

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JAIDA GREEN, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBERT PAUL GORIS,

Respondent-Appellant,

and

JOLEEN GREEN,

Respondent.

UNPUBLISHED
February 28, 2008

No. 281960
Hillsdale Circuit Court
Family Division
LC No. 06-000230-NA

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

PER CURIAM.

Respondent-appellant Robert Goris appeals as of right from a trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (g), and (h).¹ We affirm.

I. Basic Facts And Procedural History

The DHS filed a neglect petition in April 2006. As amended, it alleged that Joleen Green failed to obtain proper prenatal care and used drugs during her pregnancy. The baby, Jaida Green, tested positive for various drugs at birth. After being discharged, Green was allowed to visit Jaida and feed her. Green was given time alone with Jaida, during which time she claimed

¹ MCL 712A.19b(3)(a)(ii) (desertion for at least 91 days without seeking custody), (g) (failure to provide proper care and custody), and (h) (imprisonment depriving the child of a normal home for more than two years). The mother, Joleen Green, voluntarily released her parental rights and is not a party to this appeal.

to have fed her, but the formula was later found in the trash. Following a preliminary hearing, the trial court authorized the petition and placed Jaida in foster care. Jaida's father was unknown at that time.

In May 2006, Green entered a plea of admission to the petition, and the trial court took jurisdiction over the child. At that time, Green identified Goris, who was in prison, as Jaida's father. In June 2006, the trial court entered an order of disposition making Jaida a temporary court ward and continuing her in foster care. In August 2006, DNA testing confirmed Goris's paternity.

As of a January 2007 review hearing, Goris was still in prison, and Green was not complying with the service plan. Things were much the same in March 2007. By a June 2007 permanency planning hearing, Goris was still in prison, and Green had disappeared.

In September 2007, the DHS filed a supplemental petition for termination. It alleged that Goris had been incarcerated since April 4, 2006, and "will continue to be incarcerated for the foreseeable future." The trial court held a hearing at the end of October 2007.

Goris testified that he had been convicted of resisting or obstructing and failure to pay child support. In April 2006, he was sentenced to 16 months to two years' imprisonment for the resisting or obstructing conviction and 23 months to four years' imprisonment for the failure to pay child support conviction. The sentences are to run consecutively, so Goris will have to serve a minimum of 39 months before he is eligible for parole. His early release date is in June 2009. Goris stated that there was a chance that he could be released earlier on tether, but nothing had been confirmed.

Goris was in prison when Jaida was born. He had never seen Jaida or paid support, but his mother visited her. He arranged to have a charitable organization that helps incarcerated parents send Jaida two Christmas presents. He had not contacted Jaida by phone because he did not have a number where she could be reached. Goris stated that he had written to Green a few times and asked about Jaida in his letters. Goris had signed up for parenting classes in prison but had not been able to attend because he had been transferred to different facilities several times.

Goris stated, "I love my daughter. I wish I could see her." He asked that Jaida be placed with his parents or brother. He said his brother had expressed an interest in temporary custody or adoption and had contacted the DHS. That concluded petitioner's proofs.

Goris's mother testified that she attended Jaida's birth and took pictures that she sent to Goris. She had also visited Jaida regularly after she entered foster care. She was interested in caring for Jaida if Goris were to lose custody. Goris's mother testified that if Goris's parental rights were not terminated, she wanted him to gain custody after he was released from prison. She stated that he had another daughter, age eight, with whom he maintained regular contact; that child lived with her mother.

After taking the matter under advisement, the trial court ruled:

Robert Goris will not get out of prison until June 2009. He went to prison the day before his daughter was born. He requested a DNA test and was

confirmed to be the father. He is in prison for failure to pay child support for his daughter and then for resisting and obstructing a police officer while out on bond for the child support issue. He has done well in prison but still did not mail a card, letter, draw a picture or do any thing for his daughter since her birth. His only action is to complete a form so that his daughter would receive some Christmas gifts from Project Angel Tree. He has failed to provide for his child and did not even provide for his other daughter. He has deserted his child for more than 91 days and will continue to be an absent parent until at least June 2009. The past record of Robert Goris would indicate that he will not provide care or custody for Jaida because he has not done that for his other child who is 8 years of age.

The trial court further found that termination was in the child's best interests because Goris "has never been a parent to Jaida. He has not done one thing to prove to this Court that he is or wants to be the father of this child." Goris now appeals.

II. Indian Child Welfare Act

Goris first argues that the trial court failed to comply with the notice requirements of the Indian Child Welfare Act (ICWA).² Goris did not preserve this issue by raising it below.³ Additionally, it is not properly presented because Goris did not raise it in his statement of questions presented.⁴ Considering that the child's status as an Indian child⁵ is not apparent from the record and that Goris does not actually assert that the child is an Indian child, we decline to consider this issue further.⁶

III. Best Interests Determination

A. Standard Of Review

Goris does not dispute that a statutory ground for termination was established by clear and convincing legally admissible evidence.⁷ Rather, he argues that the trial court erred in its assessment of the child's best interests. Once a petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the trial court finds from evidence on the whole record that termination is clearly

² 25 USC 1901 *et seq.*

³ *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 162; 742 NW2d 409 (2007).

⁴ *People v Albers*, 258 Mich App 578, 584; 672 NW2d 336 (2003).

⁵ 25 USC 1903(4).

⁶ *Id.*

⁷ See MCL 712A.19b(3); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999).

not in the child's best interests.⁸ We review the trial court's decision regarding the child's best interests for clear error.⁹

B. Applying The Standards

Goris was incarcerated before Jaida was born, and he will remain incarcerated at least until June 2009, by which time Jaida will be three years old. Goris has never met Jaida; thus, no bond has ever been established. Although Jaida had a good relationship with her paternal grandmother, that alone did not establish that termination of Goris's parental rights was clearly contrary to Jaida's best interests. The trial court did not clearly err in terminating Goris's parental rights to Jaida Green.

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Alton T. Davis

⁸ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000).

⁹ *In re Trejo*, *supra* at 356-357.