

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JAFAR SHAKUR GRESHAM,
LAFRANCE NAQUAY GRESHAM, and
AUTUMN CHRISTINE GRESHAM, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

BRIDGET GRESHAM,

Respondent-Appellant,

and

ANTONIO HARRIS, JABARI BROWN, and
EMMANUEL HARRIS,

Respondents.

UNPUBLISHED

October 20, 2009

No. 290697

Wayne Circuit Court

Family Division

LC No. 03-415820-NA

Before: Davis, P.J., and Whitbeck and Shapiro, JJ.

PER CURIAM.

Respondent Bridget Gresham (Gresham) appeals as of right from a circuit court order terminating her parental rights to the minor children pursuant to her execution of releases under the Adoption Code.¹ The parental rights of the children's fathers were involuntarily terminated under MCL 712A.19b, but they are not parties to this appeal. We affirm.

I. Basic Facts And Procedural History

In 2003, the trial court took temporary jurisdiction over the children based on Gresham's admitted abuse of cocaine, her lack of housing, and Jafar Gresham's and LaFrance Gresham's failure to attend school. The children were thereafter placed in a guardianship with their

¹ MCL 710.21 *et seq.*

maternal grandmother, Patricia Gresham, following which the trial court terminated its jurisdiction over the children on April 11, 2005.

On December 18, 2006, the trial court authorized an order for the children to be placed with DHS for care and supervision, pending further hearing, because there was probable cause to believe that Gresham dropped the children off at the home of an acquaintance, but never returned. The children were placed in foster care.

In an amended petition filed on January 4, 2007, petitioner Department of Human Services (DHS) sought to terminate Gresham's parental rights. DHS alleged that the children were deserted by Gresham, their guardian, and their fathers. DHS also alleged that Gresham has a criminal and mental health history. She allegedly did not comply with services in the earlier child protection proceeding. She also allegedly left the children with a man on December 18, 2006, and failed to return. That man allegedly was not related to the children and could not care for them.

On February 13, 2007, the trial court appointed Edward Joseph to serve as guardian ad litem for Gresham. Gresham's counsel had moved for the appointment because of Gresham's mental illness and DHS's request for termination of her parental rights. Gresham was denied parenting time with the children.

Following an adjudicative bench trial on June 18, 2007, the trial court found that it had jurisdiction over the children. It found jurisdiction based on evidence that the children were conveyed to DHS's protective services office on December 18, 2006, after they were brought to the police station, and Gresham's failure to complete her prior treatment plan. In addition, the trial court determined that the earlier guardianship was terminated by operation of MCR 5.404(F)(3)(b) because a petition was authorized under the Juvenile Code. The trial court also determined that the children should be made temporary court wards and that services should be provided to Gresham. The treatment plan was to include substance abuse services because of Gresham's problem with substance abuse in the earlier child protection proceeding. She was granted supervised visitation with the children.

At the dispositional hearing on July 16, 2007, foster care worker Susan Tibbs testified by telephone that she had discussed a parent-agency agreement with Gresham. The major requirements were random drug screens, outpatient substance abuse classes, suitable housing, employment, and weekly visits with the children.

At a dispositional review hearing on October 16, 2007, foster care worker Tibbs reported that Gresham was not regularly appearing for visitation, which caused emotional problems for the children. Gresham's telephone calls to the children's residence were also causing problems. Further, Gresham was not complying with the parent-agency agreement. Tibbs opined that Gresham needed to enter an inpatient substance abuse treatment program and participate in therapy. Gresham had reportedly been prescribed medication for bipolar schizophrenia and had been going to Team Mental Health, but Tibbs did not have documentation from Team Mental Health. Gresham's attorney reported that Gresham was having problems because her boyfriend was murdered in August and she "lost everything basically on that day." He indicated that Gresham was willing to enter an inpatient substance abuse treatment program and sign a release

so that she could work on the parent-agency agreement. The trial court determined that Gresham should enter the treatment program as soon as possible.

Gresham's failure to comply with various requirements of the treatment plan continued in 2008. At a combined dispositional review and permanency planning hearing conducted on April 18, 2008, Gresham testified that she was incarcerated for approximately five days after leaving a substance abuse treatment program in March 2008. She did not complete the program. She was then living with a friend. She planned to look for employment, but also intended to apply for disability. She indicated that she was then taking medication and receiving psychiatric treatment for a schizophrenic bipolar diagnosis. She was willing to sign a release for the drug treatment and psychiatric records. The foster care worker, Charita Dixon, indicated that Gresham was late for visits, but was loving with the children when she arrived. The trial court determined that visitation should be suspended if Gresham continued to arrive late. She was not required to enter an inpatient substance abuse treatment program, but was told that termination proceedings would commence if she tested positive for drugs or failed to provide a drug screen.

At the next hearing on May 27, 2008, the trial court was informed that Jafar and LaFrance Gresham had been placed together, while Autumn Gresham was in a separate foster home because of behavioral issues. Foster care worker Dixon reported that Gresham provided a negative drug screen before the hearing, but Dixon had not received proof that Gresham was in a drug rehabilitation facility. An earlier drug screen on April 18 was positive for cocaine. According to Dixon, Gresham's only compliance with her treatment plan was that she visited the children, with the exception of the last scheduled visit. Gresham did not disclose where she was obtaining therapy. Gresham's attorney advised the trial court that Gresham was willing to release the information. The trial court determined that a petition to terminate Gresham's parental rights should be filed, but that Gresham's visitation with the children could continue as long as she provided negative drug screens.

Gresham did not appear at the next hearing on August 26, 2008. Foster care worker Dixon reported that Gresham was not in compliance with the treatment plan. Dixon terminated Gresham's visits with the children on July 3, 2008, because she did not provide drug screens, attended visits sporadically, and was late for the visits that she did attend.

On October 3, 2008, the supplemental petition to terminate Gresham's parental rights was filed. Gresham did not appear at the next two hearings on October 21 and November 18, 2008. Foster care worker Dixon reported that Gresham was continuing to phone the children on almost a daily basis and "get them off track." Dixon had no information regarding Gresham's whereabouts, but received a phone call from Gresham approximately one week before the November 18 hearing. Gresham's attorney indicated that he had been unsuccessful in his efforts to contact Gresham. The trial court determined that she should be given notice of the supplemental petition by publication. She was not to have any contact with the children, but services were to be made available to her if she wanted them before the termination hearing.

Gresham appeared at the termination hearing on January 23, 2009, to release her parental rights. The trial court found the release to be voluntary. After hearing testimony regarding the children's best interests, the trial court stated that it executed the order to terminate Gresham's parental rights. Afterward, the trial court advised Gresham that she no longer had a right to have contact with the children. A permanency planning hearing was then conducted. The plan for

Jafar and LaFrance Gresham was long-term foster care in their current placement. The plan for Autumn Gresham was adoption. Gresham's sister was identified as an individual who expressed an interest in adopting Autumn Gresham.

The releases executed by Gresham are not part of the record. And while the record does not contain the order that the trial court stated it was executing at the hearing, the record contains "advice of rights after order terminating parental rights" forms, which indicate that the termination order was based on the Adoption Code. Apparently, the release documents were given to the adoption department.

On January 28, 2009, the trial court entered an order that specified that "Mother, Bridgett Gresham released her parental rights." On March 3, 2009, Gresham filed a claim of appeal from that order. The appeal was initially dismissed for lack of jurisdiction because Gresham did not timely request appellate counsel or file the appeal.² However, the appeal was reinstated on May 13, 2009, based on Gresham's claim that her parental rights were terminated under the Adoption Code, which affords additional time to file an appeal.³

II. Threshold Issues

Although this case was initiated as a child protection proceeding under the Juvenile Code,⁴ after DHS filed a supplemental petition to terminate Gresham's parental rights, Gresham executed a release of her parental rights to each child under the Adoption Code. Because the trial court terminated Gresham's parental rights under the Adoption Code, we consider her claims in light of the statutory requirements for releases under MCL 710.29.⁵

Initially, Gresham's issues challenging the validity of her releases have not been properly preserved for appeal because she failed to raise the issues in a motion to revoke the releases in the trial court,⁶ or in a motion for rehearing under MCL 710.64(1). "The legislative determination that finality in these matters is beneficial to the well-being of the children involved coincides with the judicial policy of not considering matters first raised on appeal."⁷ Nonetheless, we will consider Gresham's claims in the interests of justice.⁸

² *In re Gresham*, unpublished order of the Court of Appeals, entered March 24, 2009 (Docket No. 290697).

³ *In re Gresham*, unpublished order of the Court of Appeals, entered May 13, 2009 (Docket No. 290697).

⁴ MCL 712A.1 *et seq.*

⁵ *In re Buckingham*, 141 Mich App 828; 368 NW2d 888 (1985); see also *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992).

⁶ MCL 710.29(10).

⁷ *In re Baby Girl Fletcher*, 76 Mich App 219, 220; 256 NW2d 444 (1977).

⁸ *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008); see also *LME v ARS*, 261 Mich App 273, 287; 680 NW2d 902 (2004).

III. Competency

A. Standard Of Review

Gresham argues that the trial court erred in failing to determine whether she was competent to release her parental rights.

MCL 710.29(6) provides:

A release by a parent or a guardian of the child shall not be executed until after the investigation the court considers proper and until after the judge, referee, or other individual authorized in subsection (2) has fully explained to the parent or guardian the legal rights of the parent or guardian and the fact that the parent or guardian by virtue of the release voluntarily relinquishes permanently his or her rights to the child; and, if the child is over 5 years of age, the court has determined that the child is best served by the release.

The adequacy of a trial court's investigation under MCL 710.29(6) is left to its sound discretion.⁹ An abuse of discretion occurs when the trial court's decision results in an outcome falling outside the range of principled outcomes.¹⁰ We review for clear error the trial court's findings of fact.¹¹ A finding of fact is clearly erroneous where, although there is evidence to support it, a reviewing court is left with a definite and firm conviction that a mistake was made.¹²

B. Analysis

We conclude that Gresham's reliance on the Americans with Disabilities Act (ADA),¹³ is misplaced because this case does not involve a request for services to accommodate a disability under the ADA during child protection proceedings, but rather whether Gresham knowingly and voluntarily executed the releases of her parental rights.¹⁴

Further, although Gresham reported at an earlier hearing that she was taking medication for a diagnosis of schizophrenic bipolar, there is no record evidence that Gresham followed through with requests for documentation regarding her mental health treatment. Regardless, the trial court had an opportunity to observe Gresham at the various hearings that she attended. It also engaged in a direct colloquy with her before accepting the releases to determine her understanding of the consequences of her decision to release her parental rights and the

⁹ *In re Blankenship*, 165 Mich App 706, 714; 418 NW2d 919 (1988).

¹⁰ *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

¹¹ MCR 2.613(C).

¹² *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

¹³ 42 USC 12101 *et seq.*

¹⁴ *In re Blankenship*, *supra* at 714; cf. *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000).

voluntariness of that decision. In addition, the trial court questioned the guardian ad litem who was appointed to assist Gresham during the child protection proceedings and also heard argument from Gresham's counsel. Nothing in the record indicates that the trial court should have been alerted to the possibility that Gresham was not capable of knowingly and voluntarily executing the releases or that the releases were not in fact knowingly and voluntarily made. Thus, the trial court did not abuse its discretion in relying on its direct colloquy with Gresham to accept the releases.¹⁵

IV. Children's Best Interests

A. Standard Of Review

Gresham argues that the trial court erred in determining that termination of her parental rights was in the best interests of the minor children. As noted above, the adequacy of a trial court's investigation under MCL 710.29(6) is left to its sound discretion,¹⁶ and we review for clear error the trial court's findings of fact.¹⁷

B. Analysis

We conclude that the trial court properly considered the children's best interests in deciding whether to accept the releases.¹⁸ The evidence that Gresham was not complying with her court-ordered treatment plan with respect to substance abuse and other requirements was evidence that the children would be at risk of harm in her custody.¹⁹ Considered in light of other evidence in the record, including the length of time the children had spent outside of Gresham's custody, the record amply supports the finding that each child was "best served by the release."²⁰

V. Effective Assistance Of Counsel

A. Standard Of Review

Gresham argues that she received ineffective assistance of counsel during the trial court proceedings.

The standards for ineffective assistance of counsel in criminal cases are applied by analogy to child protection proceedings.²¹ Therefore, where the issue is not raised in the trial

¹⁵ *In re Blankenship*, *supra* at 714; *In re Curran*, 196 Mich App 380, 385; 493 NW2d 454 (1992).

¹⁶ *In re Blankenship*, *supra* at 714.

¹⁷ MCR 2.613(A).

¹⁸ *In re Buckingham*, *supra* at 837.

¹⁹ *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005).

²⁰ MCL 710.29(6).

²¹ *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2001).

court, appellate review is limited to mistakes apparent from the record.²² A respondent, therefore, bears the burden of establishing the factual predicate for her claim.²³ The respondent must show that counsel's performance fell below an objective standard of reasonableness and that she was prejudiced by counsel's deficient performance.²⁴ To demonstrate prejudice, the respondent must show a reasonable probability that, but for counsel's error, the result of the proceeding would have been different.²⁵

B. Analysis

With respect to Gresham's claim that she was denied the effective assistance of counsel, we find merit to DHS's argument that no right to counsel existed relative to the releases executed under the Adoption Code. Although a respondent in a child protection proceeding is entitled to the effective assistance of counsel,²⁶ there is no right to appointed counsel in voluntary adoption matters.²⁷ This is so even where the case is initiated as an involuntary proceeding under the Juvenile Code.²⁸ Rather, the focus is on whether the respondent knowingly and voluntarily executed the release.²⁹ Limiting our review to the record,³⁰ Gresham's ineffective assistance of counsel claim cannot succeed because the record reflects a knowing and voluntary release of her parental rights to each child.

Affirmed.

/s/ Alton T. Davis
/s/ William C. Whitbeck
/s/ Douglas B. Shapiro

²² *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002).

²³ *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

²⁴ *In re CR*, *supra* at 198.

²⁵ *Carbin*, *supra* at 600.

²⁶ *In re CR*, *supra* at 197-198.

²⁷ *In re Blankenship*, *supra* at 713.

²⁸ See *In re Jackson*, 115 Mich App 40, 51; 320 NW2d 285 (1982).

²⁹ *Id.* at 51-52.

³⁰ *Davis*, *supra* at 368.