STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of PETTER DAVID GRIFFIN,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RHONDA DENISE GRIFFIN,

Respondent-Appellant.

UNPUBLISHED
January 17, 2008

No. 277705
Wayne Circuit Court
Family Division
LC No. 05-443197-NA

Before: Schuette, P.J., and Borrello and Gleicher, JJ.

SCHUETTE, P.J. (*dissenting*).

I respectfully dissent from the majority opinion of my very distinguished colleagues, Judges Borrello and Gleicher.

As the reviewing court, we may not disturb the trial court's decision concerning the termination of parental rights absent a finding that the trial court committed a clear error. MCR 3.977(J); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005). A trial court's finding is clearly erroneous, even though there is evidence to support it, if the finding leaves this Court "with [a] definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Further, regard must be given to the special opportunity of the trial court to determine the credibility of the witnesses that appear before it. MCR 2.613(C); *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

My distinguished colleagues in the majority have determined that respondent's single positive drug test does not diminish the other progress respondent made in getting her drug problem under control and that respondent "undisputedly no longer regularly resorted to using cocaine." I disagree. It is not enough that respondent completed a case service plan; instead, she must have benefited from it sufficiently, so that she can provide a home where the child will not be at risk of harm. *Gazella*, *supra* at 677. The trial court had the opportunity to observe respondent and assess her credibility. The trial court heard respondent proclaim that her use of cocaine was a mistake that would not happen again or that it happened because she was in the wrong place, around the wrong people. The trial court also heard testimony that respondent missed numerous drug screens, and it was acutely aware that respondent provided a drug screen that was tested positive for cocaine on the first day of her termination hearing—a hearing

respondent knew was imminent when she made the decision to use cocaine just three or four days earlier. Under these facts, I am unable to reach a firm and definite conviction that the trial court made a mistake in finding that respondent had not sufficiently benefited from her participation in the case service plan. Although we have more latitude under the clearly erroneous standard than when we are reviewing a jury finding, we cannot substitute our judgment for that of the trial court. *Johnson v Johnson*, 276 Mich App 1, 11; 739 NW2d 877 (2007). The trial court's view of the evidence is plausible and we may not reverse. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

I would affirm the trial court's decision.

/s/ Bill Schuette