

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 24, 2012

In the Matter of K. A. GRIFFIN, Minor.

No. 307805
Kalamazoo Circuit Court
Family Division
LC No. 2009-000213-NA

Before: SHAPIRO, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Respondent K. Griffin appeals as of right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i),¹ (c)(ii),² (g),³ and (j).⁴ We affirm.

¹ MCL 712A.19b(3)(c)(i) provides a statutory ground for termination when

[t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . [that] [t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

² MCL 712A.19b(3)(c)(ii) provides a statutory ground for termination when

[t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . [that] [o]ther conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

³ MCL 712A.19b(3)(g) provides a statutory ground for termination when "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

I. FACTS

The events that led to the filing of the June 2009 petition began in April 2009. In April 2009, B. Gonzalez, who is the child's grandmother and court-appointed guardian by way of a guardianship obtained in Illinois, filed a missing persons report for the child in Chicago, Illinois. On May 4, 2009, the child was found living with Griffin at the Gospel Mission in Kalamazoo, Michigan. On or about May 4, 2009, the Department of Human Services (DHS) received three complaints about Griffin's behavior toward the child. Additionally, Griffin was arrested for an incident on May 4, 2009, for hitting the child with a meat stick. Shortly thereafter, on May 8, 2009, Griffin was asked to leave the Gospel Mission for bad behavior. The child was returned to Gonzalez's home after Griffin's arrest. While en route to Gonzalez's home, the child leapt from Gonzalez's vehicle as it was traveling approximately 40 miles per hour. Apparently, the child jumped out of the vehicle because he did not want to return to Gonzalez's home. He sustained a closed head injury in the accident.

The child briefly returned to Gonzalez's home after these events, but on May 31, 2009, Gonzalez filed another missing persons report for the child after he ran away from her home once again. On June 4, 2009, DHS learned that the child had taken a bus from Chicago to Kalamazoo to find Griffin. Thereafter, DHS filed its petition.

The trial court found reasonable grounds to remove the child and take him into protective custody. Accordingly, the child was removed from Gonzalez's home, and Griffin and Gonzalez were given supervised parenting time with the child. In September 2009, Gonzalez and Griffin pleaded to the allegations in the petition. Specifically, they pleaded that there were statutory grounds for DHS to exercise jurisdiction over the child because of an unfit home environment and Gonzalez's and Griffin's failure to comply with the court-ordered guardianship plan.

During these proceedings, Gonzalez maintained that she could not provide proper care and custody for the child. Additionally, she did not seek to have the child returned to her care; rather, she acknowledged that she could not care for him and that she had attempted to dissolve the guardianship. At the termination proceeding, she testified that she attempted to terminate the guardianship, but was informed that she needed an attorney to do so. Because she was unable to afford an attorney, she contacted a legal aid clinic near her home; however, the attorneys at the legal aid clinic informed her that they did not terminate guardianships. Accordingly, because the Illinois guardianship remained intact and the trial court lacked jurisdiction to terminate the guardianship, DHS did not seek to terminate Gonzalez's rights, nor did the trial court's order affect the guardianship.

After the petition was filed, the trial court ordered Griffin to comply with a case service plan and ordered that DHS provide supervised parenting time and reasonable efforts for reunification. The case service plan recommended, among other things, that Griffin submit to drug screens, a substance abuse assessment, a psychological evaluation, counseling, and community mental health services.

⁴ MCL 712A.19b(3)(j) provides a statutory ground for termination when "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

Initially, from January, 2010, to March 2011, Griffin made progress in her efforts at complying with the case service plan and at alleviating the conditions that led to the child's removal. The trial court entered several orders during the course of this time period noting as much. Additionally, although Griffin was initially only given supervised parenting time, she eventually was granted unsupervised parenting time as well, beginning in September 2010. Moreover, at the first permanency planning hearing in June 2010, the trial court stated that because Griffin was making progress, DHS should continue its efforts at reunifying the child with Griffin. Heather Ergang, a Department of Human Services foster care worker who was assigned to the child, testified at the hearing that Griffin was making progress with the case service plan. Ergang also testified that at the time of the hearing, the child was residing at Wedgwood Christian Services because he had a criminal sexual conduct charge pending against him at the time. (The record does not indicate what the results of that charge were.) Ergang reported that aside from the charge, the child was doing well in his placement at Wedgwood.

Although Griffin initially made progress and complied with the case service plan, the trial court found at the June 2011 permanency planning hearing that Griffin stopped complying with the services plan. Because of Griffin's failure to comply with the case service plan, DHS recommended that a new petition be filed seeking termination of Griffin's parental rights. Ergang testified at the hearing that Griffin failed to participate in drug screenings and that she failed to submit to a substance abuse assessment. Further, Ergang testified that when Griffin did submit to drug testing, she tested positive for cocaine and PCP. Ergang also reported that Griffin lost her housing and was currently incarcerated. After the hearing, the trial court entered an order indicating that it found that Griffin failed to make progress with the case service plan.

In September 2011, DHS filed a petition seeking termination of Griffin's parental rights. The petition indicated that Griffin engaged in criminal behavior during the pendency of her case, including multiple counts of retail fraud and one count of domestic assault. In addition to noting Griffin's criminal behavior, the petition alleged that Griffin failed to comply with the case service plan. Specifically, the petition alleged that Griffin missed appointments for mental health treatment and that she was inconsistent in taking her medications. Moreover, the petition alleged that Griffin was inconsistent in her participation with drug screenings and that when she did submit to screenings, she tested positive for marijuana, PCP, cocaine, and opiates. The petition also averred that Griffin stopped visiting the child and that she did not contact him for approximately four months.

The petition also indicated that Griffin's unsupervised parenting time had been revoked because of an incident where she directed the child to steal items from a clothing store and that she left the child and his infant brother at the store with no way to get home. The record indicates that Griffin instructed the child to push a shopping cart out of a clothing store while concealing items underneath the infant's car carrier. It was after the child was caught and questioned by store employees, that Griffin, who had not yet been implicated in the theft, left the child and the infant at the store. The child was not charged in this incident. (According to the Children's Protective Services Investigation Report, Griffin instructed the child to shoplift for her on another occasion as well.)

The trial court held a termination hearing in November 2011. Griffin, who was incarcerated, was not present at the hearing. Her attorney indicated that she was on a bus from Benton Harbor and that she should arrive at approximately 10:30 a.m.; the hearing began at

approximately 9:49 a.m. The trial court, citing its busy schedule, commenced the hearing without Griffin. Griffin never arrived.

Gonzalez testified first at the termination hearing and noted that the child began living with her pursuant to a guardianship when he was approximately seven years old. She reiterated that she wished to dissolve the guardianship and that she could not provide the child with the care he needed. She also noted that the child desperately wanted to be with Griffin; however, she believed that Griffin could not adequately care for the child because Griffin needed to work through a variety of issues before she could be an effective parent. Gonzalez further testified that she believed that the child was receiving the care he needed at Wedgwood Christian Services, and that he would be best served if he remained there.

Next, the trial court heard testimony from Elizabeth Patterson, a social worker who performs case management services for persons with severe mental illness. Patterson began working with Griffin in 2009. Patterson testified that Griffin was diagnosed with bipolar disorder, and that Griffin was inconsistent with taking her medication for the disorder. In addition to bipolar disorder, Patterson believed that Griffin may have struggled with another disorder. However, Patterson testified that it was difficult to accurately diagnose Griffin because Griffin had a history of substance abuse. On the issue of substance abuse, Patterson testified that Griffin abused PCP and cocaine. She noted that Griffin attended narcotics anonymous meetings for a period of time and that at one time, Griffin underwent inpatient treatment for her substance abuse problems. Before completing the treatment program, Griffin left against the advice of her doctors. Patterson opined that Griffin preferred a quick fix as opposed to long-term treatment.

Laura Gardner, who was the child's therapist at Wedgwood Christian Services, testified next for DHS. Gardner explained that the child wanted to live with Griffin and that he did not want to live with a foster family because he felt that to do so would be to betray Griffin. She further explained that Griffin had limited telephone contact with the child and had not visited him for approximately six months. Still, the child was "always hopeful that, you know, [Griffin was] going to come around again and pull herself together and that things are going to, you know, come together for them to reunite." Gardner testified that she attempted to discuss the child's rejection of foster care with Griffin when she spoke with Griffin in October 2011, but Griffin appeared to be under the influence of drugs and was not capable of having such a conversation.

In addition to testifying about the child's strong bond with Griffin, Gardner noted that the child needed to continue with therapy as part of his long-term care. She noted that the child suffered from post-traumatic stress disorder and that he took medication for the disorder. She opined that the child should be given a chance to "just enjoy being a kid" and to have stability in his life, and that he would not have stability if he was permitted to live with Griffin. She explained that Griffin did not take care of the child, but rather, the child took care of Griffin when they were together. Accordingly, she testified that despite the child's strong attachment to Griffin, it was in his best interest to have Griffin's rights terminated.

Next, DHS presented testimony from Ergang and Ashley Leonard, who served as foster care workers for the child. Ergang testified that she referred Griffin for a psychiatric evaluation, but Griffin did not attend the evaluation. She also noted that she referred Griffin to substance abuse treatment, and that Griffin did not undergo such treatment. Additionally, Ergang referred

Griffin for drug screenings; however, Griffin avoided most of the screenings. Ergang reported that when Griffin did submit to screenings, she often tested positive for cocaine, marijuana, and PCP. Because of Griffin's history with substance abuse, Ergang recommended that termination of Griffin's parental rights was in the child's best interests. Leonard echoed many of Ergang's sentiments as to Griffin's substance abuse. She testified that when she spoke with Griffin on the telephone approximately one month before the termination hearing, Griffin identified herself as an "unstable crack addict," who struggled to refrain from using drugs for more than two to three days at a time. Leonard testified that Griffin tested positive for cocaine as recently as September 2011. Leonard also recalled Griffin's most recent supervised parenting visit with the child. Leonard testified that Griffin appeared to be under the influence of drugs during the visit, and that the child spent most of his time playing, and did not interact with Griffin much during the visit.

At the conclusion of Leonard's testimony, the trial court closed the proofs and directed the parties to provide closing arguments at the next hearing, which was to occur on December 1, 2011. At the December 1, 2011, hearing, Griffin appeared and moved the trial court to reopen the proofs to allow her to testify; the trial court granted her motion. During her testimony, Griffin pleaded with the trial court for one more opportunity to care for the child. She stated "[i]f I miss any appointments or anything, then [DHS] can take him; but, at least, give me one more chance—just one. If I miss any appointment—anything—or use or [test positive] or miss anything, then you could – you could take him and I'll walk away." She acknowledged that she "need[ed] to be stable" before she could care for the child, and that she was still in recovery from her cocaine addiction.

At the conclusion of closing arguments, the trial court found that DHS proved statutory grounds for termination by clear and convincing evidence. It began by specifically noting that MCL 712A.19b(3)(c)(i) was met. In particular, it stated that

[t]he Court finds that MCL 712A.19b(3)(c)(i) is present, 182 or more days have elapsed since the issuance of the initial dispositional order. The conditions that led to that adjudication, which were—

Well, the mother had problems back at that time at the Gospel Mission. She was told to leave for bad behavior and was arrested, and the child was left without proper care and custody. The mother still now finds herself in jail.

Next, the trial court found that DHS presented clear and convincing evidence of grounds for termination under MCL 712A.19b(3)(j) because the child suffered psychological harm, post-traumatic stress disorder, while he lived with Griffin, and was likely to suffer such harm again if returned to her care. The trial court declined to find that there was clear and convincing evidence that Griffin abandoned the child under MCL 712A.19b(3)(i), and concluded that "all of the statutory grounds" other than § (3)(i) had been established by clear and convincing evidence. In reaching its conclusion, the trial court noted Griffin's failure to comply with the services offered to her and opined that, "[t]here's no way this mother could provide care or custody within a reasonable time, considering the fact that now [the child] is going to be 14"

The trial court also concluded that termination of Griffin's parental rights was in the child's best interest. The trial court began by again referring to the fact that statutory grounds existed, and then explained its best interests finding as follows:

And, at this point, there—there really isn't any question in the Court's mind that it's in the best interest of [the child] to terminate his mother's rights. That has been shown by clear and convincing evidence.

But the Court is not convinced that it is in his best interest to move quickly into finding a foster home or even adoptive home for him, given his strong bond in his mind—He has a strong bond in his mind with his mother, and he's going to fight any placement for a long period of time while he's processing the fact that his mother's rights are terminated.

I do not want him moved from Wedgwood for a long period of time. We're asking for disaster if Wedgwood forces that.

Griffin now appeals from the trial court's order terminating her parental rights.

II. STATUTORY GROUNDS FOR TERMINATION

Griffin does not challenge the statutory grounds for termination. Because she does not do so, we assume that the trial court did not clearly err in finding that the statutory grounds existed.⁵

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Griffin contends that the trial court erred in its best interests analysis. Once DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is in the child's best interests, then the trial court is required to order termination of parental rights.⁶ 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.⁷ We review for clear error the trial court's decision regarding the child's best interests.⁸

B. LEGAL STANDARDS

⁵ *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998), overruled in part on other grounds *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000).

⁶ MCL 712A.19b(5); MCR 3.977(H)(3)(b); *In re Trejo Minors*, 462 Mich at 351.

⁷ *In re Trejo Minors*, 462 Mich at 353.

⁸ *Id.* at 356-357.

In determining the child's best interests, a trial court may consider a variety of factors including the parent's history, unfavorable psychological evaluations, the child's age, inappropriate parenting techniques, and continued involvement in domestic violence.⁹ A trial court may also consider the strength of the bond between the parent and child, the visitation history, the parent's engaging in questionable relationships, the parent's compliance with treatment plans, the child's well-being while in care, and the possibility of adoption.¹⁰ A trial court may also consider the child's need for permanence and the length of time the child may be required to wait for the parent to rectify the conditions, which includes consideration of the child's age and particular needs.¹¹

C. ANALYSIS

The trial court did not clearly err when it found that termination of Griffin's parental rights was in the minor child's best interests. The record reveals that Griffin had a history of substance abuse problems. Although Griffin recently began attending narcotics anonymous meetings, she tested positive for cocaine use two months before the termination hearing and repeatedly failed to comply with a court-ordered case service plan to submit to drug testing during the lengthy proceeding. In addition to her substance abuse problems, Griffin also had a history of mental health problems. Griffin repeatedly failed to comply with the case service plan to seek treatment for her mental health issues.

We do note that the record reveals that the child had a strong bond with Griffin. However, Gardner testified that Griffin had not visited the child for nearly six months before the termination hearing and that Griffin did not have regular telephone contact with the child. Nevertheless, the record demonstrates that Griffin often lacked adequate housing and that she struggled with criminal behavior. Moreover, Griffin instructed the child to shoplift for her. Additionally, the record reveals that the child often felt responsible for taking care of Griffin. During one parenting visit, Griffin slept nearly the entire time that the child was with her. Further, on her last supervised visit with the child, Griffin appeared to be under the influence of drugs.

Consequently, based on the entire record before us, we conclude that the trial court did not clearly err in finding that termination of Griffin's parental rights was in the child's best interests.

We affirm.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck

⁹ See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

¹⁰ See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

¹¹ See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).