

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of EMONI ROZLYN GOINS,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ELIZABETH MARIE ALLEN,

Respondent-Appellant.

UNPUBLISHED
December 3, 2009

No. 291891
Monroe Circuit Court
Family Division
LC No. 09-020994-NA

Before: K. F. Kelly, P.J., and Jansen and Fitzgerald, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (g), (i), and (j). We affirm.

Respondent argues that the trial court erred by terminating her parental rights under § 19b(3)(b)(i) because she did not intentionally harm Lakendrick, her fifth child, by ingesting a bag of cocaine before his birth. She contends that she was unaware of the potential effects of cocaine on her unborn child. The trial court terminated respondent's parental rights under this subsection, reasoning that Emoni's half-sibling "suffered injury as a result of the respondent's ingesting cocaine when that sibling was in utero." The trial court's reasoning assumes that respondent's cocaine ingestion while pregnant with Lakendrick necessarily caused "physical injury" to him within the meaning of § 19b(3)(b)(i). We need not resolve this issue, however, because the trial court did not clearly err by finding that termination of respondent's parental rights was justified under §§ 19b(3)(g), (i), and (j). MCR 3.977(J); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). Petitioner was required to prove only one statutory basis for termination in order to justify terminating respondent's parental rights. *In re Trejo*, 462 Mich 341, 355-356; 612 NW2d 407 (2000).

Respondent's parental rights to her first five children were terminated only days before Emoni's birth because of respondent's failure to comply with her case service plan. The evidence presented during the previous termination proceedings, of which the trial court took judicial notice, showed that Emoni's half-siblings all suffered neglect, as well as physical and sexual abuse, before their removal from respondent's care.

A primary issue in this case, and in the previous proceedings, was respondent's criminal behavior. Despite receiving services and completing parenting classes and individual therapy, respondent pleaded no contest to possessing cocaine in June 2008, and was sentenced to three years' probation and 178 days in jail. Because of her criminal activity, respondent was unable to be a part of Emoni's life for at least 178 days beginning shortly after Emoni's birth.

Respondent continues to deny that she has a substance abuse problem despite her previous cocaine-related convictions and drug test results. Although respondent was taking a substance abuse class while incarcerated, she testified that she took the class only because she knew that substance abuse would be an issue in the court proceedings regarding Emoni and because it was a requirement of her probation. She denied having a substance abuse problem, stating that she had not used controlled substances for more than two years and had not tested positive for marijuana or cocaine for two years. She also testified, however, that she did not consider a diluted drug screen to be a positive screen. Nor did she believe that attending AA/NA meetings was important to maintain her sobriety. Indeed, she had failed to attend a minimum of three meetings each week, contrary to her therapist's recommendation.

Further, respondent's caseworkers testified that it would take at least one year after respondent's release from jail for her to complete a service plan and address the issues necessary to reunite her with Emoni. Respondent's service plan would include substance abuse counseling, AA/NA meetings, abstaining from criminal activity, individual therapy, and obtaining stable employment and housing. Based on respondent's failure to comply with her previous service plan and the fact that the only thing that had changed since the previous termination of her parental rights was that she was incarcerated, there was no reasonable expectation that she would be able to address the issues that led to Emoni's placement within a reasonable time.

The trial court did not clearly err by finding that respondent had failed to provide proper care or custody for Emoni and that there was no reasonable expectation that she would be able to do so within a reasonable time. Nor did the trial court clearly err by finding that respondent's parental rights to her five older children had been terminated because of serious and chronic neglect or abuse, and that there existed a reasonable likelihood of harm if Emoni was returned to respondent's care.

We further conclude that the trial court did not clearly err by finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); see also *In re Trejo, supra* at 356-357. The evidence suggested that it would take at least one year for respondent to complete a service plan and rectify the conditions that led to Emoni's removal. Respondent was incarcerated at the time of the termination proceedings in this case and would not be able to begin working on a service plan until after her release. Emoni was placed in foster care the day after her birth and respondent visited Emoni only once before beginning her jail sentence. Thus, there existed no appreciable parent-child bond between respondent and Emoni.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald