

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of JOSHUA FARRAR, JR., Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JOSHUA ROBERT FARRAR, SR.,

Respondent-Appellant.

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UNPUBLISHED

September 24, 2009

No. 289336

Ionia Circuit Court

Family Division

LC No. 06-000265-NA

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights. Respondent raises one issue on appeal -- that his parental rights should not have been terminated because petitioner failed to provide adequate services to enable him to comply with his parent-agency agreement. We find no merit to this argument and affirm.

The minor child, born in October of 2006, was removed from the home one month after his birth. Earlier that year, domestic violence in the home caused other children to be removed and placed in guardianship. Shortly after the minor child was removed from the home, respondent was incarcerated for violating his probation. Respondent remained incarcerated throughout the lower court proceedings. He was released in January 2009, after his parental rights were terminated.

Respondent asserts that he was willing and determined to get whatever services he could, but that his incarceration, obstacles created by the Michigan Department of Corrections (DOC) and petitioner's unwillingness to expend any effort to overcome those obstacles prevented him from full compliance with his plan. Respondent asserts that given the minor child's young age, there was no evidence that he would not be able to provide a safe and nurturing home within a reasonable time of his January 2009 release.

This Court reviews for clear error the trial court's findings that a ground for termination has been established. MCR 3.977(J); *In re Rood*, 483 Mich 73, 90-91 (Corrigan, J.); 126 n 1 (Young, J.); 763 NW2d 587 (2009). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re LE*, 278 Mich App 1, 18; 747

NW2d 883 (2008). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

In general, when a child is removed from the parents' custody, petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f(1), (2), and (4). A contention that reasonable services were not offered ultimately relates to the issue of sufficiency. *In re Newman*, 189 Mich App 61, 65-67; 472 NW2d 38 (1991).

The trial court did not err in terminating respondent's rights. Petitioner did not refuse to provide services. Rather, services were limited because respondent was incarcerated because of his own actions. The trial court noted the obstacles presented by respondent's incarceration. The trial court also noted that petitioner made reasonable efforts to reunify the family. MCL 712A.18f(4). However, there is no evidence respondent could overcome the difficult obstacles still facing him -- stable employment and housing, maintaining a drug-free lifestyle, and importantly, overcoming his aggression.

Here, respondent showed little prospect for success.<sup>1</sup> He completed assaultive offender counseling while incarcerated, but still continued to have difficulty controlling his anger and behavior. Evidence showed that respondent was often moved within the DOC because of his hostility. Testimony from the termination hearing also revealed considerable domestic abuse and assaultive behavior. Respondent's wife voluntarily released her rights to the child because she feared respondent would "come after her" when he was released. Thus, the trial court did not err in terminating petitioner's parental rights.

Affirmed.

/s/ Henry William Saad  
/s/ William C. Whitbeck  
/s/ Brian K. Zahra

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<sup>1</sup> In reaching its conclusion, the court relied substantially on the psychological report, which indicated that there was little likelihood the services would have helped respondent enough to make him a suitable parent. The court's reliance on the psychological report was valid, especially since that report appears consistent with an April 2006 evaluation.