

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DEVON JOSEPH SCRIVER and
CHASTITY ANN SCRIVER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DONNA JEAN CASTOR,

Respondent-Appellant,

and

ALFRED JOSEPH SCRIVER,

Respondent.

UNPUBLISHED

May 21, 2009

No. 290002

Grand Traverse Circuit Court

Family Division

LC No. 08-002465-NA

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Respondent Donna Jean Castor appeals as of right from the trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(ii) [child or sibling of child suffered physical injury or physical or sexual abuse and parent who had opportunity to prevent failed to do so], (g) [failure to provide proper care or custody without regard to intent], and (j) [reasonable likelihood that child will be harmed if returned to home of parent]. We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence and that termination is in the children's best interests. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991); MCL 712A.19b(5). The trial court's decision is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). In applying the clearly erroneous standard, the Court should recognize the special opportunity the trial court has to assess the credibility of the witness. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court did not clearly err when it terminated respondent's parental rights to the minor children. Respondent's primary argument is that, with respect to the 2008 allegations of

sexual abuse against respondent-father, she did not have sufficient information or expertise to draw a conclusion that respondent-father was a threat to the minor children. However, she knew of many incidents of abuse by respondent-father, including: respondent-father's 1989 conviction for criminal sexual conduct involving a child approximately 12 years old; the female minor child's allegations of inappropriate touching in the shower in 2003 and his polygraph failure with regard to the allegations; years of domestic violence between respondent and respondent-father in the presence of the minor children; and an incident involving respondent-father choking respondent's older son. Therefore, respondent should have known that respondent-father was a threat to the minor children.

Respondent argues that she should not be held to a higher standard than the professionals, such as the CPS workers, petitioner, the police, and prosecutors involved in the case with respect to whether respondent-father should have been banned from the home. However, respondent's obligation as a parent was to be aware of, and appropriately assess, the home environment to insure that the minor children were safe. In addition, respondent had firsthand knowledge of all of the facts set forth above, including the extensive domestic violence in front of the minor children. While arguably the professionals involved in this matter could have acted sooner with regard to petitioning the trial court for temporary custody of the minor children, this does not alleviate respondent's obligation to provide the minor children with a safe home. In making its decision, the trial court carefully weighed the facts and found that the minor female child was a credible witness based on the opinion of professionals who have interviewed many witnesses with similar allegations in the past. The trial court did not clearly err in finding that respondent-father had sexually abused respondent's daughter and physically abused her older son, and that respondent had the opportunity to prevent the abuse but failed to do so. Respondent's history of continuing to let respondent-father live in the home, the long history of domestic violence, and her failure to believe the allegations of the minor children despite a polygraph test corroborating the allegations were sufficient evidence for the trial court to find that there was a reasonable likelihood that the minor children would be harmed in the foreseeable future if returned to respondent's home.

Respondent argues that abuse was not substantiated in any investigation by law enforcement or petitioner before the beginning of the case, and respondent-father was "merely charged" with sexual misconduct crimes. Respondent also argues for the first time on appeal that the minor children were not interviewed in accordance with a protocol that would satisfy the criteria for reliability and trustworthiness inherent in child hearsay testimony. Respondent did not raise these issues at the time of the termination trial. Failure to raise an issue at trial results in a waiver of the right to raise that issue on appeal. *People v Coons*, 158 Mich App 735, 740; 405 NW2d 153 (1987). However, the law is clear that prosecution or conviction is not a prerequisite in a termination proceeding. *In re MU*, 264 Mich App 270, 279; 690 NW2d 495 (2004). In addition, even without the testimony of the minor children, respondent admitted that respondent-father choked her older son and that she believed her daughter's allegations of sexual abuse by respondent-father. She also admitted to years of domestic violence directed toward her that occurred in front of the children. Therefore, reports by the minor female child to professionals were not critical to the trial court's findings.

Finally, respondent contends the trial court incorrectly accepted testimony pertaining to the adoption potential for these children. While the availability of a suitable alternative home is

not a factor in the determining whether the petitioner has established a statutory ground for termination of parental rights, the determination of a child's best interests may encompass the consideration of available suitable alternative homes and placement with relatives. *In re Mathers*, 371 Mich 516, 530; 124 NW2d 878 (1963); *In re Futch*, 144 Mich App 163, 170; 375 NW2d 375 (1984). In this instance, the potential viability of a future adoption for these children was not a significant factor in the best interests determination of the trial court when compared to the overwhelming evidence of possible risk to the children should they be returned to respondent's care.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot

/s/ Douglas B. Shapiro