

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KAIZEN ELIJAH GOMOLL,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MELINDA GOMOLL,

Respondent-Appellant.

UNPUBLISHED
September 1, 2009

No. 290237
Ingham Circuit Court
Family Division
LC No. 08-000407-NA

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Respondent Melinda Gomoll appeals as of right from the January 2009 trial court order terminating her parental rights to her minor child Kaizen Gomoll (d/o/b February 2007) pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody). We affirm. We decide this appeal without oral argument.¹

I. Basic Facts And Procedural History

When Gomoll was 15-years-old, she was impregnated by Michael Fountain, who was subsequently imprisoned for criminal sexual conduct, possession of child sexually abusive material, assault with a dangerous weapon, and breaking and entering. He allegedly took sexually explicit photographs of Gomoll. She continued to have contact with him, however, while he was in prison and reported to hospital staff that she planned to marry him upon his release. In May 2008, she pleaded to an amended petition indicating the above facts, as well as that (1) she had been assaulted by two other men after her son was removed from her care; (2) her associations created an unfit environment; and (3) she could benefit from services. Services were recommended and provided without significant improvement, resulting in an October 2008 hearing that was changed to a permanency planning hearing with the new goal of termination.

¹ MCR 7.214(E).

Colin Parks initiated proceedings in the family court on behalf of the Department of Human Services. Parks' initial concerns included Gomoll's lack of maturity, problems with bonding, and medical neglect involving Kaizen Gomoll's respiratory problems. Also, there was a failure to engage services, lack of employment, the fact that Gomoll was still living with her mother, who had come under protective services for failing to protect Gomoll from the sexual abuse and concern that the assaultive behavior may have occurred in front of Kaizen Gomoll. Additionally, there were questionable explanations for Kaizen Gomoll's bruising and a delay in getting him treatment for a broken ankle or leg. Parks also noted that when he suggested Families First and parenting classes Gomoll was not willing. When he told her this would result in family court involvement, she told him to go ahead. One of Parks' overriding concerns was Gomoll's lack of awareness that there were issues.

Parks acknowledged that Gomoll had been with Kaizen Gomoll during his hospitalization in February/March 2008, and that there were notations in the hospital chart showing positive interactions with the baby. He also acknowledged that notations to the contrary were by only one observer. Also, there was a notation that Gomoll had ordered an appropriate breakfast for Kaizen Gomoll and had told nurses that someone needed to be in the room when she would have to leave the room.

Rebecca Meszaros, an interventionist with Early Head Start of Lutheran Social Services, testified that she would bring activities and information regarding child development to the visitations. For the first two months, Gomoll was receptive and participated, and appeared to be implementing information that she had received in parenting classes. But then Gomoll became inconsistent, sometimes not receptive, and sometimes not engaged. Gomoll did not make goals or complete assignments as asked. Over a five- to seven-month period, Meszaros did not see carry-over from visit to visit and did not see improvement; instead, she saw a negative or "stagnating trend."

Emily Anderson, a court-appointed special advocate (CASA) for Kaizen Gomoll, observed visitations about once a month. She noted that Gomoll's mother was always present during the visitations and usually took the lead interacting with the child. Gomoll was often disengaged. To increase stability for Kaizen Gomoll, Anderson had recommended that Gomoll get a GED and move out of her mother's home, but Gomoll was not receptive. She recalled a conversation in which Gomoll said that no court was going to tell her she needed to get a GED.

Dr. Hazem Al Hnawi was Kaizen Gomoll's treating physician when Kaizen Gomoll was in the hospital. Dr. Hnawi found Gomoll to be a concerned, caring, and good parent who asked a lot of questions, was always with Kaizen Gomoll at night, and followed his instructions with respect to caring for Kaizen Gomoll. He observed no emotional break and noted that Kaizen Gomoll's weight was appropriate for his age. Moreover, he established that the respiratory problem that resulted in Kaizen Gomoll's hospitalization had nothing to do with neglect. Further, he noted that Gomoll continued to call the clinic after the hospitalization, that he encouraged her to pursue services, and that "she was pretty constant with that." Dr. Hnawi had heard from the foster mother that the emotional bond between Gomoll and Kaizen Gomoll was good.

Khadija Swims was the case manager after Gomoll admitted the allegations in the petition. Swims was responsible for coordinating services for Gomoll. Counseling and a

psychological evaluation were recommended due to concerns about Gomoll's emotional stability. Swims noted that between June 2008 and January 2009, Gomoll had only attended three weekly group therapy sessions. A June 2008 psychological evaluation resulted in a finding that Gomoll continued to make poor choices regarding Kaizen Gomoll and did not appreciate consequences. Swims had concerns that Gomoll was continuing to make poor choices with men, one having assaulted her; that she continued living with her mother; and that during observed supervised visitation, which Gomoll regularly attended except on three occasions, Gomoll sometimes relied on her mother to do parenting. Gomoll also relied on Rebecca Meszaros, an Early Head Start interventionist, to interact with Kaizen Gomoll. Some of the visits went well, but Gomoll was inconsistent. Swims acknowledged that Gomoll completed parenting classes but did not believe she was implementing the skills and noted that she did not take additional classes as recommended. Also, Gomoll and her mother did not show up for a meeting to discuss these matters. Swims acknowledged that Gomoll completed an independent living skills training class. She noted that Gomoll had provided only two pay stubs verifying employment.

Swims did not believe Gomoll had benefited from services and that the conditions that brought Kaizen Gomoll into foster care continued to exist. However, certain services recommended by the psychologist had not been provided. Swims testified that Kaizen Gomoll was doing well in his current placement and that a permanent family unit existed. Finally, she noted that Kaizen Gomoll would suffer if Gomoll's parental rights were terminated given the emotional bond with Gomoll, but that he would likely be harmed by neglect if those rights were not terminated.

Kaizen Gomoll's foster care mother, Kathy Stimer, testified that he was well adjusted when he came to her and had learned impressive things for his age. From her observations, she thought Gomoll was a good mother and that it would be best for Kaizen Gomoll if they were reunited. But Stimer had only been present before and after, but not during, the visitations.

The trial court found that Gomoll did not participate as ordered in family and individual counseling, but did attend parenting classes and had some parenting skills. The trial court had directed that Gomoll secure housing away from her mother's home, which had been deemed unsuitable. Although the mother was leasing her home to Gomoll, the trial court was not convinced that Gomoll's mother was not living there. The trial court noted problems with the caseworker, which it attributed to Gomoll's defiance and inability to accept authority and follow directions. In sum, the trial court found there had been no improvement. The trial court concluded:

The prosecutor has proved that the mother, without regard to intent, has failed to provide proper care or custody for the child, and there is no reasonable expectation she's going to do that within a reasonable time considering the age of the child. The child's very young. He's entitled to permanency in his life.

Regarding best interest, there is testimony that the child is bonded to his family. However, the same problems that cause this child to be a ward of the Court continue. And it is not in his best interest that he be placed back in that environment or that additional efforts be made for reunification.

Gomoll now appeals.

II. Statutory Grounds For Termination

A. Standard Of Review

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence.² We review for clear error a trial court's decision terminating parental rights.³ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁴ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁵

B. Analysis

Gomoll argues that the trial court prematurely terminated her parental rights because she had complied with directives to participate in many services, had shown progress as a result of these services, and was receptive to additional services. We disagree.

The testimony suggested that Gomoll was, at times, well-intentioned with respect to care of Kaizen Gomoll. Further, the evidence established that she initially appeared to be benefiting from services. However, the evidence further established that, over time, the benefits had been fleeting. She did not pursue advanced parenting classes until shortly before the termination hearing, and she was inconsistent in implementing what she had learned in her initial parenting class. Similarly, there was evidence of no carry over of instruction that she had received in the Early Head Start program. Moreover, Gomoll did not obtain a GED and was not fully employed to the extent that she could have financially provided for Kaizen Gomoll. Further, she allegedly had individual counseling on only three occasions. It appeared that her associations with several men were of concern in that she had again been assaulted. Also, there was some suggestion that she continued living with her mother even though her mother had involvement with protective services because of her failure to protect Gomoll from the sexual abuse that lead to her pregnancy. Given this evidence, there was no reason to believe that Gomoll would significantly benefit from continued services in the relative future. A parent's failure to comply with the parent/agency agreement is evidence of a parent's failure to provide proper care and custody for the child.⁶

We conclude that the trial court did not clearly err in finding that a statutory ground for termination of Gomoll's parental rights was established by clear and convincing evidence.

² MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

³ MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours*, *supra* at 633.

⁴ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁵ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁶ *JK*, *supra* at 214; *Trejo*, *supra* at 360-363, 361, n 16.

III. Best Interests Determination

A. Standard Of Review

Once a petitioner 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.⁷ 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.⁸ We review the trial court's decision regarding the child's best interests for clear error.⁹

B. Analysis

Gomoll contends that the trial court erred in its best interests analysis because there was a bond between her and Kaizen Gomoll and because she had a supportive and loving family. We disagree. The evidence established that Gomoll was bonded with Kaizen Gomoll. However, Kaizen Gomoll, who was not yet two-years-old, would, as the trial court found, benefit from permanency. Thus, the trial court did not clearly err in finding that there was no reasonable expectation that Gomoll would be able to provide proper care and custody within a reasonable time considering the child's age. Coextensively, the trial court did not clearly err in finding that continued services aimed at reunification were not warranted when services provided to date had resulted in no significant progress. Termination of Gomoll's parental rights was in the child's best interests.¹⁰

In sum, we conclude that the trial court did not err in terminating Gomoll's parental rights to the child. Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra

⁷ MCL 712A.19b(5); *Trejo*, *supra* at 350. We note that MCL 712A.19b(5) was recently amended such that the trial court must now find that termination of parental rights *is* in the child's best interests, 2008 PA 199, effective July 11, 2008, rather than finding that termination is *not* in the child's best interests.

⁸ *Trejo*, *supra* at 354.

⁹ *Id.* at 356-357.

¹⁰ MCL 712A.19b(5); *In re Trejo*, *supra* at 356-357.