

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

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UNPUBLISHED  
August 19, 2014

In re LUGO/NUNEZ, Minors.

No. 320215  
Wayne Circuit Court  
Family Division  
LC No. 12-510663-NA

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Before: GLEICHER, P.J., and SERVITTO and RONAYNE KRAUSE, JJ.

PER CURIAM.

The circuit court terminated the respondent-mother's parental rights to her three minor daughters based on her failure to protect the eldest from sexual abuse at the hands of the children's father and her repeated failures to follow court orders prohibiting the father's contact with the children after they were taken into protective custody. Because the Department of Human Services (DHS) established that respondent had not rectified the conditions that led to adjudication and could neither protect her children nor provide proper care and custody, the court did not err in terminating respondent's parental rights. We affirm.

**I. BACKGROUND**

The DHS took 13-year-old Jy and seven-year-old Je into care in November 2012, after Jy reported to a school social worker that her father had been molesting her approximately three times a week for a two-year period. Jy had previously accused her father of sexual abuse in April 2012, but the report was deemed "not substantiated" after Jy recanted her story. Jy indicated that respondent was aware of the abuse. Specifically, the father claimed he needed to sleep in his daughters' bedroom because of his bad back. Respondent was suspicious and checked on the girls twice each night. The girls slept together in the bottom, double-bed bunk of their bunk beds. Respondent found the father sleeping in the girls' shared bed, rather than on the floor as she expected. As a result, respondent moved the top bunk into the master bedroom so the father could sleep there. This angered the father, who asserted his right to sleep with his children. Moreover, Jy reported that when she disclosed the sexual abuse to her mother in April 2012, respondent convinced her to recant her story. Respondent told Jy that she and her sister would be removed and placed into separate foster homes.

During the child protective proceedings, respondent actively participated in her reunification plan. She attended parenting classes and counseling. She also earned unsupervised visits with Je. Following the February 26, 2013 hearing at which the court terminated the father's rights to Jy and Je, the court declined to terminate respondent's parental rights as it

would be contrary to the children's best interests. And by August 2013, respondent had seemingly improved to the point the DHS recommended returning Je to her mother's care. Disturbing information came to light thereafter, however.

The court had ordered respondent not to allow the father to have any contact with the children. Yet, respondent continued to reside with or near and work at the same restaurant as the father's family members. Respondent misrepresented to the court that she had ended her relationship with the father when the proceedings began. When respondent later admitted that she was pregnant with the father's child, she was evasive about her due date. Ultimately, respondent's third daughter, C, was born 11 months after the proceedings began. Moreover, evidence from social media proved that respondent allowed the father to be present during her unsupervised visits with Je. Je told her foster parent that when she was returned to respondent's care, the father, respondent, Jy and Je planned to move back to Florida where the girls were born. Jy also repeatedly ran away from her foster placements for months at a time. Early in the proceedings, respondent would contact the caseworker whenever she gathered information about Jy's whereabouts. Over time, however, respondent chose to instead harbor Jy at her home and took no protective action when Jy went to live with her sexually abusive father.

The DHS filed a supplemental petition to terminate respondent's parental rights to Jy and Je and an original petition to terminate her rights to C shortly after C's birth. In the supplemental petition related to the older children, the DHS averred that respondent had not benefitted from services given that she continued to allow the father to have contact with her children. Moreover, respondent harbored Jy when she ran away from foster care and falsely denied knowledge of her whereabouts until Jy was found in respondent's apartment during an unannounced home visit. In relation to C, the DHS alleged that respondent was "still having contact with [the father] and allowing [him] to have access to the children," despite the history of sexual abuse. Following a joint hearing on these petitions, the court terminated respondent's parental rights to all three children.

## II. GROUNDS FOR TERMINATION

The circuit court terminated respondent's parental rights to Jy and Je pursuant to MCL 712A.19b(3)(b)(ii), (c)(i), (c)(ii), (g), and (j), and to C pursuant to factors (g), (i), (j), and (l). Respondent now challenges the factual support for these grounds.

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). We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). Furthermore, the "clear and convincing standard is the most demanding standard applied in civil cases[.]" *Id.* (citations omitted). When termination is based on

“grounds new or different from those that led the court to assert jurisdiction over the children, the grounds for termination must be established by legally admissible evidence.” *In re Jenks*, 281 Mich App 514, 516; 760 NW2d 297 (2008), citing MCR 3.977(F)(1)(b).

The DHS established support for termination of respondent’s parental rights to Jy and Je under factor (b)(ii), which provides:

The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

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(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.

Jy reported on two separate occasions that she was the victim of sexual abuse at her father’s hands. Respondent admitted during the proceedings that her suspicions were aroused by the father’s choice to share a bed with his daughters and she was further concerned by the father’s reaction when she tried to facilitate his return to the master bedroom. Yet, respondent took no further action to protect her daughters while they remained in her care. In fact, as time progressed, respondent came to discredit Jy’s allegations. Following the children’s placement in foster care, respondent still failed to protect her daughters. Respondent knew Jy lived with the father after she absconded from her foster care placement, but made no report to secure Jy’s discovery. Respondent also allowed the father access to the girls in her home during unsupervised visits with Je and while Jy was in hiding.

The DHS also supported termination under factors (c)(i) and (ii), which provide:

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:

(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.

(ii) Other conditions exist that cause the child to come within the court’s jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

The condition that led to adjudication was respondent’s failure to protect the children. Despite parenting classes, counseling, and specific court orders prohibiting the father’s contact with the children, respondent continued to allow the father access to her daughters. This was

proven by Jy's and the father's posts on Facebook and Twitter. Respondent's decision to harbor Jy after she absconded from foster care was a new ground supporting termination. The DHS established this ground through admissible evidence at the termination hearing. Specifically, Jy posted pictures of herself with Je during her absence. The caseworker testified that she personally discovered these pictures on the Internet. And the caseworker testified to finding Jy hiding in a closet in respondent's apartment and her discovery of various items of Jy's clothes in the residence at the time.

Under factor (g), the court must terminate a parent's rights if the DHS establishes that a parent "without regard to intent, fails to provide proper care or custody" and will be unable to do so within a reasonable time considering the child's age. Termination is supported under factor (j) when there is a reasonable likelihood that the child will be harmed if returned to the parent's custody. The DHS supported termination of respondent's rights to Jy and Je under these factors based on evidence that respondent failed to benefit from services. Mere compliance with a treatment plan is insufficient to avoid termination. A parent must benefit from the services provided and improve her parenting skills for the safety of her children. See *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). Despite parenting classes and counseling, respondent was still unable to recognize the danger the father posed to her daughters. Respondent's inability to recognize that safety demanded the separation of her daughters from their father prevented her from providing proper care and custody in the foreseeable future and also created a risk of harm to the children if returned to her care.

The circuit court also terminated respondent's rights to C based on factors (g) and (j). The same evidence supports termination of respondent's rights to her infant on these grounds. Just as respondent failed to understand the danger to her older daughters, respondent would not likely recognize the danger posed to C within a reasonable time. Respondent proved she was incapable of separating her children from their father, and the same incidents would recur with C.

The circuit court also relied upon factors (i) and (l) in terminating respondent's parental rights to C. These factors require termination of a parent's rights over one child when her rights were terminated to the child's sibling:

(i) Parental rights to 1 or more siblings of the child *have been terminated* due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(l) The parent's rights to another child *were terminated* as a result of proceedings under section 2(b) of this chapter or a similar law of another state. [Emphasis added.]

We find these grounds problematic because respondent's rights to C were terminated at the same hearing as were her rights to Jy and Je. The use of the past tense in factors (i) and (l) suggests that the termination in connection to the child's sibling must have occurred previously. Any error in this regard would be harmless, however, and we need not resolve this interpretative issue here. The DHS need only prove one statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3). As termination of respondent's parental rights to C was supported

by two independent grounds, reliance on factors (i) and (l) was harmless. See *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

### III. BEST INTERESTS

Respondent further contends that termination of her parental rights was not in the best interests of her children. Pursuant to MCL 712A.19b(5), “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 and order that additional efforts for reunification of the child with the parent not be made.” A circuit court must determine by a preponderance of the evidence that termination is in the child’s best interest. *Moss*, 301 Mich App at 83. “In deciding whether termination is in the child’s best interests, the court may consider 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*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). “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.” *In re White*, 303 Mich App 701, 714; 846 NW2d 701 (2014).

Respondent argues that she was bonded with her children, the children wished to reside with her, and she was able to provide for them. Notwithstanding these claims, the evidence showed that termination was in the children’s best interests. Respondent placed the children’s well-beings in jeopardy during these proceedings. Perhaps because she never completely believed Jy’s story of sexual abuse, respondent continued her romantic relationship with the father and became pregnant after her older children were removed from her care. As evidenced by photographs posted on Facebook, Instagram, and Twitter, the father had contact with the children while in their mother’s care after his parental rights were terminated for sexual abuse. And respondent allowed Jy to hide in her residence after running away from her foster placement. During this time, the then 14-year-old was not attending school and was not receiving necessary counseling. Moreover, based on evidence from Jy’s social media accounts, she was abusing marijuana during this time, a problem not being addressed while the child was a fugitive. Respondent’s behavior demonstrated a lack of commitment to protecting the safety and well-being of her children. The circuit court did not clearly err in finding that termination of respondent’s parental rights was in the children’s best interests.

We affirm.

/s/ Elizabeth L. Gleicher

/s/ Deborah A. Servitto

/s/ Amy Ronayne Krause