

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (3d) 140498-U

Order filed November 3, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> I.G.,)	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. 3-14-0498
)	Circuit No. 10-JA-240
v.)	
)	
Natalie G.,)	
)	The Honorable
Respondent-Appellant).)	David J. Dubicki,
)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.

Justice McDade concurred in the judgment.

Justice Wright dissented.

ORDER

¶ 1 *Held:* The appellate court affirmed the circuit court's judgment that found it was in the best interest of the minor to terminate the respondent's parental rights.

¶ 2 The circuit court entered orders finding the respondent, Natalie G., to be an unfit parent and terminating her parental rights to the minor, I.G. On appeal, the respondent argues that the

circuit court erred when it found it was in the minor's best interest to terminate the respondent's parental rights. We affirm.

¶ 3

FACTS

¶ 4

On August 25, 2010, the State filed a juvenile petition alleging that the minor (born May 19, 2004) was neglected by reason of an injurious environment. With regard to the respondent, the petition alleged, *inter alia*, that the respondent struck the minor in the face in February 2010 and caused the minor to suffer a swollen eye and red marks on her chest. The respondent also allegedly told the minor not to tell anyone about the incident. The incident was indicated by the Department of Children and Family Services (DCFS), but the respondent refused services. The petition also alleged that in addition to being indicated by DCFS in February 2010, the respondent was also indicated in September 2005 for inadequate supervision and in December 2006 for substantial risk of physical injury and injurious environment. The minor was taken into temporary shelter care the next day and was taken into foster care on August 31, 2010.

¶ 5

On October 14, 2010, the circuit court adjudicated the minor neglected and also entered a dispositional order that found the respondent to be an unfit parent, the basis of which was listed as "current incarceration, drug usage, knew father unfit & left children [the minor and her younger brother] with father, domestic violence, mental health issues." The court also made the minor a ward, granted DCFS guardianship with placement rights, and ordered the respondent to complete numerous tasks.

¶ 6

Five permanency review hearings were held over the next approximately 2½ years, and reports were compiled for each of these hearings by the caseworker.¹ Overall, the respondent was found either to have made mixed efforts or not to have made reasonable efforts at

¹ A sixth permanency review hearing was held on the same day as the best-interest hearing.

completing the tasks set forth in her service plan. Further details from those reports that are of particular importance to this appeal include that the respondent was jailed in September 2010 on a charge of unlawful possession of a controlled substance; she was later sentenced to probation and released from custody on October 15, 2010. On January 21, 2012, she was arrested on charges of unlawful possession of a controlled substance and delivery of less than 10 grams of cocaine. She was ordered to complete drug court services and was released on May 4, 2012. She was discharged unsuccessfully from that program on January 3, 2013; she was incarcerated later that year² with an expected parole date of July 16, 2016.

¶ 7 The reports compiled for the permanency review hearings also detailed that the minor's first foster placement began on October 19, 2011. She had behavioral and defiance issues in that placement. The minor was removed from that placement on November 28, 2012, because she was allegedly hit several times with a belt by the foster parent's adult son in the foster home after the minor had stolen a flashlight from Walmart. The minor's second foster placement began on November 28, 2012, and she initially did well in that placement. However, over time, she began to have behavioral issues again, which included using derogatory terms toward the foster parent and making other "hateful" comments. The reports also noted that the minor had been diagnosed with: (1) mood disorder, not otherwise specified; (2) reactive attachment disorder; (3) attention deficit hyperactivity disorder, combined type; (4) depression; and (5) oppositional defiant disorder.

¶ 8 On March 12, 2013, the State filed a petition to terminate the respondent's parental rights to the minor. The petition alleged that the respondent failed to make reasonable progress toward the return of the minor to her care during the nine-month period between June 6, 2012, and

² At the best-interest hearing, the respondent told the court that she was incarcerated on June 19, 2013.

March 6, 2013. On January 15, 2014, the respondent stipulated to the petition's allegation, and on April 24, 2014, the circuit court entered an order finding the respondent to be unfit based on that stipulation.

¶ 9 The circuit court held a best-interest hearing over two days in June 2014.³ Initially, the court stated that it had considered the reports submitted by the caseworker for the best-interest hearing. At the time of the initial report in December 2013, which was compiled for the father's portion of the best-interest hearing, the minor had been in a placement for over one year, but the foster parent was not committed to adoption. The report noted that the minor suffered from reactive attachment disorder and that she was very loyal to the respondent. At the time of the report that was compiled on March 18, 2014, the minor had been in her placement only since February 28, 2014, but the foster parents were considering adoption. The foster home was adequate and the foster parents were meeting the minor's basic needs. The foster parents ensured that the minor was taking her psychotropic medications, which included one for attention deficit hyperactivity disorder and one for mood swings. The minor was being regularly monitored by a psychiatrist and was attending counseling on a weekly basis. In counseling, the minor was working on developing relationships in appropriate ways, on understanding her emotions, and on learning skills to cope with her issues on a daily basis. With regard to school, the minor had transitioned out of special education classes and into regular classes, although she still had an individualized education program. She also worked on a daily basis at school with a behavior specialist. The report noted that the minor had already shown an increased desire to do her

³ The minor's best-interest hearing was jointly held with her then-eight-year-old brother's best-interest hearing. We have not included any details of that portion of the hearing because termination proceedings are *sui generis* in nature and because a court's termination decision with regard to one child does not compel an identical decision with regard to any other children the parent may have. *In re G.L.*, 329 Ill. App. 3d 18, 26 (2002).

homework and improve in school since moving into the new placement. Additionally, the report noted that after her visits with the respondent, the minor's mood swings would be more intense and she would sometimes bully other children at school.

¶ 10 The report also commented on the minor's reactive attachment disorder, including that it made it difficult to determine the bond that the minor had with her foster parents. The report stated that the minor had expressed "much interest" in acclimating herself to the foster family, had drawn pictures of her with the foster family, and had written letters expressing thanks for letting her into their family. Further, the report stated that the minor attended church, helped care for the younger foster child in the home, was involved in community activities, and enjoyed spending time with her biological brother on weekends at her grandparents' house. She had a very close bond with her brother and had a bond with her foster parents. The report noted that the minor had a bond with the respondent, too, and enjoyed spending time with her. Further, the minor talked about reuniting with the respondent once she was released from prison.

¶ 11 With regard to the respondent, the report noted that she was incarcerated for unlawful possession of a controlled substance and delivery of less than 15 grams of cocaine. She was scheduled to be paroled on July 16, 2016. The report also noted that the respondent wrote letters to the minor on a regular basis, and recently, she had referred in the letters to the fact that she was taking parenting classes to work on reunification. The caseworker did not give those letters to the minor. Further, the report noted that the respondent had tried to whisper messages to the minor and her sibling during visits at prison; the previous caseworker had asked her not to do that. The report also noted that the respondent had "continually tried to discuss her case in front of her children."

¶ 12 An April 2014 addendum to the best-interest hearing report stated that the foster parents had signed a form indicating that they wanted to adopt the minor. A second addendum, from June 2014, noted that the previous caseworker had written a letter to the respondent asking her not to mention, *inter alia*, anything in letters to the minor and her brother about her sentence or anything that would cause them to believe that she was going to be their guardian upon her release from prison. Attached to the addendum were several letters that the respondent had written to the children, which included letters that were both delivered and not delivered to the children by the caseworker. The caseworker's letter to the respondent stated, in part, that the children were having difficulties understanding why the respondent was in prison and why she was not raising them. The addendum also detailed the monthly visits that the respondent had with the children at the prison between August 2013 and May 2014. Generally, the visits went well, save an incident of the respondent asking the caseworker about the case in front of the children and her whispering to her children, and included a lot of physical affection between the respondent and the children.

¶ 13 Caseworker Sarah Mack testified at the hearing that she had been assigned to the case on December 13, 2013. Prior to that date, the minor had one foster placement, which ended due to the aforementioned allegations of physical abuse of the minor in the home. After that date, the minor had another placement before her current placement, which was not a permanent option because the foster parent did not want to adopt and because she was allegedly emotionally and verbally abusive to the minor. Mack testified that the minor's mood swings had decreased with her current "more stable" placement. Mack stated that the minor was feeling more comfortable with the foster parents, who were emotionally available and supportive.

¶ 14 The foster mother told the court that the minor had been adjusting well to the foster home. She also felt that the minor was "more mellowed out from what she's been in previous placements." The foster mother also stated that she knew the minor loved the respondent, but she thought that the minor was a great child for whom her and her husband wanted to provide stability and permanence. They also had a 10½-month old foster child, and they were expecting a child of their own in October 2014.

¶ 15 At the close of the hearing, the circuit court ruled that it was in the minor's best interest to terminate the respondent's parental rights. In so ruling, the court initially noted that the minor's case had to be considered separately from that of her brother and that "[t]he children are in different placements, and the projected goals for each of them are different." Next, the court stated that it had considered the relevant statutory factors, and then the court elaborated on its application of those factors to this case. The court noted that the respondent had not been able to provide basic care for the minor since August 2010. The court noted the respondent's history of criminal activity and the interference her legal problems had with her parenting of the minor. In that regard, the court stated that "even after she's released, she's going to have to show that once she gets out that she has the ability to parent."

¶ 16 In addition, the court acknowledged the minor's difficulties with developing an identity, which the court stated was due in part to confusion created by the respondent's conduct. The court commented that the minor, who had a history of problems with placements, did not have continuity in knowing who her mother and father were. The court noted the following with regard to the respondent's visits with the minor while incarcerated:

"It is easy to be a parent when you're in custody visiting once a month. All you have to do is show affection when they are there. Write them some nice letters,

tell them you love them. That's the easy part. The tough part is the day-in and day-out stuff."

¶ 17 Further, with regard to the minor's background and ties, the court again noted the minor's confusion with identity development and her lack of stability in placements. The court noted that the minor had only been in her current placement for approximately 3½ months. The court noted that the foster parents had been taking the minor to church, and while the minor's cultural background and ties were difficult to factor in, the court noted that the respondent had not provided for those over the past four years even when given the chance to do so. The court also commented that after the minor completed her school year, the foster family could enroll the minor in activities to facilitate new acquaintances and connections with her community.

¶ 18 The court also acknowledged that the minor still had feelings of love and attachment to the respondent, but the court also again noted the confusion created for the minor by the respondent's conduct that resulted in her return to prison. The court questioned how much the respondent valued her relationship with the minor, though, given her incarceration and related inability to care for the minor. The court also commented that the minor had no sense of security with the respondent beyond any security she may have felt while sitting in the respondent's lap during visits at the Department of Corrections. With regard to the minor's sense of familiarity, the court noted that the minor had been in foster care for a substantial portion of her life and therefore found it questionable that she felt familiar with the respondent. The court also noted that the respondent had not made reasonable advancement toward reunification over the life of the case. Additionally, the court noted that the respondent had not provided continuity of affection for the minor, whereas the minor's foster parents had indicated that they were willing to adopt her after only 3½ months. The court also noted that the minor seemed to have adjusted

well to her current placement, despite the fact that the minor could be reasonably expected to have difficulty forming attachments due to the conduct of her parents.

¶ 19 Further, with regard to the minor's wishes, the court acknowledged that the minor loved the respondent, that she wished to continue a relationship with the respondent, and that a bond existed between them. However, the court also noted that the respondent "has had more than an adequate opportunity" to correct her behavior and facilitate reunification. The court also stated that it believed the least disruptive placement alternative was foster care. Also, with regard to the minor's need for permanence and stability of relationships, the court noted that the case had been open for four years and the respondent was in no position to provide permanence or stable relationships for the minor.⁴

¶ 20 With regard to the risks attendant to placing the minor in foster care, the court stated that it had no illusions about every foster home being "terrific" places, but the court noted that it was indisputable that this minor needed to be placed into foster care. With regard to the foster parents' preferences, the court again acknowledged that they wanted to adopt the minor and that while the placement was relatively new, the court had "nothing to suggest [the foster parents] are not committed to [the minor]."

¶ 21 After discussing its application of the factors listed in section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2012)), the court found that the State had proven by a preponderance of the evidence that it was in the best interest of the minor to terminate the respondent's parental rights. On June 17, 2014, the circuit court entered the order terminating the respondent's parental rights, and the respondent appealed.

⁴ The court also noted at this point that it was not involved in the placements and that it did not know why the minor and her brother were placed in separate foster homes.

¶ 22

ANALYSIS

¶ 23

The respondent's sole argument on appeal is that the circuit court erred when it found it was in the minor's best interest to terminate the respondent's parental rights. While the respondent acknowledges that her incarceration precludes her from providing care for the minor, she claims that the court "did not place enough weight" on the bond between her and the minor, on the minor's placement history, and on the minor's psychological history.

¶ 24

At the best-interest hearing, the circuit court must determine whether it is in the best interest of the child to terminate parental rights (705 ILCS 405/2-29(2) (West 2012)). The Juvenile Court Act of 1987 (Act) requires the court to consider the following factors in light of the child's age and developmental needs:

- "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
- (b) the development of the child's identity;
- (c) the child's background and ties, including familial, cultural, and religious;
- (d) the child's sense of attachments, including:
 - (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);
 - (ii) the child's sense of security;
 - (iii) the child's sense of familiarity;
 - (iv) continuity of affection for the child;
 - (v) the least disruptive placement alternative for the child;
- (e) the child's wishes and long-term goals;

- (f) the child's community ties, including church, school, and friends;
- (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
- (h) the uniqueness of every family and child;
- (i) the risks attendant to entering and being in substitute care; and
- (j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2012).

This court is not to disturb a circuit court's best-interest determination unless it is against the manifest weight of the evidence. *In re S.D.*, 2011 IL App (3d) 110184, ¶ 33. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004).

¶ 25 Our review of the record in this case reveals no error in the circuit court's best-interest determination. The court thoroughly considered the evidence in light of the statutory factors before it arrived at its best-interest decision. The court noted that the respondent's criminal behavior severely impacted her ability to care for the minor and that the respondent had in fact not provided any care for the minor since August 2010. The court acknowledged that the minor had difficulty with developing an identity, but that problem was due in part to the instability created by the respondent's criminal behavior. The best-interest hearing report stated that the minor had been diagnosed with, *inter alia*, reactive attachment disorder, which made it difficult to assess the bond she had with the foster parents, but the other evidence presented indicated that the minor was acclimating to the foster parents and the foster home. The foster parents were providing for the minor's basic needs, including her mental health needs, and they were

committed to adopting her. Under these circumstances, there is nothing in the record to indicate that the opposite best-interest determination was clearly evident. See *Arthur H.*, 212 Ill. 2d at 464. In essence, the respondent's argument merely asks us on appeal to reweigh the factors relevant to the best-interest determination. Performing that type of review is not the function of this court. See, e.g., *In re Marriage of Smith*, 172 Ill. 2d 312, 324-25 (1996) (stating that it is not the proper function of a reviewing court to reweigh the evidence).

¶ 26 While we acknowledge that the minor's foster placement was relatively new, the foster parents were interested in adopting her, and we also note that the law does not require a set adoption plan to be in place at the time a best-interest determination is made. See, e.g., *In re D.M.*, 336 Ill. App. 3d 766, 774-75 (2002) (affirming a best-interest determination despite the fact that an adoptive home was not immediately available); *In re Tashika F.*, 333 Ill. App. 3d 165, 170-71 (2002) (same); *In re B.S.*, 317 Ill. App. 3d 650, 665 (2000) (same), *overruled on other grounds* by *In re R.C.*, 195 Ill. 2d 291, 304 (2001). Further, even assuming the current placement does not result in adoption, allowing the minor the possibility to enter into an adoptive placement via the termination of parental rights promotes permanence, security, and stability far more than preserving the respondent's parental rights at this juncture. See *D.M.*, 336 Ill. App. 3d at 775; *B.S.*, 317 Ill. App. 3d at 665.

¶ 27 A stated purpose of the Act is to secure permanence for children removed from their parents' custody "at the earliest opportunity." 705 ILCS 405/1-2(1) (West 2012); see *In re Austin W.*, 214 Ill. 2d 31, 50 (2005) (noting that at the best-interest hearing, "[e]ven the superior right of a natural parent must yield unless it is in accord with the best interest of the child"); see generally *In re D.F.*, 208 Ill. 2d 223, 231-32 (2003) (discussing the importance of expeditious resolutions of juvenile cases). The minor in this case had been in foster care for almost four years at the

time of the best-interest hearing. She had been diagnosed with several mental health issues, which impacted her ability to form an identity and healthy relationships. In accord with the circuit court's comments, there is no compelling reason to allow the case to continue for at least another two years until the respondent is released from prison and could begin to attempt to show that she could parent the minor. Such a disposition would contravene the aforementioned stated purpose of the Act. 705 ILCS 405/1-2(1) (West 2012).

¶ 28 For the foregoing reasons, we hold that the circuit court's best-interest determination was not against the manifest weight of the evidence. See *Arthur H.*, 212 Ill. 2d at 464.

¶ 29 CONCLUSION

¶ 30 The judgment of the circuit court of Peoria County is affirmed.

¶ 31 Affirmed.

JUSTICE WRIGHT, dissenting.

¶ 32 At this juncture, it is clear mother is unfit and very unlikely to become able to parent this child in the near future. However, the focus of our attention must be on whether the evidence supports the court's conclusion that the minor's best interests required the court to terminate the *minor's* relationship with her mother at this point in time. I respectfully dissent because the manifest weight of the evidence reveals "the opposite conclusion is clearly evident." See *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004).

¶ 33 Perhaps with a little more time together with this particular foster family, the minor will be able to develop a healthy and less defiant sense of self, without an ongoing strong attachment to her biological, but clearly unfit, mother. Based on this record, I suggest the court's decision to terminate mother's parental rights during the "honeymoon" period while the minor was adjusting to a new family was well intentioned, but clearly premature. In my view, the manifest weight of

the evidence reveals the minor's best interests will not be served by forcing the minor to abruptly abandon all ties to the only mother she has known, and long before the minor has an equally strong attachment to another parental figure.

¶ 34 For this reason, I respectfully dissent.