

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AZARIA MARIE ASHER COX,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BRANDY LEE COX,

Respondent-Appellant.

UNPUBLISHED

October 17, 2006

No. 269455

Oakland Circuit Court

Family Division

LC No. 04-700354-NA

Before: Hoekstra, P.J., and Meter and Donofrio, JJ.

MEMORANDUM.

This appeal follows a remand from this Court. In *In re AMAC*, 269 Mich App 533; 711 NW2d 426 (2006), this Court vacated a trial court order terminating respondent's parental rights to Azaria Marie Asher Cox (d/o/b 10/30/04) and ordered the court to hold a best interests hearing. Respondent now appeals the termination of her parental rights following that best interests hearing. Because respondent failed to demonstrate that her constitutional claim is outcome determinative, we affirm.

Respondent contends that MCL 722.638(1)(b), in combination with MCL 712A.19b(3)(l) and (5), are unconstitutional because they violate her due process rights. But respondent failed to raise this argument in the trial court. Accordingly, we decline to consider this unpreserved claim of constitutional error for the first time on appeal when the alleged error would not have been decisive to the outcome. *In re Hildebrant*, 216 Mich App 384, 389; 548 NW2d 715 (1996).

The trial court plainly premised its termination of respondent's parental rights on several statutory grounds, including MCL 712A.19b(3)(b)(i), (g), (j), and (k)(vi). MCL 712A.19b(3)(k)(vi) provides for termination when the parent abused the child or a sibling of the child and the abuse included attempted murder. Testimony revealed that respondent attempted to strangle two of her children to death. Respondent pleaded guilty to two counts of attempted murder and served time in prison. Respondent's sole issue on appeal is not outcome determinative because only one statutory ground is needed to terminate respondent's parental rights and because respondent does not challenge the constitutionality of MCL 712A.19b(3)(k)(vi) in conjunction

with MCL 712A.19b(5). And, the trial court did not clearly err in finding that the evidence did not demonstrate that termination was clearly against the child's best interests.

In finding that the evidence did not establish that termination was against the child's best interests, the trial court relied on Dr. Haynes's testimony. Dr. Haynes opined that there was a safety issue with regard to the child and that respondent's prognosis was poor regarding her capacity to care for the child. The court also considered that the child Azaria had never lived with respondent and was not bonded to her. To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). Based on Dr. Haynes's testimony, and the lack of bond between respondent and the child, the trial court did not clearly err in finding that the evidence did not demonstrate that termination of respondent's parental rights was clearly against the child's best interests.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Patrick M. Meter
/s/ Pat M. Donofrio