

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UNPUBLISHED  
June 18, 2013

In the Matter of N. L. BOSS, Minor.

No. 313538  
Kent Circuit Court  
Family Division  
LC No. 11-050792-NA

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Before: OWENS, P.J., and GLEICHER and STEPHENS, JJ.

PER CURIAM.

The circuit court terminated the respondent-mother's parental rights to her daughter, NLB, who had been in care since birth. Respondent initially showed progress toward reunification but the caseworker ultimately discovered that respondent had been dishonest in her self-reports and continued to engage in behaviors that could result in harm to the child. This information supported a statutory ground for termination and that termination was in the child's best interests. We affirm.<sup>1</sup>

**I. BACKGROUND**

The Department of Human Services (DHS) took NLB into care on March 18, 2011, four days after her birth. NLB was born with marijuana and cocaine in her system. DHS was further concerned because in an incident two years earlier, respondent became intoxicated on alcohol and controlled substances, fell asleep in her bed with her four-month-old son, and awoke to find him dead on the floor underneath a blanket. As a result of her son's death and respondent's subsequent substance abuse, DHS removed her two older children from her care and ultimately placed them with their father.

Respondent spent the first six months after NLB's birth in and out of jail on various charges. Respondent thereafter appeared to show progress toward reuniting with her young daughter. Respondent completed parenting classes and engaged in counseling. She lived in an appropriate home with her mother. Respondent earned unsupervised visitation with NLB and was very close to regaining custody.

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<sup>1</sup> The circuit court also terminated the parental rights of NLB's father. He has not appealed that order.

The foster caseworker, however, eventually learned that respondent's progress was not as stellar as it seemed. Respondent hid her engagement in romantic relationships with two men who had significant criminal and substance abuse histories. In recorded jailhouse conversations with one of her incarcerated boyfriends, respondent admitted to alcohol use and drug use and sales, as well as engaging in physically violent situations. Respondent graphically discussed sex with her boyfriend during recorded telephone conversations while children were in the room and could be heard making inappropriate comments to those children. Child Protective Services (CPS) substantiated a neglect claim against respondent in the meantime based on injuries to respondent's boyfriend's child who had been improperly left in her care. Respondent also became pregnant twice during this case, the first ending in a miscarriage or an abortion, and lied to the caseworker about it.<sup>2</sup> Moreover, despite the passage of 19 months and repeated referrals to organizations for assistance, respondent never secured any type of employment.

Based on the evidence, the circuit court terminated respondent's parental rights to NLB based on MCL 712A.19b(3)(c)(i), (g), and (j).

## II. STANDARD OF REVIEW

Pursuant to MCL 712A.19b(3), a trial court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). "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 is required by law to order termination. MCL 712A.19b(5). This Court reviews for clear error the circuit court's determination that a statutory ground for termination has been established and its determination that termination is in the children's best interests. MCR 3.977(K); *In re Archer*, 277 Mich App 71, 73; 744 NW2d 1 (2007). A decision "is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes us as more than just maybe or probably wrong. *Trejo*, 462 Mich at 356.

## III. THE DHS ESTABLISHED A STATUTORY GROUND FOR TERMINATION

MCL 712A.19b(3)(c)(i) requires termination of parental rights if

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 . . . [t]he 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.

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<sup>2</sup> Respondent gave birth to a son in February 2013, who was also taken immediately into care by the DHS.

The conditions that led to adjudication in this case were respondent's substance abuse, failure to secure a crib for NLB despite the previous death of her son due to unsafe sleeping conditions and the neglect that led to the removal of her two older children from her care. These conditions had not been remedied despite the passage of 19 months since the petition had been filed. Respondent tested positive for marijuana as late as 15 months after the petition was filed and admitted to continued drug and alcohol use during taped conversations with her boyfriend. Respondent had a room for NLB in her mother's home but still had not found a crib. Moreover, there was evidence that respondent was still unable to safely care for her child. A neglect report against respondent was substantiated due to injuries suffered by a child while in respondent's care. During unsupervised visitation with NLB, respondent visited friends and family with known criminal backgrounds and left NLB in the temporary care of individuals that had not been approved in violation of her service plan.

MCL 712A.19b(3)(g) provides for termination when "[t]he parent, without regard to intent, 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." Respondent received services for 19 months after NLB's birth and even before as her two older children were the subject of earlier child protective proceedings. Despite extensive parenting classes, substance abuse treatment, psychological counseling and referrals for employment assistance, respondent continued to use narcotics and alcohol, associated with drug users and criminals, lied to caseworkers about her progress, and remained unemployed. The caseworker testified that she would require another year of services with respondent truthfully reporting her progress to assure that respondent was truly ready and able to be reunited with her child. While respondent had an appropriate home with her mother, the DHS presented clear and convincing evidence that respondent could not adequately and safely care for NLB anytime in the near future.

MCL 712A.19b(3)(j) provides for termination of parental rights where "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." The DHS presented evidence that respondent continued to associate with known criminals and drug users and left NLB with inappropriate persons during unsupervised parenting time sessions. Moreover, despite that respondent's infant son had died in her care while she was intoxicated on controlled substances and alcohol, respondent continued to use these substances. This evidence sufficed to support the potential danger to NLB in respondent's care. The cumulative evidence also supported the court's determination that termination was in NLB's best interests.

Affirmed.

/s/ Donald S. Owens  
/s/ Elizabeth L. Gleicher  
/s/ Cynthia Diane Stephens