

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

January 18, 2011

In the Matter of MCGOVERN Minors.

No. 298555

Kalkaska Circuit Court

Family Division

LC No. 08-004037-NA

Before: SAWYER, P.J., and WHITBECK and WILDER, JJ.

PER CURIAM.

Respondent mother L. McGovern appeals as of right from an order that terminated her parental rights to her three minor children, R. McGovern, K. McGovern I, and K. McGovern II.¹ We affirm.

I. FACTS

In October 2008, the Kalkaska Department of Human Services (DHS) filed a petition seeking to terminate L. McGovern's parental rights. The petition alleged that K. McGovern I and K. McGovern II's father, C. McGovern, had slapped K. McGovern I in the face after drinking. He also waived a gun in the air and threatened to kill himself. L. McGovern told R. McGovern that if anyone asked what happened, R. McGovern was to state that it was her, and not C. McGovern, who had slapped K. McGovern I. The petition alleged that L. McGovern had been warned that continued contact with C. McGovern, who had a history of domestic violence, was placing her children at risk. In fact, both L. McGovern and C. McGovern had several contacts with DHS in the past. L. McGovern had three substantiated cases and the children were removed on two prior occasions in 1999 and in 2004 for chronic neglect, sexual abuse, and inadequate housing.

¹ MCL 712A.19b(3)(b)(ii) (failure to protect child from physical injury or abuse); (3)(c)(i) (conditions of adjudication continue to exist); (3)(c)(ii) (other conditions that would bring the child within the court's jurisdiction are not rectified); (3)(g) (failure to provide proper care and custody); and (3)(j) (reasonable likelihood of harm if child is returned to parent).

C. McGovern, K. McGovern I and K. McGovern II's legal father, voluntarily relinquished his parental rights to his daughters. The court also terminated the parental rights of R. McGovern's putative father, S. Hopper. Neither father participated in the appeal.

C. McGovern released his parental rights to K. McGovern II and K. McGovern I in December 2008. The court held a jury trial in January 2009, at which time the children were adjudicated temporary wards of the court.

A dispositional hearing took place in March 2009. Clinician Amber Peterson testified that she had been treating R. McGovern since November 2008. According to Peterson, R. McGovern, aged 17, was emotionally young, given her traumatic background. She suffered from intense anxiety, depression, and posttraumatic stress disorder. R. McGovern had been physically and sexually victimized by many of the men in L. McGovern's life. Peterson testified that R. McGovern's long-term prognosis was not very good; she was at high risk for impulse behaviors. Peterson believed that R. McGovern was "absolutely" at risk of harm if returned home. According to Peterson, R. McGovern had a bond with L. McGovern based on the trauma she endured. Peterson opined that R. McGovern's bond with L. McGovern was so toxic that it was not capable of repair in therapy or family counseling. Peterson did not believe it was currently in R. McGovern's best interests to attend counseling with L. McGovern. During cross-examination, Peterson testified that R. McGovern had just recently made a reference to sexual abuse but had not identified a perpetrator.

Dennis Chitwood, a counseling psychologist, testified that he first came into contact with K. McGovern I in November 2008. She was at Eagle Village, a locked residential placement. K. McGovern I did not appear to suffer from serious psychopathy, but she suffered more of a reaction or adjustment disorder with depressed mood. K. McGovern I was anxious and likely suffered from posttraumatic stress disorder. According to Chitwood, K. McGovern I was guarded, so it was difficult to make an accurate diagnosis. She expressed a desire to return home to L. McGovern, but she also expressed anger toward her mother and admitted that her home life had been chaotic for a very long time. Nevertheless, Chitwood did not recommend that L. McGovern's parental rights be terminated. He recommended that K. McGovern I be placed in long-term foster care. Chitwood opined that since K. McGovern I was close to being 16 years old, termination seemed "counterproductive." He did not recommend that K. McGovern I return to L. McGovern because of her inability to safely parent over the years. Given L. McGovern's history, dating back to when K. McGovern I was two or three years old, Chitwood testified that there was a lack of insight, which indicated "that the parent is not amenable to treatment or change for whatever reason."

April White testified that she was a limited licensed professional counselor at Child and Family Services. White had been counseling K. McGovern I since November 2008. According to White, K. McGovern I was extremely guarded and severely depressed. She cried uncontrollably and expressed suicidal thoughts. There was a drastic improvement now that she was in a foster home. Given K. McGovern I's guarded approach to therapy, White had difficulty assessing whether reunification would be possible.

Lisa Lederer testified that she was a therapist at Child and Family Services. Lederer began treating K. McGovern II after K. McGovern II had emotional outbursts in the foster care placement, including threats to harm herself. Initially, their sessions went well. K. McGovern II was open and expressive and had no problems revealing her stress and anxieties. However, that changed around February 2009, when she began to close up and began saying less because she wanted to go home to her mother. Thirteen-year-old K. McGovern II appeared emotionally younger than her age and seemed "consumed with survival." K. McGovern II had experienced

extreme guilt for revealing to her school counselor the abuse that led up to the children's removal. K. McGovern II loved her mother, and it was difficult for her to be in foster care. Yet Lederer did not believe contact with L. McGovern was prudent until K. McGovern II showed more stability.

DHS worker Kelly Schaub testified that DHS had been providing the family services from 1996 until 2008, including Families First on three separate occasions. Hygiene, cleanliness of the home, and truancy were recurrent themes. In November 2007, C. McGovern was arrested after assaulting K. McGovern I and L. McGovern. L. McGovern suffered a fractured finger and K. McGovern I was slapped on the head. As part of a plea agreement, C. McGovern pleaded to domestic assault against L. McGovern and the charge regarding K. McGovern I was dismissed. L. McGovern allowed C. McGovern back into the home after the incident. K. McGovern I was also the victim of C. McGovern's most recent attack in October 2008, which caused the children's removal. He was drunk and upset. He gave a gun to K. McGovern I and told her to kill him. The girls dismantled the gun and hid it from their father. C. McGovern was previously convicted of assaulting one of his older children in 1997. DHS did not believe that further services would benefit L. McGovern. Before the incident in 2008, L. McGovern had been warned that allowing the children to have contact with C. McGovern placed them at risk of harm. She did not believe he was a risk, and she wanted him to come home.

Licensed clinical psychologist Wayne Simmons testified that he was asked to evaluate L. McGovern and the three children. K. McGovern II was sad. K. McGovern II was depressed and anxious and had been exposed to a lot of disruption and emotional challenges. R. McGovern was close to L. McGovern, but also felt betrayed by her because she did not believe R. McGovern's claim of sexual abuse. According to Simmons, termination of L. McGovern's parental rights with regard to R. McGovern would result in very little gain because he predicted that R. McGovern was very likely to resume a relationship with L. McGovern once she turned 18.

Simmons testified that K. McGovern I expressed that L. McGovern failed to take care of the children correctly and failed to protect them. K. McGovern I also said that L. McGovern was harsh and would hit them. Although K. McGovern I would likely indicate a desire to return to L. McGovern's care, Simmons believed that termination was in her best interests. She was capable of deteriorating and would be at "grave risk" if returned to L. McGovern's care.

Simmons testified that L. McGovern disclosed her past with DHS, including the most recent incident with C. McGovern and another incident in which the girls accused one of her friends of sexually assaulting them. Simmons explained that he was concerned that "in each instance, her blame goes to [DHS] for misunderstanding what was going on. It does not go to harm that was occurring to her children or dangerous situations that she was putting them in touch with." Nor was L. McGovern particularly distressed about what was happening. She was upbeat and cheerful, which was not in keeping with a parent on the brink of losing her parental rights. The fact that she was not distressed and that she minimized the role she played in what was happening meant that there was "no data to support that she's likely to change."

The dispositional review hearing continued in May 2009. Kelly Schaub testified that since the last court hearing she went to L. McGovern's home based on a report from the landlord that C. McGovern was in the home once again. L. McGovern denied that he was living there and

allowed the workers to look around. There were men's items, but L. McGovern indicated that those had been left by C. McGovern. The landlords reported otherwise—that they had been to the house for an inspection and C. McGovern had let them in.

The trial court declined to terminate L. McGovern's parental rights because, although the trial court was convinced that clear and convincing evidence existed to support termination, termination was not necessarily in the children's best interests at that time. The trial court looked to the opinions of both Dennis Chitwood and Wayne Simmons and concluded that, even though the consensus was that the children ought not return to L. McGovern's care, it would not be in their best interests to terminate L. McGovern's parental rights. The trial court wrote: "Clearly the recommendations of the therapists who are counseling with the children should be considered in determining when contact with the mother will be deemed appropriate and not harmful. The court is in agreement with the guardian ad litem that contact between the mother and the children is a matter which should be left to the discretion of the Department of Human Services."

In October 2009, a hearing was held in which the trial court advised that L. McGovern needed to be offered services. It appeared as though the children were now ready for therapeutic intervention and family counseling. Clinical supervisor of the behavioral department at Child and Family Services, Amber L. Ligon, testified that she had a session with L. McGovern the week preceding the hearing and that it went well. The goal was to continue to support the girls and work toward L. McGovern taking ownership of the choices she made and have her verbalize them to the girls. Ligon opined that returning the children to L. McGovern was not in their current best interests, but she was not opposed to family therapy sessions. The focus was on the needs of the children, not the needs of L. McGovern. Foster care specialist Morgan Dix testified that R. McGovern was now 18 years old, but still in need of services in terms of independent living skills. The trial court granted L. McGovern supervised visitation but deferred to the recommendation of the therapists.

A review hearing was held January 2010. Dix testified that family counseling began in November 2009. However, counseling was terminated when it was determined that it was not in the children's best interests to continue. Amber Ligon testified that she was R. McGovern's counselor. There were a total of three family sessions in November and one in December. The first session was traumatic because it was the first time that the girls had seen L. McGovern in quite some time. Still, the session went well. However, as the sessions progressed, L. McGovern demonstrated an inability to meet the girls' needs. K. McGovern I stormed out of the building twice. Her behavior escalated so much that she needed a medical evaluation. R. McGovern revealed sexual abuse and attempted to talk to L. McGovern about it, but L. McGovern "was not emotionally able to meet her or emotionally hold or validate her for that." The girls clearly loved L. McGovern, but they were angry. According to Ligon, the girls wanted the ability to contact L. McGovern over the phone, but did not express a desire to see her face-to-face.

DHS worker Donna Wzniski recommended that the girls not have any contact with L. McGovern. They were in stable placements and wanted to stay with their placements or with their sister. L. McGovern had been receiving individual counseling since October 2009, but L. McGovern had not benefited. L. McGovern continued to fail to take responsibility for her role in the case.

The guardian ad litem stated that “my opinion has completely changed now. I would recommend that they—she be terminated on. She’s not helpful to them at all. And if she really cares about their best interest, she would simply sign off her parental rights at this point in time.” The trial court ordered that a termination petition be filed.

The termination hearing took place in April 2010. Amber Ligon testified that she had been R. McGovern’s individual counselor for a year and a half and had been doing conjoint counseling with R. McGovern and her sisters since Fall 2009. L. McGovern was also treating with Ligon since Fall 2009. L. McGovern attended and engaged in the sessions, but it was clear that she was unable or refused to meet the girls’ needs. R. McGovern’s counseling was successful. R. McGovern did not wish to return to L. McGovern’s care. K. McGovern I was not interested in returning to her mother’s care either. K. McGovern II was the one that demonstrated the strongest desire to reunify, but those feelings changed the longer she stayed in care. During the family therapy sessions, L. McGovern primarily blamed the girls’ father for their troubles. Ligon believed that termination of L. McGovern’s parental rights was in the girls’ best interests.

April Truskowski testified that she counseled K. McGovern I once a week since December 2008. K. McGovern I was very sad and angry about the situation, not necessarily angry with L. McGovern. She was ambivalent—expressing a desire to have contact with L. McGovern, but then saying she did not. Truskowski did not believe that K. McGovern I wanted face-to-face contact with L. McGovern. The joint counseling sessions with L. McGovern resulted in “some fallout” with K. McGovern I, including increased depression, anxiety, and ambivalence. Of the three siblings, K. McGovern I was the angriest. She blamed herself for the girls being placed out of the home, and L. McGovern did nothing to correct that impression. Truskowski did not recommend continued contact with L. McGovern. Truskowski opined that K. McGovern I did not have a healthy attachment with L. McGovern.

K. McGovern II’s counselor, Lisa Lederer, testified that she had been counseling K. McGovern II once a week since December 2008. A few months ago, K. McGovern II expressed that she wanted to be adopted. She did not want to return to L. McGovern’s care. Nor did she express a desire to see L. McGovern face-to-face. Since the joint sessions with her mother, K. McGovern II indicated a desire to “be done.” She was afraid that if she returned to L. McGovern’s care that the cycle would repeat itself and she would eventually be placed back in foster care. K. McGovern II was especially concerned about her mother’s choices in men. K. McGovern II did not feel comfortable around them. K. McGovern believed her mother’s priorities were not in order.

Foster care specialist Morgan Dix testified that L. McGovern’s individual counseling sessions ended due to L. McGovern’s lack of progress and her failure to take into account the role she played in the girls coming into foster care. The girls relapsed after seeing L. McGovern. K. McGovern I wrote a suicide note in December 2009. Dix believed that termination of L. McGovern’s parental rights was in the girls’ best interest because L. McGovern could not parent them in a safe and secure manner. The month before the hearing, Dix went to L. McGovern’s home. A man identified himself as “Ron” and said that L. McGovern was sleeping and would not come to the door. When Dix went back a second time, L. McGovern’s trailer was totally dismantled. L. McGovern told Dix that if the trailer was going to be repossessed, it would be repossessed in this condition. When L. McGovern came to drop off some of the girls’ items, she

was again accompanied by “Ron.” Dix asked Ron his last name and Ron responded that it was not necessary for her to know it because he was not part of the case.

At the close of trial, the guardian ad litem expressed the girls’ opinion on the case. They did not wish to return home and wanted closure. In May 2010, the trial court issued an opinion and order terminating L. McGovern’s parental rights to the children. She now appeals as of right.

II. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

L. McGovern appears to concede that the statutory bases for terminating her parental rights were proven by clear and convincing evidence. She focuses on whether the trial court erred in determining that it was in the girls’ best interests to terminate her parental rights. L. McGovern claims that because DHS was upset with the trial court’s prior decision denying its petition for termination of L. McGovern’s parental rights, it failed to make reasonable efforts toward reunification.

Once the 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 clearly in the child’s best interests, then the trial court shall order termination of parental rights.² 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.³ We review the trial court’s decision regarding the child’s best interests for clear error.⁴

B. ANALYSIS

The trial court did not clearly err in finding that termination was in the children’s best interests and in terminating L. McGovern’s parental rights. Although the trial court did not order that L. McGovern’s parental rights be terminated in June 2009 because of the potential harmful effect of termination on the girls, reunification was not necessarily a realistic goal. Rather, the trial court was trying to give the girls an opportunity to work through some issues with L. McGovern in family therapy. However, their first meeting was traumatic, and L. McGovern never accepted responsibility for the girls coming into care and had no response to their questions about things that had happened in the past. The girls’ misbehavior began to escalate again and family therapy was discontinued after only a brief period of time.

² MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000).

³ *Trejo*, 462 Mich at 353.

⁴ *Id.* at 356-357.

L. McGovern complains that the family should have had more sessions together, but the girls clearly regressed when they saw their mother. And although L. McGovern complains that only the children's needs were being considered, that is exactly what protective proceedings are all about. When it was obvious that the therapy sessions were doing more harm than good, the therapists and the workers were obligated to act in the girls' best interests and discontinue therapy.

L. McGovern also claims that she was entitled to more individualized services and therapy. However, both Chitwood and Simmons—though they could not agree on the degree to which termination would harm the girls—agreed that L. McGovern was simply not amenable to change. This was not the first time the children were placed in foster care. The family had received extensive services in the past. And the consensus was that additional services would not be beneficial.

L. McGovern clings to the assertion that the girls expressed a desire to maintain contact with her. However, the evidence of that was slight. The therapists and the GAL agreed that the girls did not want to maintain a relationship with their mother. The youngest girl, K. McGovern II, was especially astute and recognized how her sisters' behaviors were affected when they began seeing their mother again. She was afraid that if they went back with their mother, they would end up right back in foster care, especially in light of the fact that L. McGovern already had a new boyfriend and did not have her "priorities straight."

These children have been removed from L. McGovern's care on three separate occasions. The consensus was that they were finally enjoying stability in their foster care placements. The evidence that the girls did not desire contact with L. McGovern far outweighed any evidence that they wanted to have contact with L. McGovern. The girls' regression during the period of time when L. McGovern was re-introduced into their lives supports a finding that it was in their best interests to terminate L. McGovern's parental rights. They were entitled to permanence and stability. We conclude that the trial court did not clearly err in finding that termination of L. McGovern's parental rights was in the child's best interests.

We affirm.

/s/ David H. Sawyer
/s/ William C. Whitbeck
/s/ Kurtis T. Wilder