

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

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In the Matter of LAQWESHA JONEA  
AUGUSTINE, MICAH DASHAWN  
AUGUSTINE, and NIA LASHAY AUGUSTINE,  
Minors.

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DEPARTMENT OF HUMAN SERVICES,  
  
Petitioner-Appellee,

UNPUBLISHED  
January 8, 2008

v

BRENDA L. EVANS,

Respondent-Appellant,

No. 277590  
Genesee Circuit Court  
Family Division  
LC No. 01-113525-NA

and

CRAIG EMERSON EVANS,

Respondent.

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Before: Schuette, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Respondent-appellant (“respondent”) appeals as of right from the order terminating her parental rights to the minors under MCL 712A.19b(3)(c), (g) and (j). We affirm.

**I. FACTS**

Respondent pleaded responsible to various allegations in a petition requesting that the court take jurisdiction over the minors, including an allegation that her use of drugs interfered with her ability to care for the children. Thereafter, although she complied with some requirements of a parent-agency agreement, she failed to consistently visit the children, failed to comply with all requirements for drug testing, and failed to stay sober for a significant period. A petition to terminate was therefore authorized. At the termination hearing, the evidence showed that substance abuse therapy was discontinued due to nonattendance, and that respondent had relapsed following an approximate five-month period of sobriety. At the time of the hearing, respondent had been in a residential treatment program for approximately two months. She had no other housing. Moreover, the psychologist who had evaluated respondent concluded, among

other things, that respondent's sporadic sobriety was not a reliable indicator of future sobriety, that she did not appreciate the consequences of her actions, that she had impaired judgment, and that her 20-year history of substance abuse had apparently caused intellectual deterioration. The psychologist concluded that respondent could benefit from consistent therapy with respect to her own problems, but that therapy likely would not enable her to care for her children.

## II. TERMINATION OF PARENTAL RIGHTS

Respondent argues that the trial court clearly erred in terminating her parental rights to her minor children. We disagree.

### A. Standard of Review

To terminate parental rights, the trial court must find that at least one statutory ground for termination in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). We review the trial court's decision for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made, giving due regard to the trial court's special opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

### B. Analysis

Respondent first argues that it was clearly erroneous to terminate her parental rights since she had substantially complied with the parent-agency agreement, had made independent efforts to improve her situation, and the psychologist's report was not current. However, termination in this case was based on: (1) the determination that continued sobriety was unpredictable based on respondent's track record; (2) the psychologist's testimony that there was an organic intellectual deterioration, and that consistent counseling might enable respondent to address her own needs but likely would not enable her to timely provide proper care for her children, especially given that they were teenagers; and (3) respondent's inconsistent visits, evincing a lack of interest in remedying these problems. These findings supported the conclusion that the substance abuse and neglect that led to the adjudication continued and there was no reasonable likelihood that they would be rectified within a reasonable time, MCL 712A.19b(3)(c)(i); that respondent had failed to provide proper care and custody and there was no reasonable expectation that she would be able to do so within a reasonable time considering the children's ages, MCL 712A.19b(3)(g); and that there was a reasonable likelihood that the children would be harmed if returned to respondent's care, MCL 712A.19b(3)(j). Accordingly, there was no clear error.

Respondent next argues that the referee erred in not advising respondent of her right to appeal. Since respondent has appealed to this Court, any error is harmless. See *People v Hicks*, 259 Mich App 518, 537; 675 NW2d 599 (2003). Respondent suggest that she also had "the right to appeal [the referee's] decision directly to the judge." However, although MCL 712A.10(1)(c) provides that a referee may summarize testimony and make a recommendation, the judge makes the ultimate decision. Accordingly, review of the referee's "decision" is inherent in the structure of the statute.

We find no merit in respondent's supposition that the judge's stamped signature on the order indicates that the judge did not meaningfully consider the referee's findings and recommendation. There is no substantiation for this belief.

Affirmed.

/s/ Bill Schuette

/s/ Stephen L. Borrello

/s/ Elizabeth L. Gleicher