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2014 IL App (3d) 130726-U

Order filed February 6, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

<i>In re</i> N.R.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-13-0726
	)	Circuit No. 13-JA-100
v.	)	
	)	
T.R.,	)	
	)	
Respondent-Appellant).	)	Honorable Mark E. Gilles,
	)	Judge, Presiding.

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JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Carter and Wright concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court's termination of the respondent father's parental rights was not against the manifest weight of the evidence.
- ¶ 2 Following a best interest hearing, the Peoria County circuit court terminated the parental rights of respondent father, T.R.

¶ 3 Having considering the best interest report, evidence introduced at both the fitness and best interest hearings, respondent's testimony, and all relevant statutory factors, the trial court found it was in the minor's best interest for respondent's parental rights to be terminated.

¶ 4 Respondent appeals, claiming the evidence was insufficient to prove it was in N.R.'s best interest to terminate his parental rights, thus rendering the trial court's decision against the manifest weight of the evidence.

¶ 5 We affirm.

¶ 6 **BACKGROUND**

¶ 7 On April 23, 2013, the State filed both a petition for adjudication of neglect and a petition for termination of parental rights (TPR). On June 24, 2013, the trial court adjudicated the minor neglected by way of proffer by the State. N.R. was made a ward of the court. The one-count TPR petition alleged that respondent was a depraved person pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2013)). Specifically, that respondent had been convicted of aggravated battery of a child in Peoria County case No. 07-CF-477 and aggravated battery with a firearm in Cook County case No. 97-CR-3162901. In his answer, respondent stipulated that the State would call witnesses that would support the allegations in the TPR, but asserted that he had been rehabilitated and that if found unfit, it was not in the best interest of the minor to terminate his parental rights.

¶ 8 A hearing on the fitness portion of the petition to terminate parental rights commenced on August 7, 2013. Respondent appeared in custody of the Department of Corrections. The State submitted a certified order of conviction for respondent's Peoria County conviction as State's exhibit No. 1. The State proffered that a certified order of conviction would be produced for respondent's Cook County conviction once received from Cook County.

¶ 9 Respondent testified that in 2007, he pled guilty to aggravated battery of a child. When the incident occurred, respondent was lying in bed and N.R. had begun to cry. Respondent stated he was half-asleep when he reached into the bassinet to pick N.R. up. N.R. was two months old. Respondent stated that he picked N.R. up by the leg and "mistakenly broke his leg." He did not notice the injury at the time, but N.R. continued to cry. When respondent got up, he noticed N.R. was crying more than usual. He then noticed that N.R.'s leg was "moving funny." N.R.'s maternal grandmother was in the home at the time, and respondent testified that he conferred with her about N.R.'s constant crying. He testified that she thought they could wait until the doctor's office opened to take N.R. to get medical attention. Respondent then called N.R.'s mother to tell her that something was wrong with N.R. and that he was going to wait to take N.R. to the doctor. Approximately 10 minutes later, N.R. continued to cry and would not eat. Respondent called N.R.'s mother again to inform her he was taking N.R. to the hospital.

¶ 10 Respondent initially told hospital personnel and the police that N.R. had gotten his leg caught on something in the bassinet as he was picking him up. When the doctor informed respondent that N.R.'s leg was broken, that is when respondent realized that he was likely the cause of N.R.'s injury. Respondent ultimately confessed to police that he had picked N.R. up by the leg and that this caused the injury. Respondent testified that he had been in custody since the confession. He had been held at Mount Sterling Correctional Center for approximately 2½ years before he was transferred to Illinois River Correctional Center.

¶ 11 Respondent further testified that he maintained a relationship with N.R. during his incarceration. N.R. has asked him why he is incarcerated. Though respondent never told N.R. the specifics of the injury, he told N.R. that he made a mistake. Respondent has had approximately 12 visits with N.R. since his incarceration. The last visit occurred around

Thanksgiving of 2012. The visits are four hours long, and respondent stated that during the visits, he and N.R. play games, draw, color and talk. N.R. calls him daddy and appears to be happy to see respondent. While there, N.R. shows respondent affection and hugs him.

Respondent testified that sometimes N.R. does not want to leave the visit. Respondent also stated that he speaks with N.R. on the phone once or twice per month and that the conversations last 15 to 30 minutes. Respondent sends N.R. cards every holiday and birthday and that N.R. has written things for him.

¶ 12 Respondent stated that he regrets his actions because he hurt his son. His family is "broke apart" due to his incarceration. As for his aggravated battery conviction in 1997, respondent testified that it was a gang-related offense and he had had no gang contacts since 1998.

¶ 13 At the close of argument, the trial court found that the State had proven by clear and convincing evidence that respondent was a depraved person pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2013)), and therefore unfit. The court stated that it would consider the evidence presented at the best interest hearing as well. It noted that much of the testimony elicited was more appropriate for the best interest hearing, as it concerned respondent's relationship with the minor.

¶ 14 The trial court conducted the best interest hearing on September 11, 2013. At the request of respondent's counsel, the trial court took judicial notice of the dispositional order on the neglect petition and the testimony elicited at the fitness hearing. The State submitted the best interest hearing report prepared by Lutheran Social Services, but presented no additional evidence at the best interest hearing.

¶ 15 Respondent's counsel called Thane Hunt, the caseworker who prepared the report, to testify at the best interest hearing. According to Hunt, N.R. was placed in relative foster care with his maternal grandmother, with whom he had a strong bond. N.R. regularly visited with his mother, but had had no visits with respondent in over a year. Hunt stated that when he asked N.R. how not seeing his father for over a year made him feel, N.R. said it made him feel sad. The prospect of adoption had not been discussed with the foster parent because reunification with N.R.'s mother was still the goal. Hunt also testified that if respondent were to retain his parental rights, it would not have a foreseeable impact on N.R.'s relationship or bond with his mother, his maternal grandmother or his community due to respondent's incarceration. He testified that respondent's retention of his parental rights as of the time of the best interest hearing would not act as an impediment to N.R.'s permanency, but went on to state that that was due to respondent's incarceration and that respondent "wouldn't be out to try to change that."

¶ 16 Following closing arguments, the trial court found it was in the minor's best interest that the respondent's parental rights be terminated.

¶ 17 This timely appeal followed.

¶ 18 ANALYSIS

¶ 19 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)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2013)). Respondent stipulated to the facts alleged in the State's petition, but denied any legal conclusions asserted, *i.e.*, that even if he was found unfit, it would not be in the minor's best interest to terminate his parental rights.

¶ 20 Respondent argues that the trial court's finding that it was in the minor's best interest to terminate his parental rights was against the manifest weight of the evidence.

¶ 21 A petition to terminate parental rights is filed pursuant to section 2-29 of the Juvenile Court Act of 1987 (705 ILCS 405/2-29 (West 2013)). That section delineates a two-step process in seeking involuntary termination of parental rights. 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.

¶ 22 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 State 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).

¶ 23 "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)).

¶ 24 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)).

¶ 25 Respondent argues that the trial court's finding was against the manifest weight of the evidence, given that the State failed to produce evidence that even a single best interest factor could be weighed in favor of termination of respondent's parental rights. 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 argues that based upon the lack of evidence presented, the trial court improperly relied only upon the finding of unfitness to terminate his parental rights. See *In re D.M.*, 336 Ill. App. 3d 766, 772 (2002) (holding that the circuit court cannot rely solely on the fitness findings to terminate parental rights).

¶ 26 Respondent's arguments are not supported by the facts. 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). That is not to say, however, that the trial court cannot consider some elements of a parent's unfitness contemporaneously with what is in the minor's best interest.

¶ 27 Here, respondent's unfitness was based on a finding of depravity, *i.e.*, that he was convicted for the aggravated battery of N.R and aggravated battery with a firearm. The fact that he committed this act on his own child cannot go unheeded by the trial court, particularly when the first factor to be considered at a best interest hearing is the physical safety and welfare of the child. 705 ILCS 405/1-3(4.05)(a) (West 2011).

¶ 28 Furthermore, the record is devoid of any indication that the trial court relied solely on respondent's unfitness to justify terminating his parental rights. While the trial court did take judicial notice of the testimony elicited at the fitness hearing at respondent's request, this did not translate to the court relying solely on that finding to make its determination. The trial court even noted that the majority of the testimony elicited at the fitness hearing was more appropriate for the best interest hearing because it involved the relationship between respondent and N.R.

¶ 29 The evidence presented cut in favor of termination. Respondent had not had any contact with N.R. in over a year, indicating a lack of attachment and bonding. Since his incarceration, respondent had only seen N.R. a total of 12 times. N.R. was two months old at the time of the incident. As of the date of the best interest hearing, he was six years old. The caseworker, Hunt, opined that it was in N.R.'s best interest that respondent's parental rights be terminated. N.R was now in a safe and stable environment with the maternal grandmother. N.R. had regular visits with his mother, where they showed affection and exhibited a strong bond. The permanency goal remains reunification with his mother.

¶ 30 Respondent urges us to consider Hunt's testimony, wherein he stated the respondent's retention of his parental rights would not serve as an impediment to N.R.'s permanency, nor would it pose a danger to N.R.'s physical safety or welfare. Respondent's argument removes Hunt's testimony from the proper context and mischaracterizes it. In reality, Hunt stated that

given respondent's incarceration, he did not *currently* have the ability to disrupt N.R.'s permanency or pose a danger to his physical and mental well being.

¶ 31 The trial court appropriately applied this evidence to the statutory factors under section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2013)). Despite respondent's argument to the contrary, the trial court need not explicitly mention each factor listed in section 1-3(4.05) when rendering its decision. *In re Deandre D.*, 405 Ill. App. 3d 945, 954 (2010) (citing *In re Jaron Z.*, 348 Ill. App. 3d 239, 262-63 (2004)). Nor must the court articulate any specific rationale for its decision. *Id.* at 955. With that said, the trial court's rationale in this case is clear. N.R. will be 12 years old, still a minor, on respondent's expected parole date in March 2019. It is not in N.R.'s best interest to have his life disrupted after having very little, if any, contact with respondent in the 12 years preceding that. This is particularly true when respondent's last real contact with a two-month-old N.R. was to remove him from his crib by the leg resulting in a spiral fracture to N.R.'s femur.

¶ 32 We accordingly find that the trial court's decision to terminate the respondent's parental rights was not against the manifest weight of the evidence.

¶ 33 **CONCLUSION**

¶ 34 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 35 Affirmed.