STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SARAH KAY COYLE, ARTHUR MATRELL DYSON, and JORDAN RYAN DYSON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

STACY MAY DYSON,

Respondent-Appellant.

UNPUBLISHED
February 10, 2009

No. 286788
Oakland Circuit Court
Family Division
LC No. 03-685255-NA

Before: Wilder, P.J., and Cavanagh and Murray, JJ.

PER CURIAM.

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

Respondent does not challenge the finding of statutory grounds to terminate her rights. However, she argues that the trial court erred when it found that termination was not against her children's best interests. This issue is reviewed for clear error. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 365; 612 NW2d 407 (2000). Under the law in effect when this decision was entered, the trial court was required to terminate respondent's parental rights after finding a statutory ground, unless it determined that termination was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, *supra* at 352-353. There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available. *Id.* at 354.

Respondent argues that the trial court's findings are erroneous because she (respondent) was initially unaware of her daughter's accusation that her stepfather had sexually molested her, there were serious questions of the credibility of the allegations, as potentially revealed by proceedings not of this record, as well as the testimony of her daughter and her mother, and that she would have taken advantage of services which would have helped her to better protect all of her children from exposure to her husband's physical abuse or his marijuana smoking. We must reject these challenges for a number of reasons. First, this Court defers to the trial court's superior position to judge witness credibility. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, we cannot consider anything that occurred after respondent's rights were

terminated because our review is limited to the trial court record. See *Kent Co Aeronautics Bd v Dep't of State Police*, 239 Mich App 563, 580; 609 NW2d 593 (2000), aff'd sub nom *Byrne v State*, 463 Mich 652; 624 NW2d 906 (2001).

Moreover, the trial court concluded from the evidence that even when her parental rights were at stake, respondent was unlikely to make the necessary changes in her life to safeguard her children from harm. Respondent showed no intent to separate herself from her husband but instead supported her husband completely when he was charged with child abuse and sexual abuse. Despite already having received counseling and parenting classes, respondent continued to expose her children to the danger by virtue of her abusive relationships with men. Although the children appeared to have an emotional bond with respondent, considering the children's need for stability and safety, the trial court did not clearly err when it held that termination was not clearly against the children's best interests. See *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991).

Respondent also argues that the trial court should have adjourned her best interests hearing until after her husband's criminal charges were resolved. However, Respondent's attorney affirmatively stated that it was not necessary to adjourn the best interests hearing. A waiver is the intentional and voluntary relinquishment of a known right. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 204; 747 NW2d 811, 819 (2008). We conclude from the record before us that respondent, through her attorney, waived this issue by agreeing to go forward with the best interests hearing in advance of the criminal proceedings involving her husband.

Further, respondent does not cite any authority supporting her assertion. Therefore, she has abandoned the issue on appeal. See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999); *In re Keifer*, 159 Mich App 288, 294; 406 NW2d 217 (1987).

Finally, respondent argues that petitioner should have notified the Cherokee tribe, and there was insufficient evidence that any tribe was notified. Under 25 USC 1912(a), when a state court knows or has reason to know that an Indian child is involved, a party seeking to terminate parental rights must notify the Indian tribe or the Secretary of the Interior if the tribe cannot be located. See also MCR 3.980(A)(2). Circumstances that give a court reason to believe the child is an Indian child include any party informing the court that the child is an Indian child. *In re IEM*, 233 Mich App 438, 446-447; 592 NW2d 751 (1999), citing the Bureau of Indian Affairs guidelines. It is generally best for a court to err on the side of granting notice. *Id.* at 447.

In the present case, respondent stated during the preliminary hearing that her grandparents were Cherokee Indians. However, she never mentioned the Cherokee tribe again and never objected to references to the Chippewa Tribe of Sault Ste. Marie in several later hearings. Her statement that her father tried to get her grandparents' tribe involved in 2003, followed by references to the Chippewa tribe trying to get involved in 2003, strongly indicated that her grandparents' tribe was actually the Chippewa and she was mistaken when she called it Cherokee. Respondent did not give the trial court reason to believe her children might actually be members of a Cherokee tribe, in light of her repeated failure to object to references to the Chippewa and failure to request that another tribe or the Bureau of Indian Affairs be notified. Respondent also did not question petitioner's assertions that the Chippewa tribe was contacted. Petitioner's unchallenged assertions constitute sufficient evidence that notice occurred. The trial court did not commit any error requiring reversal.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Christopher M. Murray