

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

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In the Matter of BL, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAWN WEBB,

Respondent-Appellant,

and

FRANK LAMBERT,

Respondent.

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In the Matter of NL, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAWN WEBB,

Respondent-Appellant,

and

FRANK LAMBERT,

Respondent.

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Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

UNPUBLISHED

November 27, 2001

No. 231916

Montcalm Circuit Court

Family Division

LC No. 2000-000022-NA

No. 231917

Montcalm Circuit Court

Family Division

LC No. 2000-000023-NA

In these consolidated appeals, respondent-appellant Dawn Webb appeals as of right from the family court order terminating her parental rights to the minor children.<sup>1</sup> We affirm.

### I. Basic Facts And Procedural History

The Family Independence Agency (FIA) filed its initial petition in May 2000, which included events that allegedly occurred while the family was living in Arizona. The petition asserted that the children had been living with a friend in Lakeview, Michigan, since January 2000 in order to avoid being placed in foster care in Arizona, that the friend could no longer care for the children, and that it was unknown when the parents would return from Arizona. The FIA indicated that Child Protective Services in Arizona advised that they had received five reports of child abuse involving the parties, that both children had been acting out sexually, and that Lambert had sexually abused BL.<sup>2</sup> Webb, however, denied that Lambert sexually abused BL, stating that BL was “just telling stories.” The petition also stated that the parents allowed the children to view pornographic pictures and videos, that both children saw Lambert assaulting Webb, and that Webb continued her relationship with Lambert and allowed him access to the children.

The family court authorized the initial petition following a preliminary hearing in May 2000, which Webb did not attend. The court released the children to the temporary custody of the FIA. The FIA filed an amended petition on June 22, 2000, seeking to terminate Webb’s parental rights pursuant to subsections 19b(3)(b)(ii), (g) and (j). The petition alleged that Lambert had sexually abused BL through actual or attempted sexual penetration and that he physically abused BL by strangulation and by beating her. The petition added that NL had been observed with injuries, that Lambert admitted to drug use, allowing pornography in the home, and beating the children and Webb. The petition reported that the children were found unattended on at least four occasions and that case workers found the Lambert home in a “deplorable” condition with feces smeared on the walls and dirty clothes, dishes, and food strewn throughout the home.

With respect to Webb, the amended petition alleged that she failed to protect the children from Lambert’s physical and sexual abuse, attributing the children’s injuries to the children’s own actions. Webb reportedly stated that BL invented the reports of sexual abuse. Webb admitted to using methamphetamine and prescription pain medication, which made her sleep for long periods of time, leaving the children unsupervised. Webb also reportedly admitted to living in a car with the children, noting that Lambert had beaten her several times, sometimes in the presence of the children. Nevertheless, Webb refused to cooperate with the prosecution of the assaults and continued to associate with Lambert. Additionally, Webb voluntarily relinquished

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<sup>1</sup> See MCL 712A.19b(3)(b)(ii), (g) and (j).

<sup>2</sup> Specifically, the petition alleged that BL stated that Lambert inserted his fingers “where she goes potty” and that it hurt; that he put “where he goes to the bathroom” in her mouth; that he touched her “where she goes poop” with “where he goes to the bathroom,” and that it hurt; and that BL stated that “he does it to Mom too,” indicating that her parents had sexual contact in front of her.

custody of her two older children to their grandparents after they filed a neglect petition on the children's behalf.

At subsequent hearings held in June and July 2000, the family court heard additional testimony and ruled on several motions not relevant to the issue raised on appeal. The family court suspended Webb's parenting time with the children. Later, the family court entered an order requiring the children to obtain psychological evaluations pertaining to the "risk of harm" in allowing them to resume visitation with Webb.

At the jury trial in September 2000, Kim Dowling testified that, while in Arizona in 1995, she knew Webb and Lambert. Webb told her that Lambert beat her, and Dowling observed bruises on Webb on several occasions. Webb and Lambert fought almost daily and the police were called to their apartment several times. After Dowling moved to Michigan, Webb called with reports that Lambert had choked her until she passed out and that he had broken her nose. Webb also reported that Lambert "[put] a belt around [BL's] neck several times," that "he's finally hitting on [NL] too," and that he would lock the children in a bedroom. Webb tried to leave Lambert, but she and the children always returned to him.

Dowling said that the children came to live with her in Michigan at the end of January 2000 and remained with her until May 2000, when the children were taken into protective custody. In the spring of 2000, Webb and Lambert came to Michigan and took the children to a hotel for a week. After the visit, Dowling saw bruises in the shape of fingers on NL's face and "more spots" on BL's head where the girl would pull out her hair when she was stressed. When Webb came to Michigan to start a new life about two-and-a-half months after the children had arrived, she called Lambert and asked him to join her. Lambert complied with Webb's request, and Webb paid for his bus ticket. While Webb stayed with Dowling, Webb took prescription pain medication that caused her to sleep during the day when the children were awake and to stay up at night when the children were sleeping.

During the children's stay, Dowling began to suspect that six-year-old BL had been sexually abused after she witnessed BL acting out sexually. BL later reported that Lambert had her watch certain movies and that "[h]er daddy touched her." A phone conversation Dowling had with Webb was once interrupted when Webb stated that she had to "stop the kids because the kids were having sex together." NL told Dowling that BL fondled him one night when Dowling's son, with whom NL shared a room, was gone for the evening. There was also an incident when BL and NL had taken off their pants and were trying to "get my niece's pants off." When Dowling confronted Webb with this information, Webb told BL to "quit telling stories" and that "she was going to get her some counseling and get her some help." Dowling subsequently called the authorities regarding her suspicions.

Jennifer Cooper, Dowling's daughter, testified that she frequently visited her mother's home while BL and NL were there. BL told Cooper that Lambert put "his pee-pee where she peed," that he would put "his [pee-pee] in her mouth and would sometimes pee in it," and that he had "laying butt" (BL's word for sex or sexual contact) magazines and videos that he would have her watch. BL reported that Webb was either in her room sleeping or at work when the incidents occurred. BL also told Cooper that when she told Webb what had happened, Webb "just said she was telling stories." Further, BL told Cooper that she and NL witnessed Webb and Lambert "doing nasty things."

With respect to physical violence in the home, BL and NL told Cooper that Lambert “tied [Webb] up, he had a gun to her head,” that he would “hit them with whatever he could get his hands on” and that he would “pick [BL] up and throw her against the wall.” From BL’s story of the physical violence toward her and NL, Cooper assumed that Webb was present when the abuse occurred.

Pastor John Jachim testified that in April or May of 2000, he befriended Webb and Lambert after they arrived from Arizona and were homeless. Jachim found them a place to stay temporarily. Webb allegedly stated to him that Lambert had strangled BL “to the point of unconsciousness and soiling herself.” Jachim also recounted one particularly disturbing incident Webb told him suggesting BL had been sexually abused.

Um, [Webb] said she came home, I believe it was from work . . . . [S]he came in the house and the bedroom door was locked. And she proceeded to – I think she said she heard something playing like a TV or radio or something and she went around the home and went through the window and she found – she climbed through the window and she found [Lambert] on the bed and her daughter on the floor and there was X-rated movies playing on the TV.

Webb told Jachim that BL was lying naked, next to a vibrator, and Lambert had a towel around him. Webb said that she still loved Lambert, that she could not leave him, that she wanted him to change, and that she wanted to get him some help.

Former FIA worker Terry King testified that he worked on the case until July 2000. When Webb and Lambert lived in Arizona, Webb requested a personal protection order against Lambert, but later had it removed. Webb told King that Lambert had numerous contacts with the police related to domestic violence. She had him arrested for rape in November 1999, but never followed through with the charges. Lambert admitted that he had a problem with domestic violence and that he wanted to get help. Webb also reported that Lambert had used excessive force against the children. During two supervised visits with respondent, King noticed that the children used inappropriate language and were difficult to control.

King further explained that BL told him that Lambert “had done the nasty to her.” When asked to explain, BL, “as a six year old, began to gyrate her hips and she actually threw her head back and started making moaning sounds, pretty much in a sexual manner.” Originally, Webb did not “accept the idea of [Lambert] having sex with [BL] and believed that the child was lying,” but in a more recent conversation, Webb thought it might be possible. During the seven or eight year relationship between Lambert and Webb, there had been four separations, the longest lasting for about six months. Webb, who always returned to Lambert, explained that she had been diagnosed as “co-dependent. That she needed this relationship . . . even though it may be abusive and destructive, that it was something that she had a great deal of difficulty in trying to control.” King told Webb that it was in her best interests and the children’s best interests to stay away from Lambert.

On cross-examination, King admitted that Webb was “very interested” in being united with her children and that there seemed to be a relationship between them. Webb engaged in every service King requested, including domestic violence classes, parenting classes, and

individual counseling. Webb reported to King that she had difficulty controlling the children and that they did not respect her.

FIA worker Charles Davenport testified that when he interviewed the children in April 2000, BL told him that Lambert touched her with his hands “where she goes to the bathroom” when her mother was at work, that “he touched her with his hand and that she felt his finger go inside of where she goes potty,” and that “he put, where he goes to the bathroom, in her mouth and in her bottom where she goes poop and it hurt.” BL also described instances of fellatio in her own words and indicated that she had viewed Lambert’s pornographic magazines and videotapes.

Davenport said that Webb did not have “much of a response” when confronted with the allegations of sexual abuse, but admitted that there was pornographic material in the house. Lambert denied having sexual contact with his daughter, but admitted to physically abusing Webb and BL. Lambert went to jail after he admittedly “beat the living shit out” of BL when he saw the children acting out sexually with each other. NL told Davenport that he did not feel safe in the house “because his mom and dad fight all the time.”

Webb stated that she lived with Lambert for about seven years and had two children (BL and NL) with him.<sup>3</sup> Lambert committed several acts of violence against her<sup>4</sup> and had been arrested about twelve times for them. Webb never followed through with charges<sup>5</sup> and allowed Lambert back into the home after each incident. Webb also returned home to Lambert after he was arrested for threatening her and the lives of the children. Lambert sought psychiatric treatment and was diagnosed with bi-polar disorder and manic depression.

Webb recalled the incident when she found Lambert and BL naked in a bedroom, and admitted that she continued to live with Lambert after the incident.<sup>6</sup> She noticed that BL began to act out sexually when she was two years old. At that time, Webb worked forty to fifty hours per week while Lambert stayed home with BL for about a month, after which BL attended daycare because Lambert could not handle the arrangement.

On cross-examination, Webb stated that she took the children with her every time she left Lambert. She had never been accused of abusing her prescribed medication. She denied that she and her children had ever spent the night in a car. She did everything King told her to do in order to regain custody of her children. She had completed parenting classes, she had been attending counseling since May 2000, and she had been attending domestic violence counseling for almost three months. She and Lambert “split up” for the last time sometime after Pastor

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<sup>3</sup> Webb had two other children from her ex-husband who lived in Arizona with their maternal grandmother, to whom Webb had voluntarily relinquished their custody.

<sup>4</sup> Webb was hospitalized on one occasion and Lambert strangled her until she passed out on another; she did not recall telling a counselor that Lambert had broken her nose three times.

<sup>5</sup> Webb testified that she did follow through with a rape charge, but was told that there was not enough evidence to convict Lambert for that offense.

<sup>6</sup> On cross-examination, Webb claimed that she found a back massager, not a vibrator, near BL and stated that BL never told her Lambert had done anything to her that evening.

Jachim found her an apartment; she did not plan to reunite with Lambert. Webb added that when the family lived in Arizona, BL falsely accused people other than Lambert of committing sexual abuse.

Webb also claimed that she told Pastor Jachim that she still loved Lambert and that she could not leave him a few months ago, not that day. She ended her romantic relationship with Lambert in November 1999, but maintained contact with him. She last had contact with Lambert a week and a half before the hearing because he “wanted to talk,” and she called the police when Lambert refused to leave her apartment.

On redirect, Webb acknowledged that while their romantic relationship ended in November 1999, she went with Lambert to Pastor Jachim’s home when they arrived in Michigan to secure a place to stay, and that she stayed with Lambert overnight. Webb also said that she went with Lambert and another couple to a bar, and that the police were recently called to her residence because of a “domestic dispute” with Lambert. She denied that in May 2000 she told a deputy who arrived at her home that she and Lambert “are trying to work out their problems and are currently residing together.”

Montcalm Deputy Trevor Harkness testified that he interviewed Webb and Lambert in May 2000 regarding the allegations of criminal sexual conduct. Webb told Harkness that she was living with Lambert at the time, and described their relationship as “on again, off again.” Webb reported that there had been several instances of domestic violence.

Dr. Vincent Palusci testified that he was a pediatrician and the director of the child protection team at Children’s Hospital in Grand Rapids. An examination of BL in May 2000 revealed that she “had dilation of her external sphincter of her anus greater than normal” generally associated with repeated trauma to that area. In light of the physical examination, behavioral changes noted by the foster parents, as well as BL’s statements to others regarding what had happened to her, Dr. Palusci concluded that she had probably been sexually abused. Dr. Palusci speculated that, at a minimum, the trauma could have occurred anywhere from several weeks to one year before the examination. He did not find trauma to the external genital area, but acknowledged that “children can have normal appearing genitalia after some types of penetrating trauma and [BL] had alleged digital contact.” BL also told others that there had been oral penetration with Lambert’s “privates,” but Dr. Palusci could not confirm that allegation without oral scars or bruises. His report noted changes in BL’s behavior that were indicative of child abuse.

Mae Ingersoll testified that Webb lived in the apartment next to her store in Lakeview. In April or May 2000, Webb and Lambert asked her if she knew where they could rent a place to live. Since that time, she saw Webb on a regular basis, but did not see Lambert frequently. She assumed that he was living in Howard City. In August 2000, Ingersoll and her husband went to a bar with Webb and Lambert because Lambert “told us that if we all went out and shot a couple games of pool and had a couple of drinks that he would pack his stuff up and leave Lakeview and never be seen again.” When asked whether she wanted Lambert to leave the area, Ingersoll responded that it was “something that was desired by all of us” and that she and her husband had “seen him arguing with [Webb in the store] on several occasions where he would want to be with her and she would tell him that she did not want to be with him.”

On cross-examination, Ingersoll agreed that on each of those occasions “[Webb’s] position was, she didn’t want to be back with Lambert.” She believed that Lambert had left town around September 1, 2000, and that he took a shower at Webb’s house and kept suitcases full of clothing there just before his departure.

Officer Trudy Foster testified that on August 31, 2000, she responded to a call regarding domestic violence at Webb’s house. Webb and Lambert began fighting after they left a bar with Ingersoll and her husband and Webb had thrown Lambert’s suitcases and medication over the balcony. Lambert told Foster that he had been living with Webb in her Lakeview apartment, and Foster believed that he was living there because:

every article of clothing he had was there. The medication – if he was on medication, which was quite obvious, was there. There was other – he said everything in the apartment was his. The furniture, the dishes, everything. He stated that the landlord, which is Mr. John Jachim, helped him move the furniture in from a storage shed. So from this information and what you could see, it was quite obvious he was living there.

Lambert told Foster that Webb only wanted him at the apartment to pay the rent. Webb told Foster that Lambert was on medication and stated “I administer it to him, so I know he gets it.” Webb also told Foster that she did not know Lambert had two keys to the apartment. On cross-examination, Foster testified that Webb told her that she did not want Lambert at the apartment and that Lambert did not give her the dates he had been living at the apartment.<sup>7</sup>

At the conclusion of the trial, the jury determined that the court had jurisdiction over the children with respect to both parents. The court also determined that there was clear and convincing evidence to terminate Lambert’s parental rights, and adjourned the issue of termination with respect to Webb to allow her to collect and present witnesses on her behalf.

The termination hearing with respect to Webb began in October 2000. Psychologist David Meyers, who evaluated the children in September 2000, said that BL told him that she was afraid of Lambert and feared future contact with him. Meyers concluded that future contact with Lambert would damage BL emotionally because:

She reports in very plain and concrete words the kinds of abuse she’s experienced. That abuse, at this time, continues to haunt her somewhat in her dreams and in her thoughts and she just, obviously, does not want to see the perpetrator anymore in any way.

BL told Meyers that she missed Webb and wanted to go back to her. Meyers suggested that BL, who had been “tossed around a bit,” had not had a permanent address, and at times did not know “where they’re living,” needed regularity and consistency, which she was currently receiving in

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<sup>7</sup> Montcalm Deputy John Hannon also responded to the call on August 31, 2000. Lambert stated that he was storing his luggage at respondent’s apartment and that had been “let in to shower at [her] residence.” Webb told Hannon that she and Lambert could not be with each other because she wanted to regain custody of her children.

the foster home. He believed that a determination regarding whether it would be emotionally safe for BL to return to her mother was premature and opined that it could take a parent months or years to break old behaviors.

Meyers stated that NL was also afraid of Lambert and expressed anger toward him, a common reaction that resulted from sexual abuse. NL had bad dreams that involved someone coming to hurt him. NL told Meyers that Lambert came into his bedroom at night, laid on top of him, and “goes back and forth.” From NL’s description, Meyers believed that NL had been sexually abused. NL would tell Webb to “call the cops,” but she never followed through with the request. NL was not angry with respondent but, like BL, he was unable to understand that Webb may have been part of the problem. Meyers stated that the children “look like they’re coping well” in the safe environment of the foster home and that NL needed support on a long-term basis.

Meyers also conducted a psychological examination of Webb, during which, Webb stated that she had no idea that abuse of any kind occurred at the time it happened.<sup>8</sup> He would be concerned if Webb continued to have contact with Lambert because Webb was now aware of the abuse and “to voluntarily or intentionally place the children back under the potential risk, would be a very negative thing . . . .” The events and relationships in Webb’s life were consistent with a dependent personality and Webb recognized that she had a pattern of gravitating toward abusive, commanding people. Meyers also noted that witnessing domestic violence was harmful for children, many of whom tend to adopt that behavior. Webb told Meyers the day of the evaluation that she had no contact with Lambert.

Meyers, would not recommend that the children return to Webb unless she broke off contact with Lambert and was able “to get on with life, stabilize herself, those kind of things.” Although Webb made positive first steps in securing an apartment, trying to find a job, and seeking a counselor, reunification at this time would be premature. Meyers reiterated that the children were doing well in the supportive environment of foster care; they felt safe and had consistent counseling. In Meyer’s opinion, reuniting the family without “external supports” would invite failure, that is, “taking a lot of people who are pretty fragile and putting them together” would not create positive results. Even if Webb permanently ended her relationship with Lambert, her personality made it a real possibility that she would form a relationship with a man with similar characteristics.

On cross-examination, Meyers acknowledged that reunification was possible in the future, that Webb was committed to the children, and that the children did not express anger toward Webb. NL had a bond with Webb and stated that he wanted to see her. BL also indicated that she missed Webb and wanted to see her.

Webb then called several witnesses in support of her case. Kimberly Croy testified that she rented Webb an apartment that was suitable for children in the spring of 2000. Ingersoll testified that Webb was trying to end the relationship with Lambert and that she constantly

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<sup>8</sup> Webb never told him that she had seen the children watching pornographic material, that she found BL and Lambert naked in a bedroom together, or that she saw Lambert strangling BL.



“brings up the kids and how she misses them and how she wants to be with them and take care of them.” Marti Lind testified that Webb was referred to her for parenting classes, which she completed. The classes did not address the issue of protecting children from physical or sexual abuse and Lind agreed that ten sessions did not adequately cover all areas that should have been discussed.

Therapist Kathryn Spengler began treating Webb in June 2000. She diagnosed Webb with anxiety disorder and dysemic disorder, which she described as a form of depression. Webb told Spengler that she and Lambert were not together and that she was not interested in him, but that he would unexpectedly show up at her apartment. Spengler stated that Webb had gained some independence by securing an apartment and a job, and theorized that it would take less than a year for her to gain emotional independence. Webb had been in a relationship for most of her adult life, first with her ex-husband and then with Lambert. Spengler admitted that she considered herself Webb’s advocate.

Webb’s father, William Sweeney, testified that he and his wife offered to open their home to Webb and the children. In the past, he repeatedly told Webb that she could live at his house to get away from Lambert, but she never took him up on the offer.

Webb testified that she loved her children, that she believed they loved her, and that there was “great affection” between them. Before the children were removed from her home, she took an active part in their education and was constantly with them when she was not working. She currently maintained a suitable apartment and had a job as a cashier, but was looking for better employment. She attended counseling with Spengler, weekly domestic violence counseling at “Safe House,” and parenting classes. She agreed that Lambert hit the children and was willing to “do whatever it is to provide and make sure that those children are safe and secure and stable.” She had had some contact with Lambert in the past, but she was no longer in a relationship with him and no longer had contact with him.

On cross-examination, Webb admitted that, when she was in Arizona, she left the children with Lambert even after she knew Lambert was physically abusing them and after BL began acting out sexually. Lambert tried to make contact with Webb before the hearing and she had not yet obtained a personal protection order against him because he was in a mental hospital. When they lived in Arizona, Webb used Lambert’s disability checks to pay the rent and utilities. Webb admitted that during unsupervised visits the children swore at her, gave her the middle finger, and called her a bitch. She left and returned to Lambert five times, not counting single, overnight departures.

The FIA called caseworker Cynthia Wheeler-Gaugh as a rebuttal witness. Around July 2000, Webb told Wheeler-Gaugh that she had not heard from Lambert, but that his SSI check was being sent to her address. Webb stated that a mutual friend would be delivering the check to Lambert and denied that she had seen him. Wheeler-Gaugh nonetheless believed that “there’s some kind of communication that they’re having to make sure that this mutual friend is getting the check.” She admitted that she had no knowledge that Webb and Lambert had contact.

In December 2000, the court issued an opinion and order terminating Webb’s parental rights pursuant to the statutory grounds listed in the petition. After setting forth its findings of

fact at length, the court determined that subsection 19(b)(ii) had been established by clear and convincing evidence with respect to both physical injury and sexual abuse:

Based upon the above which has been established by clear and convincing evidence, this mother has admitted that . . . her entire relationship with Frank Lambert was characterized by extreme domestic violence directed . . . at her and her children. Specifically[,] this included choking the daughter until she passed out and striking the boy, leaving marks on his face, and excessive spanking by Frank Lambert when he was angry. The mother also admits that she had opportunities to leave this man and that her father had offered numerous times a safe haven for her. It is well established that she left this violent man on numerous occasions and always returned.

So, clearly then the mother had an opportunity to prevent physical injury or physical abuse of the children, and she failed to do so by remaining in this relationship. Her continually returning to Frank Lambert indicates to me that there is a reasonable likelihood that if, in the foreseeable future, the children were placed with the mother that if she did not return to Frank Lambert because of her dependent personality she would most likely gravitate to another person similarly situated, placing the children at a high degree of risk. . . .

As it pertains to the sexual abuse, the court finds that it is clear that the daughter, [BL], was sexually abused by Frank Lambert and that the circumstances are such that any reasonable person should have concluded that something was going on between father and daughter . . . .

The court also determined that there was clear and convincing evidence to terminate respondent's parental rights under subsections 19b(3)(g) and (j). With respect to the children's best interests, the court stated in part:

The record is clear that the mother wants the children back. [L]ikewise the record is clear that the mother has demonstrated a lack of capacity or disposition to protect the children and therefore provide them with a safe and nurturing environment that young children need.

The children have not lived in a stable and satisfactory environment and it is not desirable to maintain the type of environment that the mother has provided them.

Given the extreme behavior on the part of the children and the mother's witnessing extreme acts of violence upon her daughter and not effectively removing her daughter from this situation would indicate a certain moral depravity on the part of the mother.

As to the preference of the children, they certainly love their mother, they want to be with their mother but the court does not consider them to be of sufficient age to express a reasonable preference. Fortunately[,] they do not see her culpability in the matter.

## II. Grounds For Termination

### A. Standard Of Review

Webb argues that the family court erred in terminating her parental rights. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence.<sup>9</sup> Consequently, this Court reviews the family court's findings of fact under the clearly erroneous standard.<sup>10</sup>

### B. The Court's Decision

After carefully reviewing the record, which we have set out at length above, we are satisfied that the family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. There was substantial and compelling evidence that Lambert sexually abused BL, there was circumstantial evidence that he sexually abused NL, and there was strong evidence that he physically abused both children. Termination under MCL 712A.19b(3)(g) does not require evidence of fault in a parent's failure to provide proper care and custody. As a result, we are under no obligation to conclude that Lambert's utterly appalling conduct was Webb's fault when considering termination under this subsection. However, without a doubt, the record supported the trial court's finding that Webb had not and could not provide proper care and custody for the children, especially with the uncertainties surrounding Webb's evidently ongoing relationship with Lambert. While the family court clearly weighed the witnesses' credibility to come to this conclusion, that was proper.<sup>11</sup> Manifestly, this evidence supported termination on the other, more specific statutory grounds alleged in the petition.

Having found clear and convincing evidence to terminate Webb's parental rights, the family court was required to do so unless it found that termination was clearly not in the children's best interests.<sup>12</sup> Again, there is no basis to conclude that the family court erred. The risk of further harm to the children outweighed Webb's eagerness to be reunited with them. We hold that the family court did not err in terminating Webb's parental rights to the minor children.

Affirmed.

/s/ William C. Whitbeck

/s/ Joel P. Hoekstra

I concur in result only.

/s/ Janet T. Neff

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<sup>9</sup> *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993).

<sup>10</sup> MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

<sup>11</sup> *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

<sup>12</sup> MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354, 364 (2000).