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2013 IL App (3d) 130254-U

Order filed September 16, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In re</i> K.D. and C.D.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors)	Tazewell County, Illinois,
)	
(I.D.,)	
)	
Petitioner-Appellee,)	Appeal Nos. 3-13-0254
)	3-13-0263
v.)	Circuit Nos. 08-JA-117
)	08-JA-118
S.D.,)	
)	Honorable John Vespa,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's termination of respondent father's parental rights was not against the manifest weight of the evidence.
- ¶ 2 Following a best interests hearing on April 9, 2013, the Tazewell County circuit court terminated the parental rights of the father, respondent, S.D. The court found that the mother,

petitioner, I.D., had proven by a preponderance of the evidence that it was in the best interests of the minors, K.D and C.D., for respondent's parental rights to be terminated pursuant to the factors listed in section 1-3(4.05) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-3(4.05) (West 2013)).

¶ 3 Respondent appeals, claiming that the evidence was insufficient to prove it was in the minors' best interests to terminate his parental rights, thus rendering the trial court's decision against the manifest weight of the evidence.

¶ 4 We affirm.

¶ 5 BACKGROUND

¶ 6 This case commenced on August 25, 2008, when the Tazewell County State's Attorney filed petitions on behalf of K.D. and C.D., alleging the minors were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2013)). The petitions alleged that: (a) petitioner and respondent had previous open cases with the Department of Children and Family Services (DCFS) for domestic violence and drug usage; (b) on April 20, 2008, respondent was convicted of domestic battery where petitioner was the victim; (c) on May 22, 2008, both parents were involved in another incident of domestic violence where the minors were present; (d) on May 22, 2008, the mother tested positive for cocaine; (e) on June 29, 2008, respondent tested positive for cocaine; and (f) since May 2008, both parents have been uncooperative with DCFS.

¶ 7 The trial court entered an adjudicatory order on September 28, 2008, finding that the State proved by a preponderance of the evidence that the minors were neglected, insofar as they were in an environment that was injurious to their welfare as defined by section 2-3(1)(b) of the

Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2013)).

¶ 8 Following the dispositional hearing on October 17, 2008, the trial court found both petitioner and respondent unfit pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2013)), and the minors were made wards of the court. Petitioner and respondent were issued service plans and ordered to correct the conditions that led to the finding of unfitness. Those plans required each party to cooperate with DCFS; obtain a drug and alcohol assessment; perform random, supervised drug drops and Breathalyzers three times per month; and to submit to a psychological evaluation, among other things.

¶ 9 Catholic Charities evaluated petitioner and respondent, monitored their compliance with the service plan and tracked their progress toward the ultimate goal of reunification with K.D. and C.D. At the permanency hearing on June 4, 2010, the parties' case manager submitted a report recommending that petitioner be returned to fitness. The case manager also recommended that the permanency goal be changed to "return home within 5 months." The case manager reported that petitioner continued to be compliant with all her court-ordered tasks/services. All of petitioner's random drug drops were clean during the reported period.

¶ 10 Respondent, on the other hand, had not been consistent with any of his court-ordered tasks/services during the relevant period. At the time of the June 4 hearing, he was incarcerated at the Vandalia Correctional Center for domestic battery of his then-girlfriend that occurred on November 21, 2009. Prior to his incarceration, respondent did not complete his psychological evaluation, his drug and alcohol assessment/screening, or his domestic violence assessment, which would have allowed him to begin classes at the Center for Prevention of Abuse. He was inconsistent in calling for drug drops, and his sobriety was not actively monitored due to the lack

of participation in drug drops or substance abuse services.

¶ 11 The trial court ordered that petitioner be returned to fitness and set the permanency goal to "return home in 5 months" as to petitioner only. The court found respondent remained unfit based on his minimal efforts to correct those issues which led to the initial finding of neglect.

¶ 12 Following a permanency review hearing on December 2, 2010, the trial court restored guardianship to petitioner, finding that the minors should remain home with her. The trial court terminated the wardship and closed the case. As to respondent, the trial court found that he remained unfit due to unresolved domestic violence issues and failure to complete services. However, the court did note at that time that respondent had made reasonable efforts toward returning the minors home based on his participation in classes offered by the Department of Corrections (DOC). The record shows that respondent did complete anger management classes while incarcerated and after his release from prison.

¶ 13 Respondent was paroled from the DOC on March 23, 2011. On July 29, 2011, he filed a *pro se* motion for visitation in both minors' juvenile cases. The trial court denied that motion on October 21, 2011, finding the motion premature as respondent had yet to complete the tasks set out for him in the dispositional order dated October 17, 2008. Following the October 2011 hearing, DCFS once again began assisting respondent in securing services and monitoring his progress.

¶ 14 On March 12, 2012, respondent filed a *pro se* motion requesting the court reconsider his fitness status. Respondent alleged that he completed his psychological evaluation and was close to completing his other classes. He further stated that he had been paying his court-ordered child support through the divorce proceeding and had maintained employment and a stable household.

¶ 15 The trial court scheduled a fitness hearing for June 8, 2012. On that date, petitioner filed her petition for termination of parental rights. The petition alleged respondent to be unfit for failure to make reasonable progress toward the return of the minors to his care within nine months after the adjudication of neglect pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2013)).

¶ 16 Also on June 8, 2012, DCFS filed a status report compiled on April 16, 2012. The report stated that since his release from the DOC, respondent appeared to have made major changes in his life for the better. He maintained clean and stable housing, and secured full-time employment. He was diligent in paying his child support and requalified for his driver's license. The report further noted that respondent was compliant with all DCFS rules and procedures. His parole officer also reported compliance with the rules and requirements of his parole. The report concluded that respondent should immediately have visitation with his daughters, he should continue to submit to random drug testing, and that the case return to court in six months for review and consideration of respondent's fitness.

¶ 17 The case proceeded to the fitness hearing on November 27, 2012. The court found count I, alleging respondent to be unfit, proven by clear and convincing evidence. Respondent admits to stipulating to unfitness, and the record reflects he withdrew his earlier motion for fitness. The court ordered DCFS to prepare the best interests report and set the best interests hearing for February 5, 2013.

¶ 18 Ann Kaufman, clinical advisor for the parents' case, testified first. Kaufman is a licensed clinical professional counselor. At the time of the hearing, she was employed with Children's Home Association of Illinois. Kaufman's first contact with the case was in December 2012. She

prepared the best interests report that was filed with the court. In preparing the report, she testified to meeting with petitioner twice and respondent once. She also met with the minor children. Her testimony corroborated the information contained within the best interests report.

¶ 19 Specifically, Kaufman found that both minors had a strong, healthy and mutual attachment to petitioner. C.D. was only 8 months old at the time she was placed in relative foster care with her maternal grandparents. Given respondent's incarceration and inconsistent visitation, C.D. has no conscious memory of respondent and, therefore, no attachment to him. K.D., on the other hand, was 3½ years old when placed in relative foster care. K.D. does have memories of respondent, but those are vague and confused. She evidences no real relationship or attachment to respondent.

¶ 20 In regard to respondent, Kaufman's report indicated that he had no contact with the minor children in almost three years. Respondent continued to exhibit violent tendencies after the juvenile cases were opened. Respondent was incarcerated from March 4, 2010, to March 23, 2011, following his conviction for domestic battery against his then-girlfriend, Erin Sellers. That incident occurred on November 21, 2009.

¶ 21 Kaufman reported that since his release from prison, respondent has had so many different addresses "that it can only be concluded that his housing is unstable." Similarly, his employment history and relationships are unstable. Respondent had at least four different relationships since being paroled in March 2011.

¶ 22 Kaufman found that throughout the case, respondent demonstrated difficulty in complying with court orders, DCFS guidelines, and rules of his parole. Most recently, respondent inconsistently called the drug drop line and failed to keep appointments with the

Children's Home caseworker. Specifically, respondent did not call the drug drop line at all in November of 2012, or on December 3 or 11, 2012. He failed to show for appointments with his caseworker on: October 1 and 11, 2012; December 9, 2012; and January 9, 2013. Respondent told the caseworker that he was unable to make those appointments due to his work schedule. Yet, in his interview on January 14, 2013, respondent stated he had been unemployed for three months. Kaufman's report also indicated that respondent had a dirty drug drop for cocaine in December 2011, and a dirty drop for alcohol in June 2012. Missed drug drops are considered dirty drops within the program.

¶ 23 In summary, Kaufman, both through her testimony and the best interests report, indicated that it would be in the minor children's best interests for respondent's parental rights to be terminated. Petitioner has turned her life around and provided a safe and stable home for the minors. Kaufman believed that remaining solely and uninterrupted with petitioner was the least disruptive and healthiest situation for K.D. and C.D.

¶ 24 Respondent's sister, M.F., testified that respondent "has grown from being incarcerated." She stated that he is responsible and patient, and aside from jumping around from job to job, she believes he is where he needs to be. Prior to his incarceration, M.F. testified that her contact with respondent was limited because she did not agree with his behavior at that time. At the time of the hearing, M.F. stated that she either sees or talks to respondent every day.

¶ 25 Respondent testified on his own behalf. At the time of the best interests hearing, respondent was unemployed and living in Bartonville with his current girlfriend. Two months prior to his release, respondent stated he was served with an order of protection that prohibited him from having any contact with petitioner and the minor children. He testified to being

depressed about not being able to see his children. He stated that his goal was to have a life with them—to watch them grow up and learn new things.

¶ 26 Petitioner's attorney cross-examined respondent regarding his inconsistent visitations. When cross-examined about allegations that he missed 14 of 24 scheduled visits prior to the April 6, 2009, permanency review hearing, respondent stated that at the time, he was dealing with the recent death of his father and that his mother was dying from cancer. Respondent further stated, "I'm not trying to make an excuse for missing the visits; I should have been there, I wish I would have been."

¶ 27 On cross-examination by the State's Attorney, respondent stated that he filed his first motion for fitness on July 29, 2011, and in December 2011 had a dirty drop for cocaine. In February 2012, respondent "self-admitted" to cocaine use. In June 2012, respondent "self-admitted" to consuming alcohol. He acknowledged that despite those relapses, he did not seek further substance abuse treatment.

¶ 28 On further cross-examination by the guardian *ad litem*, respondent agreed that services had been reinitiated for him upon his filing of the motion for fitness. When asked why he did not take advantage of the opportunities given him and why did not follow through, respondent stated that "things came up" and that he "had things that have gotten in the way of making it to an appointment."

¶ 29 Respondent's parole officer, Brad Burrell, testified that he met with respondent on December 30, 2011. Burrell's testimony mirrored respondent's, insofar as respondent admitted to using cocaine in December 2011 and again in February 2012. Burrell referred respondent for a substance abuse evaluation, but did not know if respondent completed it. Burrell stated that after

respondent admitted to cocaine use in February 2012, he administered no further tests on respondent because he only had 10 test kits with which to test over 110 parolees. Burrell testified that he believed respondent was successfully "mainstreaming" into society. Burrell remained respondent's parole officer until January 2013.

¶ 30 Finally, petitioner testified as an adverse witness. When asked her motivation for filing the petition to terminate parental rights, she stated that "he abused me in front of my children and I would do anything I can to make sure that never happens again for them to be around someone like that." In regard to the order of protection she obtained, petitioner stated that she sought such an order because that is what she had been taught to do in her counseling sessions, and she did so with the purpose of protecting her children.

¶ 31 Petitioner further testified that respondent was ordered to pay child support following their divorce. Petitioner commenced litigation to enforce the support order in 2011, after the respondent requested visitation with the children. Since the entry of the order, petitioner testified that respondent made a total of 12 payments. At the time of the best interests hearing, petitioner stated she had not received a payment from respondent for over a year and a half.

¶ 32 At the conclusion of the evidence, the guardian *ad litem*, the State's Attorney and petitioner's attorney all argued that it would be in the minors' bests interest for respondent's parental rights to be terminated.

¶ 33 The trial court then granted the petition for termination of parental rights. On the record, the trial court applied the statutory best interests factors to the evidence presented. As for the children's physical safety and welfare, the trial court concluded that respondent had "failed miserably," and that it was petitioner who had provided for the minors. The same could be said

for the development of the children's identity. The court found that the children's background and ties, including familial, cultural, and religious were all supplied by petitioner, and that respondent "had little to nothing to do with them." The trial court particularly emphasized the minors' sense of attachment, finding that when asked, the minors had little to no memory of their biological father. Furthermore, there had been no contact between respondent and the minors for almost three years—a direct result of respondent's incarceration. It was petitioner, not the respondent, who provided the least disruptive placement for the minors.

¶ 34 The trial court entered a final dispositional order on April 12, 2013. This timely appeal followed.

¶ 35 ANALYSIS

¶ 36 As an initial matter, we note that respondent does not contend that the trial court erred in finding him unfit pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2013)). Respondent stipulated to the facts in support of those allegations. Specifically, that he failed to make reasonable progress toward the return of the minors to his care within nine months after the adjudication of neglect for the period from September 11, 2008, through June 11, 2009. Indeed, respondent withdrew his motion for fitness at the November 27, 2012, hearing.

¶ 37 Respondent argues only that trial court's finding that it was in the minors' best interests to terminate his parental rights was against the manifest weight of the evidence.

¶ 38 A petition to terminate parental rights is filed pursuant to section 2-29 of the Juvenile Court Act (705 ILCS 405/2-29 (West 2013)). That section delineates a two-step process in seeking termination of parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2013); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). First, the court must find, by "clear and convincing evidence,

that a parent is an unfit person as defined in Section 1 of the Adoption Act." 705 ILCS 405/2-29(2), (4) (West 2013); 750 ILCS 50/1(D) (West 2013); *In re E.B.*, 231 Ill. 2d 459, 472 (2008).

Second, once a finding of parental unfitness is made, the court considers the "best interest" of the child in determining whether parental rights should be terminated. 705 ILCS 405/2-29(2) (West 2013); *In re J.L.*, 236 Ill. 2d at 337.

¶ 39 Given that respondent does not challenge the trial court's finding of unfitness, we go straight to the "best interest" step of the two-step termination process. At the best interest stage of termination proceedings, the petitioner bears the burden of proving by a preponderance of the evidence that termination is in the child's best interest. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071 (2009).

¶ 40 "When determining whether termination is in the child's best interest, the court must consider, in the context of a child's age and developmental needs, the following factors: (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 at 1071 (citing 705 ILCS 405/1-3(4.05) (West 2013)).

¶ 41 On review, we will not reverse the trial court's best interest determination unless it was against the manifest weight of the evidence. *Id.* "A decision is against the manifest weight of the

evidence only if the facts clearly demonstrate that the court should have reached the opposite result." *Id.* (citing *In re D.M.*, 336 Ill. App. 3d 766, 773 (2002)).

¶ 42 In arguing that the trial court's finding was against the manifest weight of the evidence, respondent implies that his parental rights should not have been terminated simply because he was found unfit. Respondent contends that "while a parent may be unfit to have custody of a child, it does not follow that the parent is unfit to remain the child's legal parent with attendant rights and privileges." *Lael v. Warga*, 155 Ill. App. 3d 1005 (1987). Respondent also cites *In re D.M.*, 336 Ill. App. 3d 766, 772 (2002), for the proposition that the circuit court cannot rely solely on the fitness findings to terminate parental rights.

¶ 43 Respondent has failed to bridge the gap between this argument and the trial court's best interests determination. We note that during a parental fitness hearing, the parent's past conduct is under scrutiny. *In re Adoption of Syck*, 138 Ill. 2d 255, 276 (1990). In contrast, during a best interest hearing, the court focuses upon the child's welfare and whether termination would improve the child's future financial, social and emotional atmosphere. See *Syck*, 138 Ill. 2d at 276. "Once a court finds a parent to be unfit, *** [a]ll other considerations much yield to the child's interests. See *In re J.T.C.*, 273 Ill. App. 3d 193, 199 (1995). Indubitably, some elements of a parent's unfitness are inextricably intertwined with those factors a court must consider in determining what is in the best interest of the minor. For example, respondent's unfitness was based, in part, on his continued drug use. Respondent's failure to submit to drug drops and maintain sobriety affects the minors' physical safety and welfare, and thus such behavior is not in their best interests. Respondent does not point this court to instances where the trial court failed to properly consider the minors' best interests or erroneously relied on respondent's status as an

unfit parent. He merely regurgitates his own testimony indicating that he worked on a regular basis since his release from prison, had positive relationship with his parole officer and loves his children.

¶ 44 There is, in fact, no indication that the trial court relied on the respondent's unfitness to justify terminating his parental rights. To the contrary, the trial court methodically considered each best interest factor in making its determination. It reviewed the evidence in the juvenile case files, the best interests report, and considered all the testimony presented during the best interests hearing. The trial court's focus on the minors' welfare is readily apparent in its statement that "[t]here's a victim in all this, and it's not [respondent]."

¶ 45 The record demonstrates that respondent (1) had a history of drug abuse and domestic violence; (2) admitted that he had relapsed on more than one occasion even after he filed a motion for the court to reconsider his fitness; (3) had not had contact with the minors in close to three years; (4) did not complete those tasks necessary for reunification, including maintaining employment and stable housing; and (4) did not take advantage of those services offered to him through DCFS. Alternatively, K.D and C.D had been returned to the care of petitioner, who had provided for their health, welfare and emotional needs. Further, K.D. and C.D. had little to no recollection of respondent.

¶ 46 We find that the trial court appropriately applied this evidence to each of the statutory factors under section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2013)), and the evidence warranted termination of respondents' parental rights.

¶ 47 At the conclusion of his brief, respondent makes a sweeping allegation that petitioner's filing to terminate his parental rights was a vindictive attempt to keep respondent out of her life.

Respondent cites to no authority to support his contention that animosity between the parties would somehow divest the trial court of its authority to make a best interests determination. The respondent was found to be unfit and did not contest that finding. The trial court properly held a best interests hearing, and as stated above, appropriately considered all relevant statutory factors. Based on those factors and the recommendations of the guardian *ad litem* and the State, the trial court found it was in the minors' best interests to terminate respondent's parental rights. As the reviewing court, we do not reweigh the evidence or reassess the credibility of the witnesses. *In re K.B.*, 314 Ill. App. 3d 739, 748 (2000).

¶ 48 Accordingly, we find that the trial court's decision to terminate the respondent's parental rights was not against the manifest weight of the evidence.

¶ 49 CONCLUSION

¶ 50 For the foregoing reason, the judgment of the Tazewell County circuit court is affirmed.

¶ 51 Affirmed.