

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

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In the Matter of BRYANNA NICOLE HARLAN,  
JESSE THOMAS HARLAN, CAMRYN SCOTT  
HARLAN, and ALORA PAULINE HARLAN,  
Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MELINDA JUNE HARLAN,

Respondent-Appellant,

and

BRYAN SCOTT HARLAN,

Respondent.

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JESSE THOMAS HARLAN, CAMRYN SCOTT  
HARLAN, and ALORA PAULINE HARLAN,  
Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

BRYAN SCOTT HARLAN,

Respondent-Appellant,

and

UNPUBLISHED  
September 15, 2009

No. 289665  
Macomb Circuit Court  
Family Division  
LC Nos. 2007-000143-NA;  
2007-000144-NA;  
2007-000145-NA;  
2007-000146-NA

No. 289890  
Macomb Circuit Court  
Family Division  
LC Nos. 2007-000143-NA;  
2007-000144-NA;  
2007-000145-NA;  
2007-000146-NA

MELINDA JUNE HARLAN,

Respondent.

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Before: Stephens, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

In these consolidated cases, respondents appeal by right the circuit court's order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g).<sup>1</sup> We affirm.

We first address respondent-mother's claim concerning the February 2007 preliminary hearing and whether petitioner established probable cause for the petition. We note that the circuit court ultimately exercised jurisdiction over the children in April 2007, based on the no contest pleas of both respondents. "Matters affecting the court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights." *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005). Respondent-mother's argument involving the initial preliminary hearing relates to the circuit court's exercise of jurisdiction, and respondent-mother may not collaterally challenge the court's exercise of jurisdiction in this appeal. *Id.*

Respondent-mother also raises a due-process claim related to the services provided by petitioner after the parent-agency agreement was adopted. However, contrary to respondent-mother's assertion on appeal, the facts of the instant matter are significantly different than those presented in *In re B & J*, 279 Mich App 12, 18-20; 756 NW2d 234 (2008), wherein this Court concluded that the state had intentionally set out to create the statutory ground for termination. Respondent relies on the referee's statement at a hearing of May 7, 2008, to justify why respondents should have been afforded more time to comply with the parent-agency agreement. The referee remarked that she believed that petitioner had "dropped the ball" for the first ten months of these proceedings. However, this remark did not suggest intentional conduct, and the evidence did not show that petitioner took any deliberate action to create the grounds for termination at issue here. Moreover, even assuming arguendo that petitioner's earlier services were deficient, we conclude that the circuit court's decision to give respondents additional time to comply with the parent-agency agreement adequately protected respondent-mother's right to due process. We further find no error in the circuit court's failure to comment on its earlier remark at the time of the December 16, 2008, decision to terminate parental rights. The court was only required to make "[b]rief, definite, and pertinent findings and conclusions on contested matters." MCR 3.977(H)(1).

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<sup>1</sup> Although petitioner also requested termination under MCL 712A.19b(3)(j), the circuit court's decision reveals that it did not rely on that statutory ground.

Ultimately, the reasonableness of the services offered to respondent-mother relates to the sufficiency of the evidence to establish the statutory grounds for termination. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). In this regard, the circuit court appropriately took notice of the entire file. Indeed, evidence admitted at a prior hearing may properly be considered at subsequent proceedings. See *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973). We review for clear error the circuit court's findings of fact regarding the statutory grounds for termination. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made. *Id.* at 209-210.

With respect to both respondents, the circuit court found that the conditions leading to adjudication involved substance abuse and an inability to provide stable housing, and that neither respondent had satisfactorily resolved these issues. We disagree with respondent-mother's argument that she had rectified her substance abuse issues by demonstrating that she had remained drug-free in the structured environment provided by Leonard House. Respondent-mother had not shown an ability to remain drug-free outside a structured environment, and her prior participation in rehabilitation programs had not been successful. Thus, the circuit court did not clearly err by finding that this condition had not been rectified and was not reasonably likely to be rectified within a reasonable time considering the children's ages. The circumstances surrounding respondent-father's substance abuse issues—namely, issues involving his criminal case for possession of heroin—differed from those of respondent-mother. But we reject respondent-father's argument that his partial compliance with the parent-agency agreement was sufficient to show that he had rectified his substantial substance abuse issues. A court must be able to conclude that the respondent could provide a home in which the children would no longer be at risk of harm. See *In re Gazella*, 264 Mich App at 677. Considering the evidence regarding respondent-father's failure to submit to drug screens and failure to participate in recommended therapy, we find no clear error in the circuit court's determination that respondent-father's substance abuse issues continued to exist and were not reasonably likely to be rectified within a reasonable time considering the children's ages.

We further conclude that the circuit court did not clearly err by finding that both respondents had failed to obtain stable housing. The caseworker's inability to remember if she had given respondents a housing list did not demonstrate that the necessary referral had not been made, especially considering the complete absence of evidence that the lack of a housing referral was the reason for either respondent's inability to obtain stable housing. Cf. *In re Fried*, 266 Mich App at 543. Quite simply, irrespective of whether petitioner made any housing referrals in this matter, the issue of respondents' lack of suitable housing continued to exist and was not reasonably likely to be rectified within a reasonable time.

For the foregoing reasons, we conclude that the circuit court did not clearly err by finding that the statutory ground for termination contained in § 19b(3)(c)(i) had been established by clear and convincing evidence with respect to both respondents. Nor did the circuit court clearly err by finding that the statutory ground for termination contained in § 19b(3)(g) had been established by clear and convincing evidence with respect to both respondents. The evidence concerning respondents' continuing substance abuse issues established that both respondents were incapable of providing proper care and custody for the children and that they would not be able to do so

within a reasonable time. See *In re Conley*, 216 Mich App 41, 43-44; 549 NW2d 353 (1996); see also *In re Shawboose*, 175 Mich App 637, 641; 438 NW2d 272 (1989).

Finally, considering the length of time the children had been in foster care, the continued uncertainty that either respondent would be able to provide proper care and custody for the children, and the children's need for permanency, we cannot conclude that the circuit court clearly erred by finding that termination of each respondent's parental rights was in the children's best interests. MCL 712A.19b(5). The referee's failure to specifically comment on the evidence of a bond between the children and respondents does not convince us otherwise. See MCR 3.977(H)(1).

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Kathleen Jansen

/s/ Kurtis T. Wilder