

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

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In the Matter of GIOVANNI PEREZ, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MELISSA KAY LAZARO,

Respondent-Appellant.

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UNPUBLISHED

February 5, 2009

No. 286307

Kent Circuit Court

Family Division

LC No. 07-052175-NA

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In the Matter of JESUS ANTONIO PEREZ,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MELISSA KAY LAZARO,

Respondent-Appellant.

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No. 286308

Kent Circuit Court

Family Division

LC No. 07-052176-NA

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In the Matter of ALONDRA MARILU PEREZ,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MELISSA KAY LAZARO,

No. 286309

Kent Circuit Court

Family Division

LC No. 07-052177-NA

Respondent-Appellant.

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In the Matter of ALONSO PEREZ, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MELISSA KAY LAZARO,

Respondent-Appellant.

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In the Matter of EMANUEL PEREZ, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MELISSA KAY LAZARO,

Respondent-Appellant.

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In the Matter of NISI YAZEL GARCIA, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MELISSA KAY LAZARO,

Respondent-Appellant.

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Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

No. 286310  
Kent Circuit Court  
Family Division  
LC No. 07-052178-NA

No. 286311  
Kent Circuit Court  
Family Division  
LC No. 07-052179-NA

No. 286312  
Kent Circuit Court  
Family Division  
LC No. 08-051038-NA

PER CURIAM.

Respondent appeals by right a circuit court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(g) [irrespective of intent, the parent fails to provide proper care and custody and no reasonable likelihood exists that she might do so within a reasonable time given the child's age], and (i) [rights to one or more siblings of the child have been terminated due to serious and chronic neglect or abuse and prior rehabilitative attempts have failed]. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

### I. Factual and Procedural History

Respondent is the mother of 12 children. On May 15, 2006, petitioner filed a petition seeking to terminate respondent's parental rights to five of her children, and alleged in pertinent part:

(1) Respondent's rights to three older children had previously been terminated on June 11, 2002; (2) that one of the children involved in this petition had verbally reported being sexually molested and that the alleged event had been witnessed by a sibling, but that respondent failed to report the alleged incident to law enforcement or secure a medical examination for the child, and (3) on April 16, 2006, respondent and her boyfriend had been assaulted by the father of five of the children, Edilsar Perez-Vincente, involved in this petition and that he was subsequently charged with felonious assault, domestic assault and home invasion.

The petition also sought immediate removal of the five children. Respondent bore a sixth child during the pendency of these proceedings.

At a preliminary hearing conducted on May 19, 2006, Child Protective Services (CPS) worker Kristie Grabowski testified that she filed the petition based on allegations of sexual abuse made by one of the children, the condition of respondent's home, and a demonstrated lack of proper clothing and food. Although Grabowski recommended that the petition continue to request termination, she acknowledged her willingness to permit the children to remain in their father's care, with the provision of in-home services. Grabowski further recommended that the court revisit the issue of termination at the adjudication hearing. The circuit court found probable cause that one or more allegations in the petition were true, and adopted Grabowski's recommendations.

Petitioner filed a supplemental termination petition on May 24, 2007, and the circuit court conducted a preliminary hearing on May 29, 2007. CPS worker Crystal Burnett affirmed that during the previous year, the minor children had resided with their father, Perez-Vincente. However, Burnett reported that one of the children claimed to have been struck by Perez-Vincente for breaking his cigarettes, and displayed a belt-shaped mark across her back. Several of the other children reported that their father daily consumed significant amounts of alcohol. Perez-Vincente denied the accusations, but Burnett observed that he seemed overwhelmed by caring for the children, and his home reflected general disarray. The children also reported that respondent visited with them when Perez-Vincente was not present. The circuit court authorized

the petition and ordered DHS to obtain suitable placement for the children, but permitted respondent frequent and liberal supervised parenting time.

At the adjudication hearing conducted July 18, 2007, petitioner amended the petition by removing the request for termination. Respondent acknowledged the allegations in the amended petition, including the previous termination of her parental rights to her older children. After accepting her plea, the circuit court conducted a permanency planning hearing. Caseworker Ann Walberer described a proposed initial service plan, which included parenting classes and counseling. Walberer opined that the goal should be reunification, and reported that respondent had been appropriate during her visitations with the minor children, had no positive drug screens since the preliminary hearing, and made efforts to secure employment. The circuit court adopted Walberer's recommendations.

At a dispositional review hearing conducted on October 10, 2007, Walberer submitted an updated service plan and parent-agency agreement. Walberer reported that respondent was once again pregnant, with a due date of March 24, 2008. Although respondent had participated in pregnancy counseling through Catholic Social Services, she had not yet initiated individual counseling. Respondent tested positive for cocaine on August 13, 2007, and Walberer referred her to Arbor Circle for substance abuse counseling. Respondent lived with her boyfriend, but had not responded to requests from Walberer for information regarding this individual. Although respondent participated in scheduled visitation, she focused the majority of her attention on the youngest child, necessitating Walberer's direction that she also attend to the other children. Respondent had completed a parenting class and demonstrated some improvement in her parenting skills, but Walberer suggested a second parenting class.

Respondent asserted she could not be present for the dispositional review hearing conducted on January 9, 2008, because her physician had placed her on bed rest until her delivery. In the interim, Perez-Vincente voluntarily agreed to return to Mexico in lieu of being deported because of domestic violence committed against respondent. At the time of this hearing, the minor children resided with Perez-Vincente. Walberer reported that respondent participated in pregnancy counseling, but had not made any progress on her treatment plan, and failed to engage in either individual or substance abuse counseling. Walberer opined that respondent lacked an ability to provide care for her children, and recommended another review hearing in 45 days.

At a February 28, 2008 dispositional review hearing, petitioner introduced a Department of Homeland Security document indicating that Perez-Vincente was scheduled to leave for Mexico by March 5, 2008. Walberer reported that the five minor children currently resided with their maternal grandparents due to their father's financial difficulties. Walberer recommended the termination of the parental rights of both respondent and Perez-Vincente, opining that the children would be at risk with either parent. Perez-Vincente had not seen the minor children since February 6, 2008, had not provided any documentation regarding the adequacy of his funds or travel plans, and failed to demonstrate any effort to prepare the children for their return to Mexico. In addition, respondent had demonstrated no progress on her treatment plan, failed to maintain adequate contact, and had not participated in any visitation with the children since December 18, 2007. Respondent attributed her failure to participate in the treatment plan to having been placed on bed rest. However, her physician denied the imposition of any such medical restriction. Respondent's counseling case had been closed, she failed to provide

documentation verifying her receipt of in-home services, and neglected to provide telephone numbers or releases requested by Walberer. The circuit court ordered respondent to comply with the parent-agency agreement and, in the interim, continued placement of the children in the maternal grandparents' home.

Respondent bore the sixth child involved in these proceedings on March 18, 2008. Petitioner immediately sought to take the infant into protective custody based on prior terminations of respondent's parental rights, the ongoing placement of five of respondent's children, and respondent's failure to comply with the current parent-agency agreement. At a preliminary hearing conducted on March 21, 2008, CPS worker Toya Zylstra reported that Rogelio Garcia-Hernandez, the infant's father, had effectuated an affidavit of parentage. However, Garcia-Hernandez had also illegally purchased social security numbers, been arrested locally for gross indecency, and evidenced a criminal record in other states. Despite the provision of the police report to the circuit court, Garcia-Hernandez denied the existence of his criminal record. The circuit court placed the infant in foster care. Zylstra opined that respondent was not "appropriate" for in-home services based on her failure to complete proffered services and history of substance abuse and neglect. The circuit court authorized a termination petition, finding it contrary to the infant's best interests to remain with respondent.

On May 9, 2008, the circuit court conducted a contested adjudication and termination hearing pertaining solely to the infant. Zylstra reported that five of respondent's children remained in foster care and that respondent had acknowledged using powder cocaine before being aware of her last pregnancy. Although respondent had supplies for the infant, she had not procured a crib. The circuit court determined that the allegations in the petition had been proven by a preponderance of the evidence and scheduled a dispositional hearing on May 22, 2008 regarding all six of respondent's children.

At this hearing, Aimee Kuyper, the local health department's medical social worker, reported that respondent admitted making poor choices in the past, but appeared very motivated and sincere in her desire to keep the infant. Kuyper recommended that the court afford respondent an opportunity to parent the infant, with close supervision and monitoring. Respondent reportedly resided with the infant's father in a stable environment, received food stamps, and would be eligible to apply for welfare. However, Kuyper incorrectly understood that respondent had voluntarily released her rights to the other children rather than having her parental rights terminated.

Sue Sefton, a health department nurse, testified that respondent denied current drug use, stopped smoking, altered her diet, and was motivated to keep the infant. Although respondent had given birth to ten children in 14 years, she currently used birth control and had maintained contact with the health department professionals assigned her case. Based on respondent's acceptance of responsibility and prior failings, Sefton recommended that respondent be provided an opportunity to parent the infant. However, Sefton admitted that she last interacted with respondent on February 27, 2008, and lacked awareness that respondent had tested positive for cocaine the following month. When provided this information, Sefton opined that respondent's participation in drug treatment would be required before the infant could be returned to her care.

Family therapist Dennis Ward testified that respondent had regularly participated in a substance abuse program since March 31, 2008. However, respondent incorrectly reported that

she had abstained from drug use for a year, and Ward could not recall respondent having admitted to her recent positive drug screen. Ward indicated that a failure to demonstrate “rigorous honesty” did not bode well for respondent’s ability to maintain sobriety.

At the continued termination hearing conducted on June 2, 2008, petitioner withdrew the request for termination of Perez-Vincente’s parental rights, because the Mexican consulate had agreed to facilitate the legal transport of his five minor children to Mexico. Respondent agreed to execute documentation permitting these minor children to be with their father, but objected to termination of her parental rights. Walberer recited the lengthy history regarding respondent’s 11 children, none of which remained in her custody. That history revealed that respondent had relinquished her rights to three children not involved in this petition, to permit adoption by the maternal grandparents. Two other children not involved in this petition were placed with their biological father. All six of the children involved in this petition remained temporary wards of the court.

Walberer opined that the primary concerns leading to removal of respondent’s children included her history of substance abuse, domestic violence and poor parenting skills. According to Walberer, respondent failed to complete counseling and had not exercised supervised visitation with the children for a four-month period, and improperly visited the children at their father’s home. Respondent maintained only limited telephone contact and primarily expressed concern only regarding her newborn. Walberer recalled that she had encouraged respondent to participate fully in the parent-agency agreement and warned her of the consequences of becoming pregnant while her other five children were the subjects of a termination petition. Although respondent reengaged in substance abuse treatment following her March 2008 positive test for cocaine and subsequently obtained four negative screens, Walberer did not believe respondent had sufficiently addressed her substance abuse issues.

Walberer further opined that respondent failed to demonstrate significant engagement when provided opportunities to visit or parent the five children fathered by Perez-Vincente. Respondent’s last visit with these children occurred on December 18, 2007, and she often questioned the need for participation in the parent-agency agreement given her willingness to place these children in their father’s care. In contrast, respondent regularly engaged in visitation with her newborn child, and completed a parenting class. However, respondent failed to verify any employment or source of income. Although respondent fully engaged in her treatment plan for the immediately preceding two-month period by participating in visitation with all six children, the visits were extremely chaotic, and respondent failed to demonstrate adequate parenting skills or an ability to exercise effective means of discipline.

At the conclusion of this hearing, the circuit court determined that clear and convincing evidence supported the termination of respondent’s parental rights to all six children pursuant to MCL 712A.19b(3)(g) and (i), and that termination served the children’s best interests.

## II. Standard of Review

Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the circuit court shall order termination of parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the children's best interests. MCL 712A.19b(5)<sup>1</sup>; *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). The circuit court's decision regarding the children's best interests is reviewed for clear error. *Id.* at 356-357.

## III. Analysis

Respondent does not challenge that sufficient evidence supported the grounds for termination, but rather contends that the circuit court clearly erred by finding that termination was in the best interests of her children. Respondent asserts that she demonstrated "more than adequate progress" regarding the treatment plan devised for the youngest child, and that termination of her rights to all six children contravened their best interests.

The two-year record of these proceedings clearly demonstrated that respondent began to seriously engage in services only two months before the termination hearing, and that her previous participation in proffered services qualified as inconsistent and sporadic at best. Respondent never adequately addressed her substance abuse problems, demonstrated by her denial that she had used drugs despite a positive test for cocaine, and her false denial of drug use while in the relapse prevention program. Contrary to the circuit court's order, respondent visited the children in the homes of the maternal grandparents and the older children's father. Her recent visitations with the children were characterized as chaotic, and her inability to discipline the children during these interactions demonstrated that she had not adequately benefited from her participation in two separate parenting classes. See *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005).

Respondent does not dispute that she failed to demonstrate an ability to maintain employment, or sufficient means to support and house the minor children. Respondent never accepted responsibility for failing to provide a stable home for her 11 children, yet sought additional opportunities to maintain custody of her youngest child despite her repeated failures to comply with her parent-agency agreements, and her inconsistent cooperation with the various service providers over an extended time period. Based on her lengthy history of neglect and

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<sup>1</sup> MCL 712A.19b(5) has been amended, effective July 11, 2008, to require that the circuit court make an affirmative finding that termination of a parent's parental rights is in the best interest of the child. 2008 PA 199. The amended statute does not affect the instant case because the termination order was entered on June 12, 2008.

drug abuse, we find no clear error in the circuit court's conclusion that termination of respondent's parental rights was consistent with the children's best interests.

Affirmed.

/s/ Michael J. Talbot  
/s/ Richard A. Bandstra  
/s/ Elizabeth L. Gleicher