

STATE OF MICHIGAN
COURT OF APPEALS

In re C. M. AVERSA, Minor.

UNPUBLISHED
November 23, 2021

Nos. 354843; 355742; 356280
Macomb Circuit Court
Family Division
LC No. 2019-000308-NA

Before: SAWYER, P.J., and BOONSTRA and RICK, JJ.

BOONSTRA, J. (*concurring*).

I agree with the majority that the trial court did not err by finding statutory grounds to terminate respondent’s parental rights. I also agree that the trial court erred by placing CMA in the care and custody of DHHS, and by concluding that petitioner lacked standing to participate in the proceedings. And I agree with the majority’s jurisdictional analysis. I write separately for two reasons. First, I am hesitant to agree that the trial court properly determined that termination was not in the best interest of CMA, or that the trial court properly focused on the minor child as the primary beneficiary of its best-interest determination. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). Specifically, I am concerned with the short shrift the trial court gave the issue of CMA’s various medical conditions, and respondent’s ability and willingness to treat those conditions. The trial court made little mention of the issue in its best-interest determination, beyond finding that CMA had special needs and that “respondent indicated that she would continue treatment.” Nonetheless, I concur, because under the applicable and deferential “clear error” standard of review, I am unable to state with a definite and firm conviction that a mistake has been committed. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Second, and although it may have been advisable for respondent to have retained legal counsel in the guardianship proceeding, I am unable to join in the majority’s gratuitous intimations that the absence of appointed counsel was somehow violative of respondent’s rights. The majority itself acknowledges that respondent was not entitled to appointed counsel. And there is no issue or argument before us raising a constitutional challenge to the lack of appointed counsel in the guardianship proceeding. See *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993) (noting that a reviewing court will generally not reach constitutional issues that are not necessary

to resolve a case). For these reasons, I concur in much of the reasoning of the majority, except as noted, and in the result.

/s/ Mark T. Boonstra