2024 IL App (4th) 231361-U

NOS. 4-23-1361, 4-23-1362 cons.

FILED
April 19, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re B.E. and H.E., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Sangamon County
Petitioner-Appellee,	)	Nos. 22JA6
v.	)	22JA7
Brandon E.,	)	
Respondent-Appellant.)	)	Honorable
	)	Karen S. Tharp,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Zenoff and Doherty concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's findings respondent was an unfit parent and it was in the minors' best interests to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 Respondent father, Brandon E., appeals from the trial court's judgment terminating his parental rights to his minor children, B.E. (born December 2019) and H.E. (born August 2021). On appeal, respondent argues the court's findings he was an unfit parent and it was in the minors' best interests to terminate his parental rights were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent and Ariel M. are the minors' biological parents. During the proceedings below, Ariel M. surrendered her parental rights on November 1, 2023. Ariel M. is not a party to this appeal.

¶ 5 A. Case Opening

¶ 6 On January 6, 2022, the State filed petitions seeking to adjudicate B.E. and H.E. neglected under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2022)). At a shelter care hearing on January 12, 2022, the trial court entered an order granting temporary custody and guardianship to the Illinois Department of Children and Family Services (DCFS).

¶ 7 In June 2023, the State filed petitions to terminate respondent's parental rights. The petitions alleged respondent was an unfit parent in that he (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2022)); (2) abandoned the minors (750 ILCS 50/1(D)(c) (West 2022)); (3) deserted the minors (750 ILCS 50/1(D)(c) (West 2022)); (4) failed to make reasonable efforts to correct the conditions that were the basis for the minors removal from his care during a nine-month period after the minors were adjudicated neglected (750 ILCS 50/1(D)(m)(i) (West 2022)); and (5) failed to make reasonable progress toward the return of the minors to his care during a nine-month period after the minors were adjudicated neglected (750 ILCS 50/1(D)(m)(ii) (West 2022)). The relevant nine-month periods for the last two allegations were April 12, 2022, to January 12, 2023, and September 12, 2022, to June 12, 2023.

¶ 8 B. Fitness Hearing

¶ 9 The trial court held a hearing on the State's petition on November 16, 2023. Respondent was not present. The court began the proceedings by noting, "[Respondent] is not

present today. He has been paged. Mr. Liles, his attorney, has gone courtroom to courtroom looking for him. Again, the trial was set at 9 o'clock. It is now 9:55." Respondent's counsel moved to continue the hearing. The court denied counsel's motion.

¶ 10 Tiffanie Sisk testified she had been the minors' caseworker since April 2023. Sisk indicated respondent had not engaged in any services since she was assigned to the case. Pursuant to respondent's service plan, he was to: (1) engage in mental health services, (2) obtain a substance abuse assessment and participate in recommended services, (3) complete random drug testing, (4) participate in parenting services, and (5) participate in visitation with the minors. Respondent was initially referred for mental health services in 2022, however, he was later discharged for nonattendance. According to Sisk, respondent indicated he did not engage in mental health services or substance abuse services because he did not have a "medical card." However, Sisk testified respondent's lack of insurance would not have impeded his ability to obtain a substance abuse assessment. During her time on the case, Sisk "requested one drug test and [respondent] failed to appear."

¶ 11 Regarding visitation, respondent was "offered weekly visits up until the goal was changed to substitute care pending termination of parental rights." Sisk indicated respondent attended "approximately half of those visits." When asked whether Sisk had any concerns regarding respondent's ability to "be with the children during visitation," she began by stating, "From the reports that I obtained from the visitation specialist he would also report that [respondent] was not engaging with the [minors]." Respondent's counsel objected, arguing Sisk's response contained hearsay. Specifically, "[Sisk] can't testify as to what someone else put in the report." The trial court overruled the objection, stating, "Part of her job is to determine

whether or not [respondent has] adequately addressed issues within the service plan. It's what she's been testifying about all throughout."

¶ 12 After argument from the parties, the trial court found respondent unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare and failing to make both reasonable progress and reasonable efforts during the relevant time periods. The court began by observing respondent failed to complete a psychological assessment, failed to complete counseling services, never obtained a substance abuse assessment, and failed to utilize mental health services. Additionally, the court noted, "All of his service plans have been rated unsatisfactory." Moreover, respondent's "visits have never moved past unsupervised. They've never moved past two hours. He only shows up half the time for his visitation."

¶ 13 C. Best Interests Hearing

¶ 14 The trial court proceeded immediately to the best interests hearing. Respondent's counsel renewed his motion to continue. The court again denied the motion. Sisk indicated the minors had been in their current foster placement since January 2022. Sisk explained the minors' current placement was "a specialized placement" due to their Alport syndrome. The foster parents ensured the minors' physical and emotional needs were met. The minors appeared to be well bonded with the foster parents. Further, the foster parents agreed to provide permanence for the minors through adoption. Sisk opined it was in the minors' best interests respondent's parental rights be terminated because, "The [minors] deserve permanency, stability in their life and they will be provided that and much more in the home that they're in."

¶ 15 The trial court found it was in the minors' best interests respondent's parental rights be terminated. At the outset, the court noted the minors had been in their current placement for "a large portion of their life." The court observed the minors' foster parents met all of the

minors' specific needs. The foster parents provided the minors with a sense of love and stability and met the minors' emotional and physical needs. Conversely, the court stated respondent "has been either unable or unwilling to address his own needs." The court further noted it would not "be in the [minors'] best interest to wait any longer to see whether or not [respondent] is ever going to address those things let alone how to address the [minors'] needs in and of itself."

¶ 16 On November 21, 2023, respondent filed a timely notice of appeal. This court docketed respondent's appeals in Sangamon County case No. 22-JA-6 as appellate court case No. 4-23-1361 (B.E.'s case) and Sangamon County case No. 22-JA-7 as appellate court case No. 4-23-1362 (H.E.'s case). On January 17, 2024, we granted respondent's motion to consolidate the appeals.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, respondent argues the trial court's fitness and best-interests determinations were against the manifest weight of the evidence. Specifically, respondent contends (1) the court violated his due process rights when it denied his motion to continue and proceeded with the fitness and best-interests hearings in his absence, (2) the court erred when it admitted certain hearsay statements during the fitness proceedings, (3) the court erred in finding him unfit where DCFS failed to make reasonable efforts to provide the services required by the service plans, and (4) the conclusions of the caseworker at the best interests hearing were inadmissible.

¶ 20 A. Procedural Due Process

¶ 21 Respondent first argues the trial court violated his due process rights when it denied his motion to continue and proceeded with the fitness and best-interests hearings in his absence.

¶ 22 In his brief, respondent alleges, "A search of the common law record which consists of over 300 pages does not contain any document which can be construed as a Service Plan." Respondent therefore reasons, "If no service plan was filed the court could not test its validity," and thus, he was "denied due process and the case should be dismissed." Respondent's assertion is both inventive and disingenuous, as the record on appeal does, in fact, contain a service plan.

¶ 23 The right of natural parents to the care and custody of their children is a fundamental liberty interest protected by the due process clause of the fourteenth amendment to the United States Constitution. U.S. Const., amend. XIV; *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). "Due process is not a fixed, hypertechnical mold, but a flexible concept that affords procedural protections as demanded by specific situations." *In re J.S.*, 2018 IL App (2d) 180001, ¶ 18. Due process claims arising out of parental termination cases are analyzed by balancing the three factors outlined by the United States Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976): "(1) the private interest affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the government's interest, which includes the function involved as well as the fiscal and administrative costs of any additional or substitute procedures." *J.S.*, 2018 IL App (2d) 180001, ¶ 18.

¶ 24 Applying these factors, the first favors respondent. He clearly had an important interest in the outcome of the termination proceedings, specifically, his interest in maintaining a parental relationship with the minors. *In re D.R.*, 307 Ill. App. 3d 478, 483 (1999).

¶ 25 The second factor requires us to look to the procedures employed by the trial court and assess the potential it erroneously deprived respondent of his parental relationship with the minors. We note, while a parent has a right to be present at termination proceedings, parental presence is not mandatory. *In re M.R.*, 316 Ill. App. 3d 399, 402 (2000). While respondent was not present in court, he was represented by his attorney. As the State notes, the court "waited almost an hour to commence the hearing." Undoubtedly, the court made efforts to afford respondent the opportunity to participate in the termination proceedings. In light of the strength of the evidence presented, it is highly unlikely respondent's presence would have made any difference in the outcome. The State presented evidence that respondent had not been engaged in services and was only participating in some visits with the minors. Thus, while respondent might have been deprived of the opportunity to testify, it was through his own failures and not due to any error in court procedure.

¶ 26 As to the third factor, it is the government's interest to adjudicate the matter as expeditiously as possible. *In re C.J.*, 272 Ill. App. 3d 461, 466 (1995). "A delay in these types of proceedings 'imposes a serious cost on the functions of government, as well as an intangible cost to the lives of the children involved.' " *J.S.*, 2018 IL App (2d) 180001, ¶ 25 (quoting *M.R.*, 316 Ill. App. 3d at 403). B.E. was two years old and H.E. was four months old at the time they were taken into protective custody in January 2022. At the time of the best-interests proceedings, B.E. was nearly four years old and H.E. was two years old. Sisk indicated the minors' needs were being met with their foster family and they agreed to provide permanence through adoption. The minors appeared to feel love and attachment to their foster parents and sought them out for comfort. Without a doubt, the government's interest weighed against further delay.

¶ 27 In sum, we reject respondent's argument his procedural due process rights were violated.

¶ 28 B. Hearsay

¶ 29 Respondent further argues the trial court erred when it admitted certain hearsay statements during the fitness proceedings. The State disagrees and asserts even if the testimony contained hearsay statements, "there was other evidence produced at the fitness hearing that proved, by clear and convincing evidence, that respondent was an unfit parent."

¶ 30 We need not determine whether the alleged hearsay was admissible, because the trial court could have determined respondent was unfit based on other evidence presented by the State. Sisk testified respondent had not completed (1) mental health services (including a psychological evaluation and counseling), (2) a substance abuse assessment, (3) drug testing, or (4) parenting services. Indeed, the court's unfitness finding focused on respondent's overwhelming failure to engage with the recommended services. Specifically, the court noted, "All of [respondent's] service plans have been rated unsatisfactory."

¶ 31 C. Unfitness Finding

¶ 32 Respondent next argues the State failed to prove he was unfit based on DCFS's alleged failure to make reasonable efforts to provide the services required by the service plans. We find respondent has forfeited this argument, as he failed to raise this issue in the proceedings in the trial court. See *In re N.T.*, 2015 IL App (1st) 142391, ¶ 41 ("Generally, an issue that was not objected to during trial and raised in a posttrial motion is forfeited on appeal."). Respondent has also forfeited his argument by failing to cite any authority supporting the proposition the State was required to prove DCFS had made reasonable efforts to provide respondent with the services he needed to comply with the requirements of the service plans in order to prove

respondent was unfit. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020); *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23 ("A failure to cite relevant authority violates Rule 341 and can cause a party to forfeit consideration of the issue.").

¶ 33 As respondent's brief in this case was far from a model of clarity, we take this opportunity to remind counsel "[a] reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented." *People v. Edwards*, 2012 IL App (1st) 091651, ¶ 29. Indeed, "this court is not a repository into which an appellant may foist the burden of argument and research." *Edwards*, 2012 IL App (1st) 091651, ¶ 29.

¶ 34 Forfeiture aside, neither section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)), which defines parental unfitness, nor section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2022)), which concerns the procedure for the involuntary termination of parental rights, includes an express requirement the State prove reasonable efforts on the part of DCFS in order to prove parental unfitness.

¶ 35 We conclude the trial court's finding respondent was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare was not against the manifest weight of the evidence.

¶ 36 Involuntary termination of parental rights under the Juvenile Court Act is a two-step process. *In re J.H.*, 2020 IL App (4th) 200150, ¶ 67. The State must first prove by clear and convincing evidence the parent is unfit under any single ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2022)). *J.H.*, 2020 IL App (4th) 200150, ¶ 67. If the State proves unfitness, it then must prove by a preponderance of the evidence termination of parental rights is in the best interests of the children. *In re D.T.*, 212 Ill. 2d 347, 363-366 (2004). We will not disturb a finding of unfitness unless it is against the manifest weight of the evidence.

J.H., 2020 IL App (4th) 200150, ¶ 68. "A finding is against the manifest weight of the evidence only if the evidence 'clearly' calls for the opposite finding [citation], such that 'no reasonable person' could arrive at the [trial] court's finding on the basis of the evidence in the record." *J.H.*, 2020 IL App (4th) 200150, ¶ 68 (quoting *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072 (2006), and *Prater v. J.C. Penney Life Insurance Co.*, 155 Ill. App. 3d 696, 701 (1987)).

¶ 37 The trial court found respondent was an unfit parent as defined in section 1(D)(b) of the Adoption Act. Section 1(D)(b) states a parent will be considered an "unfit person" if he or she fails "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2022). In determining whether a parent showed reasonable concern, interest, or responsibility as to a child's welfare, the court must examine "the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." *In re Adoption of Syck*, 138 Ill. 2d 255, 278 (1990).

¶ 38 Here, respondent's service plan required him to, *inter alia*, (1) engage in mental health services, (2) obtain a substance abuse assessment, (3) complete random drug testing, (4) participate in parenting services, and (5) participate in visitation with the minors. Sisk testified respondent failed to engage in mental health services; specifically, respondent had been discharged for "lack of participation and willingness to engage." Additionally, respondent did not complete a substance abuse assessment, nor did he complete required drug testing. Moreover, respondent had not engaged in parenting services since Sisk had been assigned to the case. Based on the evidence presented, we cannot say the trial court's finding respondent was an unfit parent by failing to maintain a reasonable degree of concern, interest, or responsibility as to the minors' welfare was against the manifest weight of the evidence.

¶ 39 D. Best Interests

¶ 40 Respondent further argues the trial court's best-interests determination was against the manifest weight of the evidence. Specifically, respondent maintains the conclusions of the caseworker were inadmissible. The State contends respondent never raised this alleged error and therefore respondent has forfeited this argument.

¶ 41 We note respondent failed to object at the hearing to Sisk's testimony regarding the alleged failure "to offer any specifics to the court regarding the bonding families or specifics as to future plans." Accordingly, respondent has forfeited this argument on appeal. See *N.T.*, 2015 IL App (1st) 142391, ¶ 41 ("Generally, an issue that was not objected to during trial and raised in a posttrial motion is forfeited on appeal."). Forfeiture aside, we conclude the trial court's determination it was in the minors' best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 42 When a trial court finds a parent unfit, "the court then determines whether it is in the best interests of the minor that parental rights be terminated." *D.T.*, 212 Ill. 2d at 352. "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *D.T.*, 212 Ill. 2d at 364. In making the best-interests determination, the court must consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2022)). These factors include:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of

relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071 (2009) (citing 705 ILCS 405/1-3(4.05) (West 2008)).

"The court's best interest determination [need not] contain an explicit reference to each of these factors, and a reviewing court need not rely on any basis used by the trial court below in affirming its decision." *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19.

¶ 43 A reviewing court will not disturb a trial court's finding termination is in the minors' best interests unless it was against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005).

¶ 44 At the time of the best-interests hearing, the minors had been living together with their foster parents since January 2022. The minors were well bonded with the foster parents, and they were able to provide for the minors' physical and emotional needs. The foster parents agreed to provide permanence for the minors through adoption. The minors deserve a permanent, stable, safe, and loving environment. The evidence showed the foster parents provided those things. Further, the trial court noted the foster parents were "able to meet all the specialized needs these [minors] have." Given the evidence presented, we find the court's finding it was in the minors' best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we affirm the trial court's judgment.

¶ 47 Affirmed.