

STATE OF MICHIGAN  
COURT OF APPEALS

UNPUBLISHED  
December 28, 2010

In the Matter of SMITH/TYSON, Minors.

No. 298141  
Wayne Circuit Court  
Family Division  
LC No. 08-481034

Before: MURRAY, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Respondent Smith appeals as of right from the circuit court's orders terminating her parental rights to the minor children. We affirm.

Respondent does not dispute that statutory grounds for termination were established by clear and convincing evidence, MCR 3.977(H)(3)(a). She argues only that termination of her parental rights was not in the children's best interests. We review the trial court's decision regarding the children's best interests for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). "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 BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. The two older children had been in foster care in another county and that case was closed at approximately the same time that this case was opened in August 2008, at which time all three children were removed from respondent's care. Respondent initially made progress toward reunification, but that progress was impeded by her continued substance abuse. At the time of the termination hearing in May 2010, respondent was in the early stages of substance abuse treatment and admitted that she was not ready to take custody of the children. There was also evidence that respondent was not always able to demonstrate proper parenting during family visits and that, at the time the supplemental petition for termination was filed, the two younger children did not have a significant bond to respondent. Considering that respondent was still not in a position to take custody of the children after more than a year and a half and the children's need for permanency, stability, and finality, the trial court did not clearly err in finding that termination was in the children's best interests. *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992).

Respondent argues that the trial court should have considered placing the children with her mother in lieu of termination. If a child is living with a relative at the time a supplemental

petition for termination is filed, that is a factor to be considered in determining whether termination is in the child's best interests. MCL 712A.19a(6)(a); *In re Mason*, 486 Mich 142, 163-164; 782 NW2d 747 (2010). In this case, however, there was no evidence that the foster family with whom the children had been placed were relatives. Nothing in the law directs a court to refrain from ordering termination when a child could alternatively be placed with relatives, *In re Futch*, 144 Mich App 163, 170; 375 NW2d 375 (1984), and if the court finds that it is within the child's best interests to do so, it may terminate parental rights instead of placing the child with relatives. *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999); *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). In any event, respondent did not offer her mother as a proposed custodian at the termination hearing and offered no evidence to show that her mother was interested in taking custody of the children. Accordingly, we find no error.

Affirmed.

/s/ Christopher M. Murray

/s/ Joel P. Hoekstra

/s/ Deborah A. Servitto