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2014 IL App (3d) 140431-U

Order filed September 29, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

|                                       |   |                               |
|---------------------------------------|---|-------------------------------|
| <i>In re</i> C.S.,                    | ) | 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. 3-14-0431          |
|                                       | ) | Circuit No. 11-JA-193         |
| v.                                    | ) |                               |
|                                       | ) |                               |
| K.S.,                                 | ) |                               |
|                                       | ) |                               |
| Respondent-Appellant).                | ) | Honorable Albert L. Purham,   |
|                                       | ) | Judge, Presiding.             |

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

**ORDER**

¶ 1 *Held:* The trial court's determination that it was in the minor child's best interest to terminate the parental rights of respondent mother was not against the manifest weight of the evidence.

¶ 2 Following a best interest hearing on May 7, 2014, the Peoria County circuit court terminated the parental rights of respondent, K.S. The court found that the State had proven by a

preponderance of evidence that it was in the best interest of the minor, C.S., to terminate respondent's parental rights, pursuant to the factors enumerated in section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2010)). The trial court entered a written order to that effect on May 12, 2014.

¶ 3 Respondent appeals, arguing that the minor's sense of attachment to respondent militates against the termination of her parental rights.

¶ 4 We affirm.

¶ 5 **BACKGROUND**

¶ 6 The State filed a petition for adjudication of neglect on August 18, 2011, alleging that the minor, C.S. (born August 15, 2011), was neglected in that her environment was injurious to her welfare. The petition specifically alleged that respondent is a registered child sex offender, that respondent previously committed sex offenses against her brother and sister, that respondent spent four years in residential treatment and, after being placed in a transitional program, began to have drug and alcohol problems, that respondent has been diagnosed with bipolar and borderline personality disorder and has been noncompliant with treatment and medication, and that respondent has a reported 12 to 15 suicide attempts. The trial court entered an order for temporary shelter care the following day.

¶ 7 The trial court adjudicated the minor neglected on October 24, 2011, and granted the Department of Children and Family Services (DCFS) guardianship with the right to place the minor.

¶ 8 On August 16, 2013, the State filed a petition to terminate parental rights, alleging that respondent had failed to make reasonable progress toward the return of the minor during a nine-month period, following the initial nine-month period after the adjudication of neglect.

¶ 9 While respondent does not challenge the trial court's finding of unfitness on appeal, we find the inclusion of some of the testimony elicited at that hearing helpful to our analysis.

¶ 10 Respondent's caseworker, Emily Lee, testified she was the caseworker for the entirety of the nine-month period, following the initial nine-month period after the adjudication of neglect. Lee stated that the relevant nine-month period was July 24, 2012, to April 24, 2013. During that period, respondent completed an initial evaluation at the Human Service Center. The center recommended that respondent complete psychiatric services, counseling and start medications. She did not follow through with those recommendations and did not complete counseling. Lee testified that respondent was ordered to complete domestic violence counseling, but did not do so. Respondent was also ordered to complete parenting classes during this period. Lee testified that respondent was discharged from those parenting classes for failure to attend.

¶ 11 As for visitation, Lee testified that respondent was allowed one visit per week prior to the permanency goal being changed to substitute care pending termination in November 2012. After the goal was changed, respondent's visits were decreased to once a month. While Lee could not recall how many visits respondent attended, she was able to recall the periods of time when respondent failed to visit C.S. Respondent did not exercise visitation rights from July 2012 to September 2012. Respondent did visit from September 2012 to November 6, 2012; respondent did not visit again from November 6, 2012, until April of 2013.

¶ 12 Lee testified that she received a phone call from respondent in January of 2013. Respondent indicated to Lee that she had moved to Arizona in November of 2012. Respondent also stated that she had been involved in a domestic violence incident with her boyfriend and had been ordered by the Arizona courts to receive domestic violence services. Lee informed respondent that no visitation would be scheduled given that she was out of state; respondent

stated that she understood. During that conversation, Lee asked respondent if she had considered surrendering her rights. Respondent indicated that she had thought about it, knew she could not take care of herself at the time, and that she needed to get her life on track before she could take care of C.S.

¶ 13 Finally, Lee testified that although respondent came back to Illinois in February and March for psychological evaluations, respondent never requested that Lee set up a visit with the minor or to see the minor. Lee testified on cross-examination that she did not ask respondent whether or not she wanted a visit.

¶ 14 At the conclusion of the testimony and arguments, the trial court found that the State had proven by clear and convincing evidence that respondent was unfit and set the matter for a best interest hearing.

¶ 15 On May 7, 2014, the court conducted the best interest hearing. The court considered the best interest report, as well as the testimony of Emily Lee. Lee testified that C.S. had been in the care of her current foster family since August 17, 2011, approximately 32 months. The minor was born on August 15, 2011, and was almost three years old as of the date of the best interest hearing. The foster family was the only family C.S. had ever known. Lee further testified that the foster parents were committed and willing to adopt the minor. Lee stated that respondent last visited the minor on April 1, 2014, the day before the court found respondent unfit. Respondent did not visit C.S. from April 2, 2014, up to the time of the best interest hearing.

¶ 16 The best interest report indicated that the foster parents continued to meet all of C.S.'s needs and were providing C.S. with a safe, stable and nurturing environment. It further indicated that C.S. is extremely attached to her foster parents and that "she tends to follow her foster family around everywhere."

¶ 17 The report stated that respondent's visitations with C.S. were sporadic, just as Lee had testified at the fitness hearing. Respondent was scheduled to visit C.S. once a month, but the visits did not always occur since respondent would either cancel the visit or not show up. According to the report, C.S. appears to be unaffected when her mother is absent.

¶ 18 Ultimately, the best interest report recommended termination of respondent's parental rights. Respondent's absences and inability to complete the recommended services are indicators that she lacks the ability to care for C.S. Moreover, C.S. needs permanency and to "move forward with her life." Lee opined that placement with C.S.'s foster parents is the least disruptive and least restrictive placement for her.

¶ 19 Respondent appeared at the best interest hearing in the custody of Vermillion County jail, where she was being held on bond for allegedly failing to register as a juvenile sex offender. She testified that following the fitness hearing on April 2, 2014, she sought mental health treatment at Crosspoints in Danville, Illinois. Her treating psychiatrist, Dr. Teigland, had prescribed her medication.

¶ 20 Respondent testified that she visited with the minor on April 1, 2014. Respondent, respondent's father and a case aid were present at the visit. Respondent stated that her father provided her with transportation from Danville to Peoria for all visits and court appearances. She testified that C.S. was happy to see her when the visit began; C.S. hugged both her and her father. Respondent testified that she and C.S. walked hand-in-hand, and spent the hour-long visit playing with Easter gifts respondent and her father brought for C.S. Respondent testified that C.S. did not really become upset during the visit, but at one point she tickled C.S. The minor told respondent to stop and respondent did. At the end of the visit, C.S. did not appear upset to

be leaving, but did want to give her grandfather another hug. Respondent testified that C.S. identifies her as "mommy" and her father as "grandpa."

¶ 21 Respondent further testified that she loved C.S. and did not want the court to terminate her parental rights. She acknowledged that she has made mistakes in her life, but that C.S. was the reason she had improved her life by quitting smoking and drinking.

¶ 22 On the court's inquiry, respondent testified that she had visited C.S. less than 15 times since the minor went into care. Respondent, again, stated that C.S. identified her as "mommy" and knew who she was.

¶ 23 Following argument, the court found it was in the minor's best interest to terminate the respondent's parental rights.

¶ 24 ANALYSIS

¶ 25 As an initial matter, we note that respondent does not contend that the trial court erred in finding her unfit pursuant to section 1(D)(m)(iii) of the Adoption Act (750 ILCS 50/1(D)(m)(iii) (West 2010)). Respondent argues only that the trial court's finding it was in the minor's best interest to terminate her parental rights was against the manifest weight of the evidence.

¶ 26 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 2010)). That section delineates a two-step process in seeking involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2010); *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 2010); 750 ILCS 50/1(D) (West 2010); *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 2010); *In re J.L.*, 236 Ill. 2d at 337.

¶ 27 Given that respondent does not challenge the trial court's finding of unfitness, we go straight to the "best interests" step of the two-step termination process. At the fitness stage, the parent's past conduct is under scrutiny. *In re D.M.*, 336 Ill. App. 3d 766, 771-72 (2002). In contrast, at the best-interest stage the court focuses upon the children's welfare and whether termination would improve the child's future financial, social and emotional atmosphere. *Id.* at 772. Thus, at the best interest hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life. See *In re D.T.*, 212 Ill. 2d 347, 364 (2004). "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).

“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 2008)).

¶ 28 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 considered to be against the manifest weight of the evidence if the facts clearly demonstrate that the court should have reached the opposite conclusion. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072 (2006).

¶ 29 Respondent concedes that she is unfit to be a custodial parent, but 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 argues that the minor's sense of attachment to her and the minor's grandfather militates against termination of her parental rights. In essence, respondent contends that retaining her parental rights will not impact C.S.'s need for permanence or C.S.'s relationship with her foster family, but a termination of respondent's rights will deprive C.S. of her relationship with her "mommy" and "grandpa." We find that the evidence belies respondent's arguments.

¶ 30 Following testimony and arguments at the best interest hearing, the trial court stated that it read through the best interest report and considered the arguments of respective counsel. The court emphasized that since the time the minor was removed from respondent's care in August of 2011, respondent had exercised, at most, 15 visits with C.S. Respondent would often fail to show up for visits, or call to cancel. The court noted that the minor had been in the care of her foster parents since she was two days old, and had consistently been in their care for approximately 32 months. The court found that, for obvious reasons, C.S. is very attached to her foster parents and told respondent that "the child's used to you leaving."

¶ 31 While the court commended respondent for seeking the psychiatric care she needed, it stated that at some point, the child needed permanence. The court then reviewed the specific best interest factors it found applicable. As to the physical safety and welfare of the child, including food, shelter, health and clothing, the court found that the foster family had done “an excellent job” in providing those to the minor. C.S. had developed an identity and attachment to her foster parents, and again, the foster family is the only family C.S. has ever known. As for the minor’s community ties, including church, school and friends, the court noted that while the minor is obviously not in school at this point, she is developing relationships within the foster home. The minor also attends church every Sunday with her foster family.

¶ 32 It is apparent from the record before us that respondent had very little contact with the minor and made little effort in completing the recommended services. Without contacting her caseworker beforehand, respondent moved out of state, knowing that doing so would severely curtail her ability to visit with C.S. While this testimony was elicited at the fitness hearing, we find that it has bearing on the minor's need for permanence and is indicative of the respondent's continued instability. Nor can we find that the minor’s ability to recognize her mother and grandfather somehow outweighs the benefits she has received by virtue of being in foster care. In fact, respondent presented no other evidence whatsoever that would indicate the minor has developed any real or permanent sense of attachment to her. Indeed, it was respondent who testified that at the end of their last visit, C.S. wanted to hug her grandfather again, not respondent. We find that the trial court appropriately applied the statutory factors to the evidence in this case, and both the best interest report and the testimony of Emily Lee support such a finding.

¶ 33 Finally, respondent’s suggestion that she could somehow retain her parental rights and doing so would have no impact on C.S. is without merit. To the contrary, respondent’s continued intermittent intrusion into the minor’s life undermines C.S.’s need for permanence, including her need for stability and continuity with parental figures and other relatives. This court need not speculate on respondent’s ability to “get her life on track,” as she has already conceded she is not fit to be the minor’s custodial parent. However, to allow her to retain her parental rights indefinitely while attempting to do so frustrates the purpose of the Adoption Act and its effort to establish permanent homes for children in need. See 705 ILCS 405/1-2(1) (West 2010). This is particularly true in light of the testimony that C.S. is thriving with her current foster family, and that they desire to adopt her.

¶ 34 We accordingly find that the trial court’s determination that it was in the minor's best interest to terminate the respondent’s parental rights was not against the manifest weight of the evidence.

¶ 35 CONCLUSION

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

¶ 37 Affirmed.