court's attention in the first place. This risk is simply too great for children, especially when that parent has shown disregard for the children's safety in the past. Even if the custodial parent is living, contact between the parents may pose a significant risk of harm to the custodial parent, and, by extension the children, especially when the non-custodial parent has been violent with the custodial parent in the past. (*In re Mason/Williams*, unpublished per curiam opinion of the Court of Appeals, Docket Nos. 362357 and 362772, rel'd 4/13/23, attached as Appendix B, p 6.) The burden of constant vigilance and active protection against an unfit and/or dangerous parent should not fall upon a relative caregiver or guardian because of a blanket application of a less restrictive option to termination being available.

While DHHS' argument and Respondent's argument may be similar in that there is agreement that trial courts should find that termination adequately protects a child's welfare and that this option will do so better than other available options, the difference is in the focus of the best-interest analysis. DHHS wants

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this Court to uphold the current law requiring trial courts to consider less restrictive options, but only in light of the first and controlling consideration, the best interest of the child, and continue to make findings that are in each child's best interests, rather than Respondent's desired outcome of trial court's utilizing a less restrictive option that may come at the cost of what the child needs or wants. Under MCL 712A.19a(6)(a), a court is not required to pursue the termination of parental rights if "[t]he child is being cared for by relatives." This Court has construed this circumstance as "weigh[ing] against termination," expounding that placement with family is "an explicit factor to consider in determining whether termination was in the children's best interests[.]" *In re Mason*, 486 Mich 142, 164 (2010). In MCL 712A.19a(4), the Legislature expressed its intent that permanency planning must include consideration of a guardianship and permanent placement "with a fit and willing relative." Appellate courts have reinforced the consideration of guardianship. In both *Affleck/Kutzleb/Simpson Minors* and *In re Timon*, this Court remanded cases for trial courts to make an individualized best-interests determination without regard to any policy disfavoring guardianship for children under a certain age. See *In re Affleck/Kutzleb/Simpson Minors*, 505 Mich at 858; *In re Timon*, 501 Mich 867 (2017).

The clear and convincing analysis for statutory grounds under MCL 712A.19b(3) with the focus on the parent makes sense, just as the focus shift from the parent to the child for best interests under MCL 712A.19b(5) also makes sense.

Appellate courts have held that "once a statutory ground for termination is established, i.e., the parent has been found unfit, the focus shifts to the child and the

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issue is whether parental rights *should* be terminated, not whether they *can* be terminated. Accordingly, at the best-interest stage, *the child's interest in a normal family home is superior to any interest the parent has*." *In re Moss*, 301 Mich App at 88 (emphasis added). See also *Santosky v Kramer*, 455 US 745, 760 (1982) ("After the State has established parental unfitness at that initial proceeding, the court may assume at the dispositional stage that the interests of the child and the natural parents do diverge.").

For the best-interest analysis, DHHS and the courts must begin with the child and the child's welfare, not from a presumption that is rooted in protecting the liberty of the parent. Each child must be the focus of any best interests hearing as the current case law requires; a child may need to close the chapter of trauma and move forward without the respondent parent just as a child may need to continue that parental relationship despite a parent's wrongdoing. Each case and each child are different and must continue to be evaluated in that way.

B. Michigan law requires courts to focus on DD's welfare in making a best interest determination for him, not Dailey.

DD was born in March 2019 with drugs in his system. Upon his release from the hospital, he entered foster care a few weeks after birth. The Department of Health and Human Services (DHHS) placed him in his maternal grandmother's home where he has remained. Dailey was given a court-ordered treatment plan and ample time to address and overcome his substance abuse. He never did. He continually tested positive for drugs. DD was 39 months old when the trial court terminated Dailey's parental rights to him. In May 2023, the Court of Appeals

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upheld the trial court's termination order, which Dailey seeks an appeal in this Court.

As noted, a child has a due process interest in having a fit parent. *In re AP, at 592*, citing *In re Clausen*, 442 Mich 648, 686 (1993), *In re Anjoski*, 283 Mich App 41, 60–61 (2009). In this instant case, even after Dailey entered a plea of admission to neglect because of his substance abuse and was found unfit in a court proceeding in May 2019, Dailey retained his constitutionally protected parental rights to DD. *Santosky v Kramer*, 455 US 745 (1982). It was nearly a year after DD remained in foster care with a relative without Dailey making progress to overcome his substance abuse and unfitness to care and provide proper custody of DD, that DHHS sought to terminate his parental rights. The record is clear that Dailey received due process of law in the proceeding employed by the court. He was provided all the constitutional protection he was entitled.

DHHS also has a compelling state interest in seeking termination of Dailey's parental rights to provide DD with a permanent and stable home. The Adoption and Safe Families Act (ASFA) of 1997; Public Law 105-89, requires permanency for a child that has been in foster care for 15 out of the most recent 22 months to prevent the child from languishing in foster care. The paramount goal of ASFA is to expedite permanency for a child when his or her parent is unable or unwilling to reunite with the child. It requires the court to conduct permanency hearings at least every 12 months after removal from the parent. Michigan's permanency planning statute, MCL 712A.19a, sets forth permanency planning alternatives for a

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child: (1) reunification, (2) adoption, (3) guardianship, (4) permanent placement with a fit and willing relative, and (5) another planned permanent living arrangement. As a matter of constitutional due process, there is no provision in the Michigan permanency planning statute that requires the trial court to consider and eliminate each permanency plan alternative before termination of parental rights. Rather, the paramount consideration is whether the placement decision will benefit DD, not Dailey, which supports the decision here.

II. MCL 712A.19b(5) does not require the trial court to consider and eliminate available alternative remedies short of termination of parental rights when a child is placed in the care of a relative under court order.

In Michigan, if the court finds that there are statutory 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 towards reunification not be made. MCL 712A.19b(5). Like the permanency planning statute, there is no provision in the Michigan termination of parental rights statute that requires the trial court to consider and eliminate each permanency plan alternative before termination of parental rights.

In this instant case, Dailey stipulated that there were grounds to terminate his parental rights to DD. Thus, the trial court was only required to determine if termination of Dailey's parental rights was in DD's best interest.

Once a statutory ground is established, the trial court decides if termination of parental rights is in the child's best interests considering the child's age and

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circumstances. During this best interest phase of the proceedings, the court may consider the child's needs for permanency among other factors. *In re Olive/Metts*, 297 Mich App 35, 42 (2012).

Neither the ASFA nor MCL 712A.19a requires the court to consider and eliminate available alternative permanency remedies before deciding whether to terminate parental rights. The scheme under Michigan law is after one or more statutory grounds under MCL 712A.19b(3) are established by clear and convincing evidence, and the court determines there is a preponderance of evidence showing that termination is in the child's best interest, then the court shall enter an order terminating parental rights. MCL 712A.19b(5). If the court decides termination is not in the child's best interest and the child cannot return home, however, the court may consider alternative permanency remedies for the child considering the child's age and circumstances.

Dailey's argument for this Court to hold that constitutional due process and MCL 712A.19b(5) required the trial court to consider and eliminate other alternative permanency remedies before terminating his parental rights to DD because he was placed with a relative is without legal authority. There is no language in the statute showing this was the legislative intent. Therefore, this Court should look to the ordinary meaning of the statute. In Michigan, "a clear and unambiguous statute leaves no room for judicial construction or interpretation." *Coleman v Gurwin*, 443 Mich 59, 65 (1993). Unless it is clear that the legislature

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intended something different, a statute must be interpreted as written. *Sun Valley Foods Co v Ward*, 460 Mich 230, 237 (1992).

Dailey's argument is mistaken. It misunderstands the process because he offers no plan to care for DD in the future, but suggests that instead of terminating his parental rights, just leave DD with the maternal grandmother in her current status. Leaving DD with the maternal grandmother in this contingent status would not provide five-year-old DD with the permanency and stability he needs and deserves. Such a result raises numerous concerns. For instance, the relative, even if appointed guardian, would not have constitutionally protected rights to the care and custody of DD. Moreover, guardianship would not completely override parental rights in that the parent can challenge the decisions of the guardian regarding the child's care and custody in court proceedings. Furthermore, Dailey, as a parent with fundamental rights to DD, will be able to interfere with the maternal grandmother's care of DD, but with adoption, he cannot. Dailey's argument to avert termination and maintain his parental rights only means that DD will languish in the care of the maternal grandmother for an indeterminate number of years. If, at a later date, or even for only a short period of time, the maternal grandmother is no longer able and willing to care for DD, she would not be able to make arrangements for his continued care and custody.

Both the language of the ASFA and MCL 712A.19a requires the trial court to conduct permanency planning hearings every twelve months after a child is removed from his or her parents. The foremost permanency plan for DD was to

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return home. As the months elapsed while DHHS made efforts to return DD home, the parents continued their substance abuse. Consequently, the permanency plan for DD was changed to adoption. DD had lived with her since his birth, and she is the only permanent parental figure he has had to provide him with proper care and custody. The best outcome for DD is for his maternal grandmother to be in a position to adopt him. Now that DD is five years old, more than ever before, he needs permanency and stability through adoption, not the uncertainty of languishing in relative placement because Dailey is not able to overcome his substance abuse.

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III. The trial court did not err in terminating Dailey's parental rights when the child was placed in the care of a relative under court order.

DHHS submits that the trial court and Court of Appeals did not err. Dailey stipulated to several statutory grounds to terminate his parental rights. MCL 712A.19b(3)(c)(*i*), (g), and (j). Once a statutory ground is established, the court must terminate if a preponderance of the evidence shows that it is in the child's best interests to do so. MCL 712A.19b(5), MCR 3.977(H)(3)(b); *In re Moss*, 301 Mich App 76, 83 (2013).

In the instant case, the trial court correctly concluded that termination was in the best interest of DD because of his age and need for permanency, stability, and finality. Moreover, the trial court was not required to eliminate alternative permanency remedies before reaching that conclusion.

In its per curiam, unpublished opinion dated May 18, 2023, the Court of Appeals opined that,

> A preponderance of the evidence supports the trial court's finding that termination of respondents' parental rights was in the child's best interests. It is readily apparent that the child would be at risk in respondents' unsupervised care. Both respondents had a longstanding history of substance abuse. They were addicted to heroin and fentanyl. Both received substance abuse counseling from an individual therapist and a drug counselor. They also participated in medication-based therapy through a methadone clinic. Despite these efforts, respondents were unwilling or unable to overcome their drug addictions.
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> Moreover, the trial court reiterated, and respondents understood that the use of fentanyl, in particular, carried with it the risk of death. Further, respondent-father admitted engaging in risky behavior when he confessed to buying heroin off the streets with the understanding that it was likely laced with fentanyl. The child would clearly be at risk of harm if left in respondents' care. [*Id.*, p 5 (paragraph break added).]

(See Appendix A.) (*Id.*, pp 2–7.) Furthermore, the Court of Appeals emphasized that the trial court acknowledged that the child's placement with his maternal grandmother weighed against termination by properly balancing relative placement with other relevant factors. (*Id.*, p 6.) Chiefly, "The trial court noted the child's young age, his need for permanency, stability, and finality, and the length of time the child had been in care–more than three years." (*Id.*) Additionally, the trial court considered the risk to the child in respondents' care considering their addiction to fentanyl and ultimately concluded that termination of parental rights was in DD's best interests. (*Id.*) "Although placement with a relative weighs against termination, and such a placement must be considered, a trial court may

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terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests." (*Id.*)

As noted, parents must demonstrate they can uphold their responsibilities as parents. The question of the best interest analysis should begin and end with what is best for a child, not the parent or guardian.

The trial court did not clearly err in its best interests finding. DD was removed from Dailey following his birth in March 2019 and remained out of his care for over three years. Dailey's failure to make progress towards reunification during that time established, by a preponderance of the evidence, that he could not and would not be able to provide DD with the stability and permanency he so desperately needs considering his tender age of five. DD has been residing with his maternal grandmother practically since his birth and she should have an opportunity to adopt him. In its findings, the trial court determined that DD requires stability, permanency, and finality *which only adoption can provide*. *In re Olive/Metts*, 297 Mich App 35, (2012). The trial court properly considered DD's best interests.

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CONCLUSION AND RELIEF REQUESTED

The trial court did not clearly err in terminating Dailey's parental rights to DD because he did not overcome his substance abuse to be able to provide DD proper care. Additionally, the trial court was not required by law to consider and eliminate available alternative remedies short of termination because DD was placed with a relative.

Accordingly, DHHS requests that this Court deny Dailey's application for leave to appeal the trial court's order terminating his parental rights to DD so that DD can obtain the permanence he desperately deserves.

Respectfully submitted,

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