

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF MARQUETTE**  
**FAMILY DIVISION**

**In the Matter of:**

**KYLE JAMES SILVA, d.o.b. 11/17/2004**  
**minor child.**

**File No. 07-8574-NA**

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**FINDINGS OF FACT**  
**CONCLUSIONS OF LAW**  
**ORDER TERMINATING PARENTAL RIGHTS**

**FINDINGS OF FACT**

Kyle James Silva was born November 17, 2004. His mother is Ashley Niemi. His father is Scott Silva. Kyle originally came under this Court's jurisdiction in February of 2007. At that time, Kyle was residing with his mother. Services were provided to Ms. Niemi and Kyle was returned to her care January 23, 2008. That case was dismissed August 6, 2008, at the request of the caseworker.

Kyle was removed from his mother's care again on October 8, 2009. At that time, Brent Kurian was living in the house with Kyle, Ms. Niemi and McKenzie Niemi, a child of Ms. Niemi's and Mr. Kurian's. The allegations of the new petition included inappropriate physical discipline of McKenzie, arson and drug possession by Mr. Kurian, and a request by Ms. Niemi that the children be removed from her care. At the time of the dispositional hearing, in February of 2010, Mr. Silva's whereabouts were unknown.

Mr. Silva has a history of criminal charges, including criminal sexual conduct against Ashley, who was 14 at the time she became pregnant with Kyle. He also has

criminal convictions for retail fraud, possession of stolen property, drug possession, and fleeing and eluding a police officer.

During the previous episode of Court jurisdiction, Mr. Silva was in and out of jail and was very inconsistent in attempts to comply with the service plan. Most of the contact he had with Kyle was when Kyle was staying with Mr. Silva's mother in 2009.

In late 2009 and early 2010, Mr. Silva was living with his father in Kansas. He testified that he left this area so that he could earn money he needed to deal with outstanding criminal charges. He felt he had to address the criminal matters before he could begin working on his ability to parent Kyle. He contacted the caseworker in January, but left a disconnected phone number and did not contact the worker again until March. At that time, he said he was back in the area, but did not have any address.

Mr. Silva did not appear for the review hearing on May 10, 2010, although his court-appointed attorney was present. Mr. Ferns said he had been unsuccessfully trying to contact Mr. Silva.

Mr. Silva contacted the caseworker about two weeks after the review hearing. He was referred to Great Lakes Recovery Centers for a substance abuse assessment and was ordered to participate in random drug screens. He had two negative screens in June, but did not appear for any screens in July.

Mr. Silva contacted the caseworker again in August, stating he was going to have to serve some jail time beginning August 13. He was released from jail in early September, and had a visit with Kyle September 23. The visit went well, as most of his contacts with Kyle did. Kyle recognizes his father, and their interactions are very appropriate.

A Petition to Terminate Mr. Silva's parental rights to Kyle was filed January 27, 2011.

As part of the processing of that petition, the parties were referred to permanency planning mediation. Mr. Silva and his attorney both attended the mediation session on March 29, 2011. The Report following mediation which was filed with and accepted by the Court, stated that Ashley Niemi, Brent Kurian, and Scott Silva had all agreed to release their parental rights to their respective children. Subsequent to the mediation agreement, Ms. Niemi released her parental rights to Kyle on March 29, 2011, and the Court entered an Order terminating her parental rights to Kyle on the same day.

Mr. Silva changed his mind about releasing his rights. The termination hearing regarding his rights took place as scheduled on May 2, 2011.

At the termination hearing the caseworker testified that Mr. Silva had had a pattern of behavior that was similar during both periods of Court jurisdiction. He was in and out of the area, in and out of jail, did not maintain contact with the caseworker, did not consistently participate in services (although he did complete a substance abuse assessment in January, 2010), and would periodically call and say he wanted to be part of Kyle's life and would do anything necessary to accomplish that goal.

Mr. Silva testified that he lived with Ashley for three years on and off. Kyle was born during that time. He felt that since the primary allegations of both petitions had been against Ashley, that it was not critical that he participate in services. He stated that he was "confused and angry", and didn't see why Kyle could not just be released to him so he could live with his parents and take care of Kyle.

Mr. Silva also testified that he “loved [Kyle] to death,” that Kyle had “changed his life”, and that Kyle is “what matters most to me.” He said he had given up a good job and living situation in Kansas to come to this area although he did not want to. He said he had to be with Kyle, and that he had not been in any criminal trouble since 2008.

At the conclusion of the termination hearing, Kyle’s lawyer guardian ad litem recommended that Mr. Silva’s parental rights be terminated.

#### CONCLUSIONS OF LAW

Termination of Mr. Silva’s parental rights is being sought under MCL 712A.19b(3)(c) (failure to rectify conditions) MCL 712A.19b(3)(g) neglect, MCL 712A.19b(3)(j) (likelihood of future harm). The Petitioner has the burden of proving a statutory ground by clear and convincing evidence. The first and third grounds alleged, failure to rectify and future harm, appear to be more applicable to Ms. Niemi than Mr. Silva. This case really hinges on whether Mr. Silva has consistently failed to meet Kyle’s needs and whether there is a reasonable expectation he will be able to meet those needs in a reasonable time.

The evidence clearly shows that Kyle lived with his mother and father for a period of time after he was born. Mr. Silva interacts with Kyle appropriately when he sees him, and Mr. Silva’s parents have demonstrated that they have some ability and some willingness to provide appropriate care for Kyle.

However, the allegations in petition to terminate rights are not against Mr. Silva’s parents, they are against him. Over the past four years, while Kyle has been in and out of parental care and sometimes under court jurisdiction, Mr. Silva has consistently failed to make himself available to provide a stable home for his son. When he appears, he says

the right things, and there is some possibility that his troubles are behind him and he is now focused on making Kyle his first priority.

The evidence suggests otherwise. While it is true that much of the case planning in the past has been directed to trying to reunify Kyle with his mother, the central question for Mr. Silva was eloquently posed by the guardian ad litem in her closing statement: If this child is truly important to you, when his mother was not taking good care of him, why weren't you pounding on the caseworker's door every time, saying, "I'm here; I'll take care of him"? The short, painful answer is that it appears Mr. Silva's ability to provide appropriate care for Kyle should be judged more by his past actions than by his present statements. That evidence justifies termination of his parental rights under MCL 712A.19b(3)(g).

#### BEST INTERESTS

With termination of Mr. Silva's parental rights, Kyle will be available for adoption. Given his age and the inquiries the Court has already received, it appears that adoption is likely. A safe, stable, adoptive placement is preferable to relying on Mr. Silva's new-found commitment to Kyle's welfare. The guardian ad litem recommended that termination is in Kyle's best interests, and the Court agrees with that assessment.

#### ORDER TERMINATING PARENTAL RIGHTS

For reasons state in the foregoing opinion, the parental rights of Scott Silva to Kyle James Silva are HEREBY TERMINATED.

DATED:

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HONORABLE MICHAEL J. ANDEREGG  
Probate Court Judge