

No. 1-14-1580

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re DONNA M., a Minor.)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Cook County.
)	
Petitioner-Appellee,)	No. 09 JA 00084
)	
v.)	
)	
Jerry M.,)	The Honorable
)	Nicholas Geanopoulos,
Respondent-Appellant).)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court
Presiding Justice Pucinski and Justice Mason concurred in the judgment

ORDER

¶ 1 *Held:* The trial court's judgment terminating the parental rights of Jerry M. to his child Donna M. was not against the manifest weight of the evidence. This court affirmed the judgment of the circuit court.

¶ 2 Following "unfitness" and "best interests" hearings, the trial court terminated the parental rights of respondent Jerry M. as to his then 5-year-old child, Donna M. Jerry now appeals contending the trial court's "best interests" determination was against the manifest weight of the evidence. For the reasons set forth below, we affirm.

¶ 3

BACKGROUND

¶ 4 Donna was born June 3, 2008. Less than a year later, the State filed a petition to declare Donna a ward of the court and permit the State to take temporary custody of her. In August 2009, the court adjudicated Donna abused and neglected due to a lack of care and injurious environment. The stipulated facts underlying this order revealed that Donna's mother deposited the child with a relative in mid-January 2009, then returned only briefly while high on drugs, and ultimately disappeared. With the relative unable to care for Donna, and with Donna's father then incarcerated, Donna became a ward of the court and was placed in the custody of the Department of Children and Family Services (DCFS).

¶ 5 Four years later, the State filed a petition to terminate the parents' rights to Donna. Although her mother's rights were also eventually terminated, she is not party to this appeal, so we recite only those facts that relate to Jerry. The State alleged Jerry was unfit because he failed to maintain the degree of concern or responsibility necessary for Donna because he: did not engage in the necessary services (see 750 ILCS 50/1(D)(b) (West 2012)); was habitually addicted to drugs (750 ILCS 50/1(D)(k) (West 2012)); and failed to correct the conditions that caused Donna to be removed and made insufficient progress to secure her return following the abuse/neglect adjudication (750 ILCS 50/1(D)(m) (West 2012)). A hearing was held May 20, 2014, in which caseworker Kenneth Baker testified to the various bases for declaring Jerry unfit, principally stemming from his heroin addiction. The record reveals that Jerry was released from prison in August 2011, when Donna was three years old. Although he was unable to adequately receive drug treatment while incarcerated, upon his release, he participated in the services. From August 2011 through December 2012, Jerry engaged in drug treatment services from three different facilities but was discharged unsuccessfully from all of them. He also declined mental

health therapy. Drug tests revealed opiates, including heroin, in his system. Although Jerry had consistently visited with Donna (even when in prison) and given her gifts, he had remained noncompliant with the recommended services. The trial court ruled the State had proved by clear and convincing evidence that Jerry was unfit to parent Donna, and the cause proceeded immediately to the best interests hearing to determine whether Jerry's rights to Donna should be terminated.

¶ 6 At the best interests hearing, Donna's foster parent, Irma, testified that Donna (then age 5) had been living with Irma for a year and four months. Donna called Irma "mom" and got along well with Irma's grandson, who also lived with them. On Saturdays, they would go out to eat together because that was Donna's "day to hang out." Every day before Irma took Donna to school, just as she relayed to her biological children, Irma told Donna "to have a good day, to learn something educational and positive, to be a blessing to someone else, and to love people that she wanted to be loved." She also told Donna that she loved her and "would be there waiting for her when she got back every day." Irma stated that her family, whom she saw at least once a week, treated Donna as if she were a member. Irma testified that she wished to adopt Donna because she loved her and wanted to "make a difference" in Donna's life, as Donna had already made a great difference in Irma's life.

¶ 7 On cross-examination, Irma stated that she would allow Jerry to continue seeing Donna, but allowed that she needed time to better acquaint herself with Jerry. While Irma had not given him her address or phone number, she had obtained a P.O. Box so Jerry and Donna could correspond. Jerry sent a letter, Irma read it to Donna, and then gave it to Donna as a keepsake. Although Donna was excited by Jerry's gifts to her and seemed to love her father, she only spoke of him after a visit.

¶ 8 Baker, the aforementioned caseworker, testified that Irma's home was safe and appropriate. He noted no signs of abuse or neglect. He was not aware of any incident reports. He was aware that Irma took Donna to her medical appointments, oversaw her schooling and tended to her daily needs. In fact, Baker testified to a close bond between Irma and Donna, observing that Donna respected Irma and essentially saw her as the authority figure. When asked, Donna reported numerous times that she liked Irma, and that she wanted to stay with Irma. Baker stated that she was comfortable, secure, and thriving there. When Baker explained adoption to Donna and relayed that she might not see Jerry, Donna asked only whether she would be able to see her former foster parent, but did not cry.

¶ 9 Baker recommended termination of parental rights, given the need for stability and the length of time the case had been in the system. Although Jerry's interactions during supervised visits with Donna were good, he had not committed to services so as to effect reunification.

¶ 10 The State rested, and Jerry testified that he wanted to maintain a relationship with his daughter because he loved her, she was basically "all [he] had right now." He testified that he wanted to stay in her life to watch her grow, and see her through college. He wanted to teach her from the mistakes he made and teach her right from wrong. During their visits, Jerry would give Donna gifts, read to her, play with her, and ask her about her life. Jerry testified that if his rights were terminated, he would "feel bad about that," but he wanted to stay in Donna's life because he was "trying hard." Jerry testified that he had been clean from drugs for six-and-a-half months. He believed Donna would benefit from maintaining contact with him and testified that he would love to build a relationship with Irma.

¶ 11 Following evidence and argument, the trial court ruled that it was in the child's best interests that Jerry's parental rights be terminated. In so ruling, the court found Irma credible

regarding her relationship with Donna and noted Irma's apparent love for the child. The court concluded Donna felt a sense of security in the home and, while there, had formed an identity with the family, a sense of attachment to Irma, and developed feelings of love and value. The court acknowledged that Jerry loved Donna, and that Donna in turn had a relationship with Jerry, whom she called "dad" and that she enjoyed visiting with him. Nonetheless, the court determined that the place where Donna would experience the least disruption and the best sense of community was in Irma's home. The court stated that the child's need for permanency, stability, and community was paramount. Observing that the case had been in the system for an inordinately long time, the court determined her current placement was in her best interests. The court noted that Irma was open to allowing Donna to have a continued relationship with Jerry.

¶ 12 Based upon these stated factors, the court terminated the parents' rights to Donna, with the right to consent to adoption, leading to this timely appeal.

¶ 13 ANALYSIS

¶ 14 The Juvenile Court Act of 1987 provides a two-stage process for terminating parental rights involuntarily. *In re C.E.*, 406 Ill. App. 3d 97, 107 (2010); 705 ILCS 405/2-29(2) (West 2012). First, there must be a showing, based on clear and convincing evidence, that the parent is "unfit," as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). *C.E.*, 406 Ill. App. 3d at 107. Following an unfitness finding, the trial court's task is to determine whether it's in the minor's best interests to terminate parental rights. *In re D.T.*, 212 Ill. 2d 347, 352 (2004); *In re Jaron Z.*, 348 Ill. App. 3d 239, 261 (2004).

¶ 15 Jerry does not now contest that trial court's initial determination declaring him unfit to parent, based on his substantial drug abuse problems and lack of progress in reuniting with his child. However, Jerry does challenge the trial court's best interests finding. At the best interests'

stage, the trial court focuses on the child's welfare and whether termination would improve the child's future financial, social, and emotional well-being. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1071 (2006). In determining whether termination of a parent's rights is in the minor's best interests, the trial court must consider and balance a number of factors such as the minor's physical safety and welfare, including food, shelter, health, and clothing; the development of her identity; her sense of attachments, security, and continuity of affection; and her need for permanence, as well as the preferences of individuals available to care for the minor. See 705 ILCS 405/1-3(4.05)(a) through (j) (West 2012). In addition, a court may consider the nature and length of the child's relationship with her present caretaker and the effect that a change in placement would have on her emotional and psychological well-being. *Jaron Z.*, 348 Ill. App. 3d at 262. The State must prove by a preponderance of the evidence that termination is in the best interests of the minor, and the decision that the parent-child relationship should be permanently severed will not be overturned unless it is against the manifest weight of the evidence. *D.T.*, 212 Ill. 2d at 366; *Jaron Z.* 348 Ill. App. 3d at 261-62; *In re Tiffany M.*, 353 Ill. App. 3d 883, 891-92 (2004).

¶ 16 Jerry specifically contends the trial court's best interests determination was against the manifest weight of the evidence because he and Donna loved each other and Jerry "was in a unique position to guide his daughter through the hazards of life" by teaching her right from wrong. Jerry asserts he is the sole male figure in his daughter's life, although he points to no evidence in the record establishing that fact.

¶ 17 Jerry's contentions on appeal revolve around his own interests in Donna, but at this stage 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; see also *In re Tajannah O.*, 2014 IL App

(1st) 133119, ¶ 18 (a child's best interest takes precedence over any other consideration, including the natural parent's right to custody). Our review of the record reveals that the trial judge carefully reviewed the statutory factors, while analyzing the specific facts of this case in light of the law, and made a determination that Irma provided a stable and loving home. The trial judge is in a unique position to evaluate the witnesses (*Jaron Z.*, 348 Ill. App. 3d at 261-62) and he found that Irma was credible and that she clearly loved Donna. Under Irma's care, Donna regularly attended school, was taken to appropriate medical appointments, received special attention, saw Irma as an authority figure, and became part of Irma's extended family. Irma testified that she wished to adopt Donna. Given the trial court's superior position, we will not reweigh the evidence or disturb credibility determinations made there. See *In re K.B.*, 314 Ill. App. 3d 739, 748 (2000). Respectfully, we find Jerry's contention that he could teach his 5-year-old child right from wrong and also provide her with guidance through the "hazards" in life particularly disingenuous in light of the evidence suggesting that Jerry was a long-time drug addict who, according to his own trial testimony, had only been "clean" for six months. The birth of his child and the threat of termination of his parental rights did not operate in a manner that caused him to avoid drugs previously.

¶ 18 It merits mention that we find Jerry's reliance on *In re M.F. and T.R.*, 326 Ill. App. 3d 1110 (2002), misplaced. In that case, this court affirmed the trial court's unfitness finding as to the mentally-ill mother, but reversed the order terminating her parental rights to one of her children because the mother and child had a relationship when the case began; the mother had long-held, regular supervised visits with the child through a divorce decree; the child had resided with the father since the parents' divorce; and during an *in camera* interview with the trial court, the child expressed a desire for visits with her mother to continue. *M.F. and T.R.*, 326 Ill. App.

3d at 1115-1118. This court observed that terminating the mother's parental rights would not afford her child any more stability. *Id.* at 1118.

¶ 19 In contradistinction, the trial court here noted Donna had been a ward of the State for some five years. Her father was only ever able to establish supervised visits after release from prison when Donna was age three. See *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 53 (2008) (drug-addicted parents who still had supervised visits with their child were precluded from regaining custody). Due to his drug addiction, Jerry simply could not provide Donna with the permanency, stability, and sense of identity gained in Irma's home. See *In re Angela D.*, 2012 IL App (1st) 112887, ¶ 39; see also *Tajannah O.*, 2014 IL App (1st) 133119, ¶ 28 (affirming termination of parental rights because although the mother loved her child, she could not provide permanency due to her drug addiction). As the trial court observed, while Donna and her father were bonded, that bond had to yield to Donna's best interests in permanency. See *Tajannah O.*, 2014 IL App (1st) 133119, ¶ 33 (noting that return home or adoption are statutorily preferred permanency goals); *Angela D.*, 2012 IL App (1st) 112887, ¶ 40 (noting that the fundamental purpose of the Juvenile Court Act (705 ILCS 405/1-2(1) (West 2010)) is to secure permanency for minors as early as possible). Relevant to the court's determination, Irma also testified that she had already developed a means for Jerry and Donna to correspond via letter and would possibly consider in-person visits in the future, thus demonstrating that she was acting in Donna's best interests by allowing the child to maintain a relationship with her biological father. See *Angela D.*, 2012 IL App (1st) 112887, ¶ 41. In short, given the total evidence, we cannot say the opposite conclusion, that Jerry's parental rights should be maintained, is clearly evident. See *Id.* ¶ 28 (defining manifest weight); *Tasha L.-I.*, 383 Ill. App. 3d at 52 (same). The trial court's decision

was well-grounded in the evidence and not so unreasonable or arbitrary as to warrant a different result. *Id.*

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, we affirm the decision of the circuit court of Cook County terminating respondent Jerry M.'s rights to his child Donna M.

¶ 22 Affirmed.