

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 22, 2011

In the Matter of REYNOLDS/THOMAS, Minors.

No. 301989
Wayne Circuit Court
Family Division
LC No. 06-459827

Before: SHAPIRO, P.J., and WHITBECK and GLEICHER, JJ.

PER CURIAM.

Respondent J. Thomas appeals as of right the trial court order terminating her parental rights to her two minor children, MPR, Jr. and XRT, under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (likely harmed if returned). We affirm.

I. FACTS

On May 29, 2008, police officers responded to a child-home-alone call at Thomas's home. The officers discovered Thomas's boyfriend passed out and MPR, Jr. locked in a bedroom. The home and MPR, Jr. were unclean. When officers revisited the home the next day, MPR, Jr. was being supervised by L. Davis, who was passed out on the floor. MPR, Jr. was in the same condition as he had been the previous day. MPR, Jr. was then removed from Thomas's home and placed with his maternal grandmother.

At pretrial, Thomas admitted that on May 29, 2008, she had left MPR, Jr. with the babysitter two doors down, but the babysitter called to say that she locked MPR, Jr. in the bedroom while Thomas's boyfriend was sleeping. She also admitted that she allowed L. Davis to watch MPR, Jr., even though she knew medication impaired L. Davis's judgment. Thomas also admitted that she had a protective services case in 2006 for improper supervision because then-two-year-old MPR, Jr. was found walking on Southfield Road by himself. As a result of that incident, she received Families First in-home services through January 2007. The trial court agreed to order a medical examination, including a neurological examination, for MPR, Jr. because of his violent outbursts and speech difficulties, and also suggested play therapy.

MPR, Jr. was placed with his father in December 2008. However, MPR, Jr.'s father, asked that MPR, Jr. be removed from his home because of behavior issues, and he was placed back with his maternal grandmother on March 9, 2009.

At a custody hearing, foster care worker Gail Embery testified that Thomas was not participating in services, including drug screens. At a March 2009 review hearing, Embery testified that Thomas completed parenting classes, but missed the second Clinic appointment, was not providing urine samples, and had not documented her claims that she was in counseling, substance abuse treatment, or psychiatric treatment. Embery said that Thomas was advised not to take her psychiatric medication because she was pregnant. She said Thomas's visits were moved to her mother's home, and the only problem was that MPR, Jr. hit her once. The trial court expressed concern that MPR, Jr. had not received a neurological assessment or play therapy and that DHS had not followed up to make sure Thomas was drug-screening.

After Thomas gave birth to XRT in March 2009, and he tested positive for marijuana, DHS sought temporary custody.

Foster care supervisor Sherone Chambers testified at an April 2009 review hearing that the neurological examination had been completed. Chambers said she also referred MPR, Jr. for play therapy a week ago. She added that MPR, Jr. had been receiving speech therapy since October 2008. Chambers testified further that Thomas also started therapy and resumed seeing her psychiatrist after stopping medication at her obstetrician's direction until she gave birth. Thomas had claimed she stopped using substances when she knew she was pregnant.

Thomas completed a Clinic for Child Study evaluation in April 2009. The evaluation found an evident bond between Thomas and MPR, Jr. but deemed her prognosis guarded because she minimized her role in the neglect and minimized her substance use. The evaluation recommended therapy to address depression and substance abuse and help Thomas develop coping skills and identify appropriate caregivers, psychiatric care to evaluate her medication needs, and drug screens.

At a June 2009 review hearing, the trial court granted DHS discretion to allow unsupervised visits. And at an August 2009 review hearing, Embery reported that unsupervised Saturday visits were going well. But in November 2009, Embery reported that Thomas was positive for alcohol in October 2009, failed to call numerous times in September 2009 and October 2009, and missed a drug screen in October 2009.

At a December 2009 review hearing, Embery reported that Thomas was involved in individual therapy and provided a copy of her new lease. However, Thomas missed calling for drug screens three times in November. Thomas's attorney requested a re-referral for substance abuse treatment, explaining that Thomas claimed she was unable to obtain treatment because she did not have a history of drug abuse.

Thomas was reportedly positive for opiates on December 10, 2009, January 19, 2010, and February 8, 2010. Embery reported that Thomas claimed she took Vicodin for back pain from a car accident that occurred when she was 18, but she did not provide requested documentation to confirm her claim. At a February 2010 review hearing, Embery asked that the case continue for three more months. Embery also asked that Thomas document she had a prescription for Vicodin because she had four screens positive for opiates.

At a May 2010 review hearing, the new foster care worker on the case, Tachi Suski, reported that Thomas had suitable housing and income, was attending individual counseling, had

completed parenting classes in the past, and had consistently negative screens, but she missed three screens that month. The trial court adopted Suski's recommendation to allow only agency-supervised visits and ordered a permanent custody petition.

Child Protective Services (CPS) worker Kellie Underwood received a complaint on July 1, 2010, that MPR, Jr. was wandering around outside while under Thomas's care. Underwood testified that Thomas took a long time answering the door, and she heard children inside. Underwood said Thomas claimed that there were no children and that she must have heard the television. She said Thomas hesitated to let her in the master bedroom, where she found a man in the bed. Underwood said Thomas told her that the man was her boyfriend and lived in a treatment program for pill addicts. Suski testified that Thomas always denied having a boyfriend before. According to Underwood, she heard crying sounds and discovered MPR, Jr. in a closet. She said Thomas claimed it was her boyfriend's child, not MPR, Jr., and then claimed this was the only time MPR, Jr. was there, because his maternal grandmother was at the doctor. Underwood said MPR, Jr. told her that he was at Thomas's house lots of days and spent the night lots of times. MPR, Jr. was removed from his grandmother's custody and placed with an adult maternal cousin.

In mid-August 2010, Suski reported that Thomas was positive for alcohol in June 2010 and July 2010, and was positive for opiates in August 2010. On August 24, 2010, DHS filed a petition to terminate Thomas's rights to MPR, Jr. and XRT. Suski's petition also alleged that Thomas tested positive for marijuana in July 2010.

At an August 2010 review hearing, Thomas was able to provide a negative sample. Thomas claimed she was taking pain medication but did not provide the prescription. Thomas also explained that her alcohol positive was because she put Bailey's in her coffee to get through a double shift. Also, Suski testified that Thomas participated in individual in-home counseling for about a year, until her therapist took a new position in September 2010. The therapist reported Thomas was participating and making positive progress; she was opening up and talking about her feelings and everything that was going on. The goals were to treat her depression and discuss the separation from her children. Suski testified that Thomas was referred to substance abuse counseling twice; the first time she could not be located and the second time she was terminated in November 2009 because she stopped participating after two sessions. She said the individual counseling was separate from substance abuse counseling. She agreed that Thomas did not respond to her concerns that she should be in substance abuse therapy.

Suski testified further that Thomas completed psychological and psychiatric evaluations, along with the Clinic evaluation. She said the psychological evaluation recommended individual counseling, parenting classes, psychiatric services, and substance abuse counseling. Suski testified that Thomas should have completed about 117 screens over two years, but she missed 39. Thomas had 12 positive screens in 2010, including one in July 2010 for marijuana and one in November 2010 for Xanax. Suski talked with Thomas about the missed and positive screens, and Thomas cited her prescription medications. Thomas claimed the marijuana positive was because she put Khalua in her coffee to stay awake working nights. Suski said Thomas gave her prescriptions dated in July 2010 and August 2010, which she sent to the laboratory. The laboratory told Suski the prescriptions included Norco, which is Vicodin, but Thomas was also positive for Alprazolam or Xanax, for which she did not provide a prescription.

Suski said Thomas interacted very well with her children, brought food, played games, and talked with them. Suski testified further that MPR, Jr. was always glad to see Thomas, welcomed her with open arms and hugged her, and called her his mother. However, Suski testified she did not know if Thomas benefited from her 2008 parenting classes because she missed drug screens. Suski also testified that Thomas was arrested on April 19, 2010, for stealing from Sears and pleaded guilty to second-degree retail fraud, with a sentence delayed until April 27, 2011. Suski said she was told the court would not sentence her if she did not get in trouble again.

Suski testified that Thomas showed her a pay stub in May 2010 to verify that she was a bartender at Henry VIII Bar, and she had a clean two-bedroom apartment. Thomas applied for Social Security disability benefits; however, the process could take three years and Suski agreed with the court that it did not count as income until Thomas was approved. Suski did not know whether Thomas had health insurance. However, she said the counseling, parenting classes, and substance abuse treatment were at DHS's expense.

Thomas testified that she made a lot of progress in the past year, except for several positive and a couple missed screens. She said she was trying to make herself look better by doing things on her own. She testified that, if her rights were terminated, she would feel she did everything for nothing. She said she did not have a substance abuse problem, but she would go to AA/NA to get her children back. She said she also needed to get her GED, a job, and her own home. She testified that she would do more counseling if she found the right place for which she did not have to pay. Thomas testified further that Suski did not always return her calls, did not offer help to Thomas in getting her GED or getting into substance abuse treatment, never suggested AA/NA, and never asked to see her prescription bottles.

The trial court opined that Thomas did not adequately address her emotional stability and substance abuse and found that she had credibility issues. The trial court found sufficient evidence to terminate her rights under MCL 712A.19b(3)(c)(i), (g), and (j), held that termination was in the children's best interests, and terminated her parental rights. Thomas now appeals.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

Thomas's brief on appeal asserts that the trial court improperly terminated her rights under MCL 712A.19b(3)(g) and (j). However, the trial court also found sufficient evidence of each element of subsection (c)(i) regarding XRT; thus, we will review the court's finding under that subsection as well.

To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.¹ We review for clear

¹ MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

error a trial court's decision terminating parental rights.² 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.³ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁴

B. STATUTORY GROUNDS MET BY CLEAR AND CONVINCING EVIDENCE

1. LEGAL STANDARDS

MCL 712A.19b(3)(c)(i), (g), and (j), provide as follows:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

DHS generally must make reasonable efforts to rectify the problems through a service plan,⁵ and failure to make reasonable efforts can affect whether there was sufficient evidence to terminate parental rights.⁶ To successfully claim lack of reasonable efforts, a respondent must

² MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

³ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁴ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁵ *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005).

⁶ *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009); *In re Newman*, 189 Mich App 61, 67-68, 70; 472 NW2d 38 (1991).

establish that she would have fared better if DHS offered other services.⁷ A respondent's compliance with components of the parent-agency agreement is evidence that the respondent will be able to provide proper care in a reasonable time.⁸ However, the respondent must benefit from treatment, not merely go through the motions.⁹

2. ANALYSIS

Thomas completed parenting classes soon after MPR, Jr. was removed in late May 2008. But in March 2009, Xavier was born positive for marijuana. Thomas completed a Clinic evaluation in April 2009, was clean through summer 2009, and started receiving unsupervised visits. But she tested positive for alcohol in October 2009 and missed screens in October 2009 and November 2009. Thomas was also positive for Vicodin in October 2009. Thomas had more opiate positives in December 2009 through February 2010, which she claimed was from Vicodin prescribed for her back. She reportedly did not provide her prescriptions, although she was asked to do so at the February 2010 hearing.

On April 19, 2010, Thomas was arrested for shoplifting. On June 1, 2010 she tested positive for alcohol. On July 1, 2010, MPR, Jr. was found at her home despite the fact that she was allowed only supervised visits at that time. She was also positive for alcohol on July 1, 2010. She also tested positive for marijuana on July 2, 2010. Thomas admitted putting Bailey's in her coffee but claimed that the marijuana was secondhand. She tested positive for opiates on August 11, 2010, and she tested positive for Xanax in November 2010.

Despite the positive screens, Thomas denied having any substance abuse problem. Moreover, Thomas demonstrated a willingness to violate court orders regarding limitations on her visits, by hiding her child from case workers, and continuing to deny any wrongdoing. Therefore, Thomas's lack of honesty would make it difficult for DHS to work toward reunification safely. It is also significant that Thomas left her children with improper caregivers in the past, which placed them at risk of harm, and was not honest about her current relationships.

Thomas's testimony lacked credibility and revealed that she was unable to acknowledge and address her emotional instability and substance abuse problems, even two and a half years after her eldest son was removed. She disrupted reunification efforts by choosing to hide her children from DHS. Her continuing lack of honesty about that incident and her relationships are strong evidence that the children could not safely be returned to her. Further, although she provided prescriptions for her recent positive drug screens, she did not acknowledge the need to address her alcohol and marijuana use. Therefore, we conclude that the trial court did not clearly err when it found that clear and convincing evidence established MCL 712A.19b(3)(c)(i), (g), and (j).

⁷ *In re Fried*, 266 Mich App at 543.

⁸ *In re JK*, 468 Mich at 214.

⁹ *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005).

C. HEARING IMPAIRMENT

Thomas also argues that her hearing impairment made it difficult for her to understand the termination proceedings. According to Thomas, she was hearing impaired since she was a baby.

DHS is required to reasonably accommodate any disabilities.¹⁰ However, Thomas never requested additional accommodations.¹¹ Indeed, at a July 2008 pretrial, the trial court asked whether Thomas needed a sign language interpreter. But Thomas responded, “I can hear.” Her attorney explained that Thomas was impaired in one ear, but she was still able to hear. At a subsequent hearing, the trial court asked Thomas if she could hear. She responded, “I have a hard time hearing.” Thomas said further that she was hard of hearing in both ears and was working on getting hearing aids. The trial court therefore promised to talk louder. When the termination hearing began, her attorney requested a specific instruction that anyone addressing Thomas look at her so she could see their lips. The trial court granted the request and directed all who spoke to Thomas to face her directly and speak loudly. Her attorney agreed that would help. The trial court found that Thomas’s hearing impairment did not impede the court’s ability to understand her or her ability to make herself understood. The trial court was also in the best position to judge the credibility of the foster care worker’s testimony that Thomas’s hearing did not interfere with her ability to understand and be understood through the proceedings.¹²

Accordingly, we conclude that the trial court did not err in terminating Thomas’s parental rights.

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Thomas contends that the trial court erred in its best interests analysis. Once DHS 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 in the child’s best interests, then the trial court is required to order termination of parental rights.¹³ 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.¹⁴ We review the trial court’s decision regarding the child’s best interests for clear error.¹⁵

¹⁰ *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000).

¹¹ *Id.* at 26 and n 5.

¹² See *In re Miller*, 433 Mich at 337.

¹³ MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 351.

¹⁴ *In re Trejo Minors*, 462 Mich at 353.

¹⁵ *Id.* at 356-357.

B. LEGAL STANDARDS

In determining the child's best interests, a trial court may consider a variety of factors including the parent's history, unfavorable psychological evaluations, the child's age, inappropriate parenting techniques, and continued involvement in domestic violence.¹⁶ A trial court may also consider the strength of the bond between the parent and child, the visitation history, the parent's engaging in questionable relationships, the parent's compliance with treatment plans, the child's well-being while in care, and the possibility of adoption.¹⁷ A trial court may also consider the child's need for permanence and the length of time the child may be required to wait for the parent to rectify the conditions, which includes consideration of the child's age and particular needs.¹⁸

C. ANALYSIS

Although the children were bonded to Thomas, permanency and safety were in their best interests.¹⁹ Michael had lived with uncertainty about his relationship with his mother for two and a half years. During that time, his father asked for his removal and then essentially abandoned him, and he had to be removed from his grandmother because she left him with Thomas. The behavior issues that prompted neurological testing indicated he especially needed stability. Stability was in these children's best interests. Thus, we conclude that the trial court did not clearly err in finding that termination of Thomas's parental rights was in the child's best interests.

We affirm.

/s/ Douglas B. Shapiro
/s/ William C. Whitbeck
/s/ Elizabeth L. Gleicher

¹⁶ See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

¹⁷ See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

¹⁸ See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).

¹⁹ *Id.* at 52.