

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

January 25, 2011

In the Matter of MCCLAIN/SMITH, Minors.

No. 296147

Wayne Circuit Court

Family Division

LC No. 93-306065-NA

Before: JANSEN, P.J., and OWENS and SHAPRIO, JJ.

PER CURIAM.

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

Respondent argues that the trial court erred by applying the "bright line" or rigid standards of MCL 712A.19b(3) to determine whether termination of her parental rights was justified. Respondent argues that it would have been more appropriate to use a "totality of the circumstances" approach, such as that adopted in *Illinois v Gates*, 462 US 213; 103 S Ct 2317; 76 L Ed 2d 527 (1983). Respondent's argument appears to challenge the validity of the statutory scheme contained in MCL 712A.19b(3).

We review de novo questions of law, including questions concerning the validity of a statute. *Phillips v Mirac, Inc*, 470 Mich 415, 422; 685 NW2d 174 (2004). "Statutes must be construed in a constitutional manner if possible, and the burden of proving that a statute is unconstitutional is on the party challenging it." *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). A statute must be enforced as written unless it is unconstitutional. *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 588; 702 NW2d 539 (2005).

Respondent's reliance on the "totality of the circumstances" test of *Gates* is misplaced because that test is based on the probable cause requirement of the Fourth Amendment. This case does not involve the validity of a search or the Fourth Amendment. Although parents have a significant liberty interest in the care, custody, and management of their children, which is protected by the Due Process Clause, our Supreme Court has observed that the requirement of proving one or more of the conditions contained in MCL 712A.19b(3) by clear and convincing evidence is sufficient to protect a parent's due process liberty interest. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). Thus, the trial court did not err by analyzing respondent's fitness as a parent within the framework set forth by MCL 712A.19b(3).

The trial court determined that the grounds for termination contained in MCL 712A.19b(3)(c)(ii), (g), and (j) had been established by clear and convincing evidence. Respondent does not address the trial court's findings or decision with respect to any of these statutory grounds. "The failure to brief the merits of an allegation of error is deemed an abandonment of an issue." *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998), overruled in part on other grounds *In re Trejo*, 462 Mich at 353. Because no effective challenge to the statutory grounds has been made, we do not disturb the trial court's determination that the statutory grounds were established by clear and convincing evidence. *Id.* at 99.

Further, we reject respondent's challenge to the trial court's best-interests determination. Under MCL 712A.19b(5), once the trial court finds that at least one statutory ground for termination has been established by clear and convincing evidence, it shall order termination of the respondent's parental rights if it finds that "termination of parental rights is in the child's best interests[.]" We review the trial court's best-interests determination for clear error. MCR 3.977(K); *In re JK*, 468 Mich at 209. "Brief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1). A trial court's findings are sufficient if it appears that the court was aware of the issues and correctly applied the law, and if appellate review would not be facilitated by a remand for further explanation. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995).

After finding that the statutory grounds for termination had been proven, the trial court addressed the children's best interests. The court found that the children's need for permanency and stability, as well as safety concerns arising from respondent's inability to control her anger, established that it was in each child's best interests to terminate respondent's parental rights. The court declined to terminate respondent's parental rights to an older child, who had expressed a preference that respondent's parental rights not be terminated. The trial court's findings in this regard were sufficient to satisfy MCR 3.977(I)(1). Moreover, we are not persuaded that the trial court clearly erred by finding that termination of respondent's parental rights was in the best interests of each of the four younger children. MCR 3.977(K). There was ample evidence regarding respondent's continuing mental health issues and inability to provide a stable and safe environment for the children to support the trial court's best-interests determination.

Affirmed.

/s/ Kathleen Jansen
/s/ Donald S. Owens
/s/ Douglas B. Shapiro