STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MPT and MGT, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

STEVEN TWIETMEYER,

Respondent-Appellant.

UNPUBLISHED
June 3, 2010

No. 295525
Saginaw Circuit Court
Family Division
LC No. 09-032059-NA

Before: BANDSTRA, P.J., and FORT HOOD and DAVIS, JJ.

PER CURIAM.

Respondent Steven Twietmeyer appeals as of right the order terminating his parental rights to the minor children, daughter MPT and son MGT, both teenagers, under the Indian Child Welfare Act (ICWA), 25 USC 1912(f), and MCL 712A.19b(3)(b)(*i*) (sexual abuse of child or sibling), (j) (reasonable likelihood of harm if child returns to parent's home), and (k)(*ii*) (abuse of child or sibling involving criminal sexual conduct [CSC]). Rights of the mother, Lori Twietmeyer, were not terminated and the children continue to live in her home. We affirm.

Termination of parental rights under MCL 712A.19b(3) is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews the lower court's findings under the clearly erroneous standard. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). Once a statutory ground for termination is established by clear and convincing evidence and the court finds that termination is in the children's best interests, the trial court must terminate parental rights. MCL 712A.19b(5). The trial court's decision on the best interests question is reviewed for clear error. *Trejo*, 462 Mich at 356-357.

The ICWA carries a higher standard of reasonable doubt to terminate parental rights. 25 USC 1912(f). Questions of law, including interpretation of the ICWA, are reviewed de novo. *In re JL*, 483 Mich 300, 318; 770 NW2d 853 (2009); *In re IEM*, 233 Mich App 438, 443; 592 NW2d 751 (1999).

Finally, the decision to admit or exclude expert testimony and the question of whether a person is qualified as expert are reviewed for abuse of discretion. *Mulholland v DEC International Corp*, 432 Mich 395, 402; 443 NW2d 340 (1989). A court abuses its discretion when its decision falls outside a range of reasonable and principled outcomes. *People v Kahley*, 277 Mich App 182, 184; 744 NW2d 194 (2007).

Respondent's parental rights were terminated under MCL 712A.19b(3)(b)(*i*), (j), and (k)(*ii*), which provide:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
>
> * * *
>
> (b) The child or sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
>
> (*i*) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
>
> * * *
>
> (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.
>
> (k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:
>
> * * *
>
> (*ii*) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

Respondent's parental rights were also terminated under 25 USC 1912(f), which provides in pertinent part:

> No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

A similar provision appears in MCR 3.980(D).

The evidence in this case was sufficient to satisfy the state and federal standards. MPT's reports of respondent's penetrative sexual abuse was corroborated by testimony from another of his daughters. MPT also told numerous people, including medical personnel, about respondent's

repeated abusive conduct against her in a manner consistent with her testimony to the court below. A family friend testified that respondent told him that he had sex with all of his daughters and that he had offered MPT for sex to men in motel rooms. The family friend even testified that respondent had offered MPT for sex to the friend. Another of respondent's acquaintances gave a similar account. The trial court found that allegations of respondent's depraved activity had been proved not merely with clear and convincing evidence but beyond a reasonable doubt. The record here amply supports that conclusion.

Next, respondent baldly asserts that the lower court was "premature in terminating his rights" and "[i]t would have been better . . . if reasonable efforts would have been made . . . to provide services to" him, without citation to any authority in support. We note that both the ICWA, 25 USC 1912(d), and the Michigan termination statute, MCL 712A.18f(3)(d), impose requirements on petitioner to make certain efforts to keep families intact and to avoid the termination of rights. However, petitioner did not rely on those statutes in making his unsupported argument and, more importantly, the obligation imposed by those statutes is not absolute; petitioner's obligation may be mitigated or completely absolved depending on the facts and circumstances of a case. See, e.g., *In re Roe*, 281 Mich App 88; 764 NW2d 789 (2008) abrogated on other grounds, *In re JL*, 483 Mich 300, 326-327; 770 NW2d 853 (2009); *In re SD*, 236 Mich App 240; 599 NW2d 772 (1999). In light of respondent's failure to even mention the statutory authority upon which his argument might be based, much less discuss how applicable precedents might apply to the facts and circumstances here, we consider this argument abandoned. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959); *Peterson Novelties, Inc v City of Berkeley*, 253 Mich App 1, 14; 672 NW2d 351 (2003); *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001). Moreover, even if we were to consider the argument and find it valid, we do not see what remedy might be available to respondent at this point; certainly, now that the trial court has properly determined that respondent was a sexually abusive parent, no efforts to preserve the family unit here or protect his parental rights would be appropriate.

Respondent also argues that the trial court erred by "ignoring" that Dr. Frederick found no injuries to MPT and that MPT never revealed the abuse when it was happening. These arguments lack merit. The trial court saw the witnesses firsthand and was entitled to believe MPT despite the deficiencies pointed out by respondent. *People v Wolfe*, 440 Mich 508, 574-575; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).

Respondent next claims that the trial court erred by allowing David Gardner to testify as an expert witness. The ICWA, 25 USC 1912(f), and MCR 3.980(D) require the testimony of "qualified expert witnesses" before parental rights to an Indian child can be terminated. "Witnesses" has been interpreted to require one witness. *In re Elliott*, 218 Mich App 196, 207; 554 NW2d 32 (1996); *In re Kreft*, 148 Mich App 682, 690; 348 NW2d 843 (1986). *Kreft* quoted the following from guidelines of the U.S. Department of the Interior, Bureau of Indian Affairs:

> Persons with the following characteristics are likely to meet the requirements for a qualified expert witness for purposes of Indian child custody proceedings:

(i) A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organizations and child rearing practices.

(ii) A lay expert witness having substantial experience with the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe.

(iii) A professional person having substantial education and experience in the area of this or her specialty. [*Kreft*, 148 Mich App at 689-690, quoting 44 Fed Reg 67593, § D.4(b).]

The trial court did not abuse its discretion by allowing Gardner's testimony. Gardner was a Potawatomi and knowledgeable in tribal customs. He had trained through the Oklahoma Indian Child Welfare Association, and he worked and testified many times as an Indian child welfare worker. His relative inexperience in his present position and in giving ICWA expert testimony went to the weight, not the admissibility, of his testimony.

Finally, respondent challenges the trial court's decision on best interests. The evidence showed, and the trial court found, that respondent sexually abused daughter MPT many times, offered her for sex to other men and provided illegal drugs to her. Older sister AT testified that respondent sexually abused her and gave her pornographic magazines. Respondent argues that termination of his parental rights to his son, MGT, was not in his best interests because there was no evidence that MGT was abused. However, Gardner testified that there was a likelihood of serious emotional or physical damage to the children if they continued in respondent's care; this was true even if the children did not live with respondent because of the divorce. Gardner felt that MGT would be put in a position of potentially having to choose sides. Kevin Zaborney of CPS believed termination to be in the children's best interests and noted that both children favored it. Zaborney stated that MGT had described situations causing him to fear his father, and that he did not want to see his father in the foreseeable future. Respondent's children were old enough to express opinions about their own welfare. Those opinions were more than reasonably based upon the evidence. The trial court did not err in finding clear and convincing evidence that termination would be in the children's best interests.

We affirm.

/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood
/s/ Alton T. Davis