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2012 IL App (3d) 120321-U

Order filed August 7, 2012

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IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

<i>In re</i> Je. M. and Ju. M.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois
	)	
(The People of the State of	)	
Illinois,	)	
	)	Appeal No. 3-12-0321
Petitioner-Appellee,	)	Circuit Nos. 09-JA-167, 09-JA-168
	)	
v.	)	
	)	
Julius M.,	)	Honorable
	)	Chris L. Fredericksen,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Presiding Justice Schmidt and Justice Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court's finding—that it was in the minors' best interests to terminate respondent's parental rights—was not against the manifest weight of the evidence. The appellate court, therefore, affirmed the judgment of the trial court.

¶ 2 In the context of a juvenile neglect proceeding, the State filed a petition to terminate respondent's parental rights to his minor children, Je. M. and Ju. M. After a hearing on the matter, the trial court found that respondent was an unfit person and terminated respondent's parental rights.

Respondent appeals, arguing that the trial court erred in finding that termination of parental rights was in the minors' best interests. We affirm the trial court's judgment.

¶ 3

### FACTS

¶ 4 Respondent and Tamaria G. were the biological parents of the minors, Je. M., born in 2002, and Ju. M., born in 2006. In September 2009, the minors were adjudicated neglected based upon an injurious environment. Following a dispositional hearing, respondent and Tamaria were found to be unfit parents. The finding of unfitness as to respondent was based on the contents of the neglect petition, respondent's criminal activities, and respondent's use of marijuana while the petition was pending. The minors were made wards of the court, and the Department of Children and Family Services (DCFS) was named guardian of the minors.

¶ 5 At the time of disposition, respondent was given certain tasks to complete in order to correct the conditions that led to the removal of the minors. Those tasks included: (1) to cooperate fully and completely with DCFS; (2) to obtain a drug and alcohol assessment and successfully complete any recommended treatment; (3) to perform random drug tests two times per month; (4) to successfully complete counseling to address domestic violence issues; (5) to visit with the minors at the times and places specified by DCFS and demonstrate appropriate parenting conduct during those visits; and (6) to complete an anger management class. Although not quite clear from the record, it appears that at some point later, respondent's drug-test requirement was reduced to one time per month.

¶ 6 In August 2011, the State filed a petition to terminate respondent and Tamaria's parental rights and to appoint a guardian with the power to consent to the adoption of the minors. The petition alleged that: (1) Tamaria was an unfit person in that she failed to make reasonable progress toward the return of the minors for the nine-month period from July 15, 2010 to April 15, 2011 (750

ILCS 50/1(D)(m)(iii) (West 2010)); (2) respondent was an unfit person in that he failed to make reasonable progress toward the return of the minors for the nine-month period from July 15, 2010 to April 15, 2011 (750 ILCS 50/1(D)(m)(iii) (West 2010)); and (3) respondent was an unfit person based upon depravity (750 ILCS 50/1(D)(i) (West 2010)) because he had been convicted of certain criminal offenses, which were listed.

¶ 7 A hearing on the unfitness portion of the State's petition was held over a two day period in January and February 2012. Respondent failed to appear for the first day of the hearing. On the second day of the hearing, respondent appeared in the custody of the sheriff, after having been arrested for allegedly shooting his girlfriend's brother.

¶ 8 The evidence presented at the hearing relative to respondent can be summarized as follows. The State admitted into evidence certain documents to establish that respondent had the following criminal convictions in Peoria County: aggravated unlawful use of weapons (03-CF-364), criminal trespass to building (04-CM-1707), unlawful possession of a weapon by a felon (05-CF-1039), unlawful possession of cannabis with intent to deliver (05-CF-1039), and unlawful possession of a controlled substance (06-CF-1607).

¶ 9 Emily Lee testified that she worked for Catholic Charities and was the case worker for respondent, Tamaria, and the minors. For the relevant nine-month period, along with other requirements, respondent was supposed to participate in individual anger management counseling, perform one drug test per month, and visit with the minors during scheduled visitation. According to Lee, respondent did not perform any counseling or drug tests during the nine-month period and his visitation with the minors was sporadic.

¶ 10 From the start of the nine-month period in July 2010 until December 2010, respondent did

not visit with the minors at all. In August and October 2010, respondent told Lee that he did not want to participate in visitation or services until November because of a criminal case he had pending. Respondent called Lee in the end of November, and asked to set up a meeting to start his services and visitation again. A meeting was held at the beginning of December 2010. From the December 2010 meeting until the middle of April 2011, Lee had no further contact with respondent. Lee tried to reach respondent by phone and by letter but received no response. After the December 2010 meeting, respondent resumed visitation of an hour a week and had six visits between the meeting date and February 20, 2011, which was the last time respondent saw the minors during the nine-month period. Lee did not know why respondent stopped his visitation and tried to contact respondent by letter and by phone but was unable to do so.

¶ 11 In May 2011, after the nine-month period ended, respondent called Lee. Lee told respondent that he would need to contact the acting case worker to set up a team meeting because Lee was on maternity leave. A meeting did not occur until September 2011. Between the point in February when respondent stopped doing visits until the September 2011 meeting, there had not been any visits between the minors and respondent, of which Lee was aware. As a result of the meeting, a visitation schedule was set at once per month at Catholic Charities, beginning in October 2011. Respondent attended visits for the months of October, November, and December 2011. The visits stopped in January 2012 when respondent was arrested.

¶ 12 According to Lee, respondent maintained a residence and employment during the entire nine-month period and completed an anger management class and a drug and alcohol evaluation before the nine-month period started. Pursuant to the evaluation, respondent was not required to do drug or alcohol counseling. Lee also testified that respondent did very well with the minors when he

attended visits.

¶ 13 Respondent testified that in September 2011, after the nine-month period ended, he completed a 10-month welding program. Respondent was working full-time as a welder from about October 2011 and was being paid \$15 per hour. Since completing the program, respondent had been employed as a welder until his most recent arrest. Respondent speculated that he would be able to return to his job upon release from jail.

¶ 14 Respondent confirmed that he had completed an anger management class and a parenting class prior to the start of the nine-month period, and certificates of completion were admitted into evidence. Respondent stated that since 2009, he lived in an apartment and paid rent. Rent receipts were admitted into evidence as were pay stubs from respondent's previous job in a factory, which respondent stated was a full-time job. Respondent testified further that he submitted to, and passed, drug tests in September and October 2011 as part of his job as a welder. Results of those drug tests were admitted into evidence. Respondent stated that he did not take unlawful substances in the past and did not have a substance abuse problem. Respondent denied telling the caseworker that he did not want to participate in services or visit his children.

¶ 15 It appears from the record that there may have been some confusion on respondent's part about the time period in which he performed services and attended visitation. Respondent initially testified that he performed counseling and drug tests during the nine-month period and that he attended most of his scheduled visits with the children. Respondent later admitted that he quit counseling in May or June 2010 (before the nine-month period started) and stated that he did so because he became discouraged when he received a firearm charge that he did not commit and was told in court that the pending charge would prevent him from being found fit. According to

respondent, he was eventually found not guilty of the charge in December 2011 and resumed counseling for a brief period that same month in conjunction with another case involving another minor until he was arrested in January 2012. Respondent also later stated that he was not sure if he had done drug tests, other than those for his job, during the nine-month period. According to respondent, from September 2011 forward (after the nine-month period had ended), he did one drug test per month. In addition, when respondent was specifically asked later about how often he visited the minors, respondent testified that he was not certain and stated that he believed that he had visited them about 10 times or less during the nine-month period and about 10 times or less thereafter. Respondent testified further that he did not appear on the first day of the hearing because he was not aware of the court date or forgot about it and because of his situation with the current criminal charge.

¶ 16 At the conclusion of the hearing, the trial court found that all three counts of the State's petition had been proven by clear and convincing evidence and that respondent and Tamaria were unfit persons. In reaching that conclusion, the trial court noted that although respondent had done some positive things, he seemed to be more worried about his ongoing criminal case than maintaining a healthy relationship with his children. The trial court set the case for a hearing on the best-interests portion of the State's petition.

¶ 17 The best-interests hearing took place in March 2012. In preparation for the hearing, best interests reports were filed on both minors by the caseworker. The reports indicated that the minors had been residing with their foster parents (their maternal great grandmother and great grandfather) since June 2009. The foster parents provided for the minors' needs regarding food, shelter, and clothing. The foster parents' home was in adequate condition and met all of DCFS's licensing

standards. The minors were doing well in the home and in school and were progressing through the developmental milestones as expected. The minors had a strong relationship with both of their foster parents and also had an ongoing relationship with Tamaria. The minors' relationship with respondent was sporadic, and the minors did not seem to be bothered by their lack of a relationship with respondent. The caseworker recommended in the report that Tamaria and respondent's parental rights be terminated in the best interests of the minors because the minors needed permanency. The foster parents were not willing to adopt the minors but were willing to serve as permanent guardians.

¶ 18 Called as a witness by Tamaria, the foster mother, Charlene Lyons, testified that the minors had a strong bond with Tamaria and that it would be detrimental to the minors if Tamaria's parental rights were terminated. Lyons also testified that she did not believe that respondent's parental rights should be terminated.

¶ 19 The guardian *ad litem* represented to the trial court that he met with the minors and the foster parents and that in his opinion, the minors seemed happy and well-adjusted in their current home with the foster parents. The guardian *ad litem* represented further, during arguments, that he would not recommend that either Tamaria or respondent's parental rights be terminated.

¶ 20 At the conclusion of the hearing, the trial court found that it was in the best interests of the minors that respondent's parental rights be terminated. The trial court terminated respondent's parental rights, named DCFS as the guardian of the minors with the right to place, set the minors' permanency goal to guardianship, and ordered that the minors have no further contact with respondent. In so doing, the trial court stated:

"First of all, with regard to [respondent], [respondent] has a disturbing criminal history, [and] is now facing serious criminal charges once again. In

reviewing the evidence in this matter, he does not have a strong bond with his two children. At times he did not visit them due to his ongoing criminal charges by his own testimony. He has not completed any services. He has not done any drops, granted he does have a job now.

These children have been in a foster placement their entire lives for the most part. They are in a safe and secure environment. They clearly love their foster parents, and their foster parents can provide the children with permanency. This Court is extremely concerned with regard to the children's safety if [respondent] continues some type of relationship with them based on his criminal history.

This Court finds that it's in the best interest of [Je. M.] that the parental rights of [respondent] be terminated, and they are so terminated. The Court finds that it is in the best interest of [Ju. M.] that the parental rights of [respondent] be terminated, and they are so terminated."

¶ 21 The trial court did not terminate the parental rights of Tamaria and found that it was not in the best interests of the minors to do so. Respondent appealed.

¶ 22 ANALYSIS

¶ 23 On appeal, respondent argues that the trial court erred in finding that it was in the minors' best interests to terminate respondent's parental rights. Respondent asserts that such a determination was "gratuitous" and was not warranted based upon the permanence of the minors since Tarmaria's parental rights were not terminated and the permanency goal was set at guardianship with the foster parents. Respondent asserts further that the same best-interests finding that applied to Tamaria should have applied to him as well. The State argues that the trial court's ruling was proper and

should be affirmed.

¶ 24 In a proceeding on a petition to terminate parental rights, once the trial court makes a finding of unfitness, the focus of the proceeding shifts to the child, and the parent's interest in maintaining the parent-child relationship must yield to the child's interest in having a stable and loving home life. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). From that point forward, the issue is no longer whether parental rights can be terminated, but rather, whether in the child's best interests, parental rights should be terminated. *In re D.T.*, 212 Ill. 2d at 364. In making a best-interests determination, the trial court must consider, in the context of the child's age and developmental needs, the numerous statutory factors listed in section 1-3(4.05) of the Juvenile Court Act of 1987. See 705 ILCS 405/1-3(4.05) (West 2010). Some of those factors include the physical safety and welfare of the child, the development of the child's identity, the child's sense of attachment, and the child's need for permanence and stability. 705 ILCS 405/1-3(4.05) (West 2010). A trial court's ultimate determination of whether to terminate parental rights will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Tiffany M.*, 353 Ill. App. 3d 883, 892 (2004). A finding is against the manifest weight of the evidence where it is clearly evident from the record that the trial court should have reached the opposite conclusion. *In re C.N.*, 196 Ill. 2d 181, 208 (2001).

¶ 25 In the present case, there is ample evidence in the record to support the trial court's finding that it was in the best interests of the minors to terminate respondent's parental rights. The evidence presented at the hearing indicated that the minors were in a stable and secure home with their foster parents, where they had lived for the past three years. The minors were comfortable in the home and well-adjusted and had a close relationship with both of the foster parents, who were willing to serve as permanent guardians for the minors. The minors were doing well in school and their needs at

home and in school were being met by the foster parents. In addition, the caseworker for respondent, Tamaria, and the minors opined in her report that it was in the best interests of the minors to terminate parental rights. Based upon the record presented, we conclude that the trial court's determination was not against the manifest weight of the evidence. See *In re Tiffany M.*, 353 Ill. App. 3d at 892; *In re C.N.*, 196 Ill. 2d at 208.

¶ 26 While we recognize the practical appeal of respondent's argument—that it was not necessary to terminate his parental rights on the basis of permanency since Tamaria's parental rights were not terminated and the goal for the minors was set at guardianship with the foster parents—we find no legal support for that argument. Furthermore, we reject respondent's equally-unsupported argument that the same best-interests finding that applied to Tamaria should also have applied to him. In rejecting that argument, we note that the trial court, when making its determination, specifically found that it had concerns about the safety of the minors if a relationship with respondent was maintained, based upon respondent's criminal history.

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 28 Affirmed.