STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of J.B. and N.B., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellant,

v

TAMMY LYNN BUTINA,

Respondent-Appellee.

UNPUBLISHED
September 24, 2002

No. 236738
Macomb Circuit Court
Family Division
LC No. 2000-050008-NA

Before: O'Connell, P.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Petitioner appeals by leave granted from the trial court's order denying its petition to terminate respondent's parental rights to the minor children pursuant to MCL 712A.19b(3).[1] We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 5.974(I); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Under this standard, the trial court's decision "must strike [the reviewing court] as more than just maybe or probably wrong." *Trejo*, *supra* at 356, quoting *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). In applying this standard, this Court gives due regard to the trial court's superior ability to assess the witnesses' credibility. *In re Miller*, 182 Mich App 70, 81; 451 NW2d 576 (1990).

We conclude that the trial court did not clearly err in finding that petitioner failed to establish the statutory grounds for termination. Although the court found that the children had been physically abused by someone other than respondent while in respondent's care, it found

[1] Petitioner appeals only the trial court's determinations that termination was not warranted under MCL 712A.19b(3)(b)(iii), (g), and (j). Thus, our review of this matter is limited to these statutory grounds.

that petitioner failed to establish anticipatory abuse as required by §§ 19b(3)(b)(iii), (g), and (j). This finding is not clearly erroneous; it does not strike us as "more than just maybe or probably wrong." *Trejo*, *supra* at 356, quoting *Sours*, *supra* at 633. We recognize that petitioner presented substantial evidence that respondent was a passive-dependent person, and that she was predisposed to decline to intervene to protect her children from harm by others. However, respondent presented evidence to the contrary. Thus, the trial court apparently found that petitioner's evidence did not rise to the level of establishing anticipatory abuse, and that respondent's witnesses and evidence on this issue was more persuasive than petitioner's evidence. The trial court was in a better position to weigh the evidence and evaluate the credibility of the witnesses. *Fletcher v Fletcher*, 229 Mich App 19, 28; 581 NW2d 11 (1998). Therefore, we defer to the trial court's findings in this regard. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard Allen Griffin
/s/ Joel P. Hoekstra