

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CHRISTIAN DAVID MERCER,
RONALD DANIEL CLINT MERCER, and
ANGEL MAE MERCER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANGELA LEE FORSYTH,

Respondent-Appellant.

UNPUBLISHED

April 13, 2010

No. 292675

Wayne Circuit Court

Family Division

LC No. 08-476519-NA

Before: WHITBECK, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Respondent Angela Lee Forsyth appeals as of right from the trial court's order terminating her parental rights to the minor children, C.M., R.M., and A.M.¹ We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

On February 1, 2008, the Department of Human Services filed a petition to take temporary custody of the minor children. The petition alleged a Child Protective Services history, lack of suitable housing and income, and substance abuse. At the preliminary hearing, Mia Parker of Child Protective Services testified that A.M. tested positive for opiates when he was born in December 2007, and was hospitalized until January 31, 2008. Further, Forsyth admitted using heroin before and during pregnancy. The father was a registered sex offender. Forsyth and the father were on the Child Protective Services central registry for physical neglect and had received services when C.M. failed to thrive. They were not offered substance abuse treatment before A.M.'s birth, but were advised to enter treatment. The trial court found a risk of harm and suspended visitation until they did so.

¹ MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if child is returned to parent).

A pretrial was held in late February 2008. Forsyth was prepared to make admissions, but the trial court preferred to wait for the father. Forsyth's attorney indicated that she would deny allegations of heroin use during pregnancy and "nodding out" while holding A.M. at the hospital. The older children, C.M. and R.M., were placed with their paternal grandmother Thelma Mercer, and A.M. was placed with paternal cousin Nancy Evans. Forsyth said she was enrolled in a women's intensive outpatient treatment program. The trial court understood that Forsyth might be on methadone for a while and ordered a drug screen that day.

The pretrial resumed in March 2008. The father had passed away from an apparent drug overdose a few days before. The relatives were distraught, and the trial court chose to adjourn the hearing, directing the Department of Human Services to draft a treatment plan. Forsyth's drug test on the last court date was negative. The trial court ruled that she would be allowed supervised visitation if she tested negative again. However, respondent was absent from the next hearing, and her second drug screen was positive for opiates.

Adjudication and disposition took place in April 2008. Forsyth admitted that she did heroin while she was pregnant with A.M. However, she claimed that she did not use again during the pregnancy or after A.M.'s birth. While Forsyth was pregnant, she was prescribed methadone to help her stop heroin, and as a result, A.M. had seizures, problems sleeping, irritability, and prolonged screaming and crying. Forsyth also admitted that she knew, before she had C.M., that the father was on the sex offender registry. Forsyth admitted that heroin use materially interfered with her ability to properly parent and manage her life. The trial court commented that it did not believe that Forsyth stopped using heroin during pregnancy and termed her behavior "outrageous." Accordingly, the trial court accepted the plea and took temporary jurisdiction.

The trial court then proceeded to disposition. According to the initial service plan and parent agency agreement, as presented by foster worker Theresa Ankney, Forsyth was to have drug treatment and random screens. Forsyth claimed that she tested positive for opiates because "I had just had a tooth pulled." Forsyth testified that she was living with a family friend and denied that she was in a relationship. The trial court stated that after drug treatment Forsyth was to have "counseling, parenting classes, etc." The trial court also required a psychological assessment, suitable housing and employment, regular contact with the Department of Human Services, and general equivalency degree classes. The trial court ruled that Forsyth could have supervised visitation.

The order of adjudication was entered in May 2008. The trial court found that the children were at significant risk. The order recommended inpatient drug treatment and required drug screens plus "intensive individual and grief counseling, parenting skills classes." Similarly, an order of disposition was entered in July 2008, which incorporated the parent agency agreement and provided that "Mother MUST immediately enter into an in-patient drug treatment program," plus "take parenting classes and demonstrate significantly improved parenting skills."

The next hearing was a dispositional review in late July 2008. Forsyth failed to attend. Paternal cousin Evans indicated that Forsyth contacted her on July 4 and said she was at the emergency room and "that her boyfriend had beat her up." Evans refused Forsyth a ride home because Forsyth's boyfriend had threatened Evans.

Foster care worker Ankney testified that Forsyth was “not complying at all.” According to Ankney, Forsyth had done nothing toward her parent agency agreement and missed most visitations in the last two months. Forsyth completed no drug screens for the Department of Human Services and did not attend parenting classes, counseling, or drug treatment. She had one visit and missed eight. The trial court stated that the next hearing was an accelerated permanency planning hearing because Forsyth abandoned the children.

The next review was in October 2008, and Forsyth was in attendance. Foster care worker Malek Saif testified that Forsyth contacted him two weeks ago and “said she would like to start services.” Saif referred Forsyth to Juvenile Assessment Center for counseling. When the trial court asked Forsyth where she had been, she claimed that in September, she “had a mental break down and was in a mental hospital” and also her boyfriend’s mother had surgery. The referee told Forsyth that she had no time to date because she needed to work on her problems. Forsyth claimed that she had been “clean for a little over 6 months,” and she claimed that she had tried contacting Ankney, but that Ankney did not return calls and then went on medical leave. The trial court told Forsyth that her time was “close to being up because these children deserve permanency in their life,” and Forsyth must remain clean and demonstrate that she could provide a safe, suitable home.

At the next hearing in February 2009, Forsyth’s drug screen from October 31 was admitted and was positive for marijuana. Forsyth also had positive marijuana screens on January 19 and February 3, 2009. Saif testified that Forsyth was “not doing too good.” She had completed no other screens and did not attend Juvenile Assessment Center substance abuse or counseling sessions. She did go to six substance abuse sessions at Growth Works, but missed three. She had no job and was living with her boyfriend’s parents.

Forsyth testified that she had dated Reuben Carter for almost a year, but did not know about his drunk driving and marijuana convictions until six months prior. When the hearing referee asked where Carter worked, he became belligerent, and the referee told him to leave the courtroom. At some point, two sheriffs were in the courtroom because Carter was threatening people. Forsyth denied that Carter ever hit her, but Mercer said that Forsyth had told Evans that Carter “beat the tar out of her.” And, under further questioning by the court, Forsyth admitted telling Evans “that he might have hit me.” Then Forsyth said that Carter had pushed her over a railing, and if she had not caught herself, she would have fallen down to the next floor. The trial court stated that Forsyth’s decision to live with Carter “speaks volumes about your judgment, and whether or not you can parent these children.”

A supplemental petition to terminate Forsyth’s parental rights was filed in April 2009, and the termination hearing was held in May 2009. Foster worker Saif recommended termination “due to absolute lack of compliance by Ms. Forsyth.” Saif felt that Forsyth “hasn’t really been involved in any part of the treatment plan,” and that termination would be in the children’s best interests. In over a year, there was “absolutely no progress.” According to Saif, Forsyth had not shown that she could live a drug-free lifestyle and she did not appear committed to turning her life around. Saif opined that the children needed a drug-free, crime-free, stable home, which Forsyth could not provide in the foreseeable future. The trial court found clear and convincing evidence to terminate Forsyth’s parental rights under MCL 712A.19b(3)(c)(i), (g), and (j).

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

To terminate parental rights, the trial court must find that the Department of Human Services has proven at least one of the statutory grounds for termination by clear and convincing evidence.² We review for clear error a trial court's decision terminating parental rights.³ 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.⁴ Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁵

B. ANALYSIS

Parents have a fundamental liberty interest in the "companionship, care, custody, and management" of their children.⁶ Before parental rights may be terminated, reasonable efforts must be made to prevent removal and rectify the conditions that caused removal.⁷ Procedural due process requires that the parents be given meaningful notice and an opportunity to participate in the proceedings.⁸ Services must be provided to ensure the children's safe return.⁹

The evidence showed that Forsyth was afforded referrals to inpatient treatment to deal with her drug problem, and for individual/grief counseling, parenting classes, and drug screens.¹⁰ She had a meaningful opportunity to participate in services and court proceedings.¹¹ However, Forsyth failed to avail herself of the referrals or to rectify the conditions that caused the children's removal, and the evidence supported the trial court's findings that she would be unable to provide proper care or custody within a reasonable time. A parent's failure to comply with the parent/agency agreement is evidence of a parent's failure to provide proper care and custody for the child.¹² Further, because she continued to abuse drugs and to be in a violent relationship, the trial court did not clearly err in determining that the children would be at risk in

² MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

³ MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours*, 459 Mich at 633.

⁴ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁵ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁶ US Const, Am V, XIV; Const 1963, art 1, § 17; *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009); *Dep't of Social Services v Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993).

⁷ MCL 712A.18f(1).

⁸ *Rood*, 483 Mich at 111, 122.

⁹ MCL 712A.19a(6)(c); MCR 3.976(E)(2), (3); *Rood*, 483 Mich at 100-101, n 39.

¹⁰ MCL 712A.18f(1); MCL 712A.19a(6)(c); MCR 3.976(E)(2), (3).

¹¹ *In re Rood*, 483 Mich 73, 111; 763 NW2d 587 (2009).

¹² *JK*, 468 Mich at 214; *Trejo*, 462 Mich at 360-363, 361, n 16.

her care. Therefore, we find no merit to Forsyth's claim that she was denied due process, and we conclude that the trial court did not clearly err in finding that statutory grounds for termination of Forsyth's parental rights were established by clear and convincing evidence.

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Once the Department of Human Services has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights. There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.¹³ We review the trial court's decision regarding the child's best interests for clear error.¹⁴

B. ANALYSIS

Given the risks to the children and their need for a drug-free, crime-free, stable home, we conclude that the trial court did not clearly err in finding that termination of Forsyth's parental rights was in the children's best interests.¹⁵

We affirm.

/s/ William C. Whitbeck
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood

¹³ *Trejo*, 462 Mich at 354.

¹⁴ *Id.* at 356-357.

¹⁵ MCL 712A.19b(5); *Trejo*, 462 Mich at 356-357.