

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 18, 2012

In re DAVIS/MCGEE/MOORE, Minors.

No. 309826
Wayne Circuit Court
Family Division
LC No. 11-501042-NA

Before: STEPHENS, P.J., and OWENS and MURRAY, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(ii), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j). We affirm.

Respondent argues the trial court erred by determining that it was in the children's best interest to terminate respondent's parental rights. This Court reviews the trial court's best interest determinations for clear error. *In re Olive/Metts*, 297 Mich App 35, __; __ NW2d __ (Docket No. 306279, issued June 5, 2012), slip op, p 3. This Court may only set aside the trial court's findings if it "is left with a definite and firm conviction that a mistake has been made." *Id.* (quotation marks and citations omitted). "When reviewing the trial court's findings of fact, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

Once the petitioner presents clear and convincing evidence that there is a statutory ground for termination, "the parent's interest in the companionship, care, and custody of the child gives way to the state's interest in the child's protection." *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000). Additionally, "[i]f the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." *Olive/Metts*, 297 Mich App at __ (slip op at 3), quoting MCL 712A.19b(5); see also MCR 3.977(E)(4).

When determining the best interest of a child in a termination case, a trial court may consider the respondent's history, psychological evaluation, parenting techniques during parenting time, family bonding, participation in the treatment program, the foster environment and possibility for adoption, and the parent's continued involvement in situations involving domestic violence. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33

(2001). A court may also consider “the child’s need for permanency, stability, and finality.” *Olive/Metts*, 297 Mich App at __ (slip op at 3) (quotation marks and citation omitted).

The trial court did not clearly err in its best interests determination, as there was substantial evidence that the children would be at risk of harm if the court returned them to respondent. At the time of the hearing, respondent had substance abuse and emotional dependency issues, and she continued to communicate with and support her ex-boyfriend, M. Moore, who sexually abused her oldest daughter, T.M. Respondent often put her own needs over the needs of the children. For example, she stated that she wanted to kill Moore because of his infidelity, not because he was sexually abusing her daughter. Additionally, respondent had no way to financially support the children, and was unable to effectively control the children during their supervised visits. All of the children have some special needs, and there was no indication that respondent, given her own emotional, financial, and substance abuse issues, could adequately parent the children.

The evidence also showed that respondent had a history of neglecting her children. Respondent did not keep the children’s immunizations up-to-date and failed to adequately supervise her four-year-old daughter, which led to the death of her infant grandchild. She also failed to protect T.M. from Moore’s sexual abuse that occurred in her home over the course of at least three years. The Department of Human Services (DHS) and Moore’s mother both alerted respondent to the potential sexual abuse. Moore’s mother testified that respondent acknowledged that Moore and T.M. were acting inappropriately, and failed to stop the inappropriate behavior. Respondent testified that she noticed that T.M. and Moore would spend time together in Moore’s bed. She also admitted that she at least suspected that the abuse was taking place because she asked Moore and T.M. whether Moore was the father of T.M.’s children. Yet, she did nothing about the situation.

Respondent argues that both DHS workers assigned to the case agreed that it would be harmful to the children to terminate respondent’s parental rights. However, respondent fails to acknowledge that both workers also opined that there is a substantial risk of harm to the children if the court returned them to respondent’s care.

Respondent additionally argues that the DHS’s failure to protect T.M. from the sexual abuse excuses respondent’s failure to do the same. However, the focus of the termination proceeding was on respondent’s own failure to parent and provide for her children, not the DHS’s oversight. Unlike the DHS, respondent was living in the home with T.M. and Moore. It was clear to Moore’s mother, when she was living with the family for only a few months, that T.M. had an inappropriate attachment to Moore. Respondent even lied to the DHS about T.M. having a second child. This evidence reveals that respondent knew about the abuse and failed to take any action to stop it. Therefore, the trial court did not clearly err by determining that it was in the best interest of the children to terminate respondent’s parental rights.¹

¹ Respondent states in her brief that “[t]he court erred in finding statutory grounds for the termination of [respondent’s] parental rights.” Yet respondent fails to substantiate this allegation

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Donald S. Owens

/s/ Christopher M. Murray

through any legal or factual argument. “An appellant’s failure to properly address the merits of an assertion of error constitutes abandonment of the issue.” *Begin v Mich Bell Tel Co*, 284 Mich App 581, 590; 773 NW2d 271 (2009). In any event the record evidence discussed in this opinion establishes that the trial court did not err in finding that the statutory grounds for termination existed. Additionally, to the extent respondent briefly mentions that the DHS should have offered respondent services in order to reunify the family, the record indicates that the DHS referred respondent to parenting classes on two previous occasions. Respondent, however, did not participate in the classes. And in any event, after the DHS confirmed that Moore had fathered at least two of Telesha’s children when she was a minor, the DHS was not required to provide services. MCL 722.638(1)(a)(ii); MCL 722.638(2).