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2016 IL App (3d) 160009-U

Order filed May 27, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

<i>In re</i> J.F.,)	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. 3-16-0009
)	Circuit No. 12-JA-270
v.)	
)	
Sheteika F.,)	The Honorable
)	Albert L. Purham,
Respondent-Appellant).)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* In an appeal in a termination of parental rights case, the appellate court held that: (1) the trial court was not required to specifically find in the best interest portion of the proceedings that the State had met its burden by a preponderance of the evidence; and (2) the mother had forfeited her claim of a denial of due process in the trial court proceedings. The appellate court, therefore, affirmed the trial court's judgment, terminating the mother's parental rights to her minor child.

¶ 2 In the context of a juvenile abuse and neglect proceeding, the State filed a petition to involuntarily terminate the parental rights of respondent mother, Sheteika F., to her minor child, J.F. After hearings on the matter, the trial court found that respondent was an unfit parent/person and that it was in the minor's best interest to terminate respondent's parental rights. Respondent appeals, arguing that: (1) the trial court did not make an appropriate finding at the best interest hearing that was necessary to terminate respondent's parental rights; and (2) she was denied due process during the trial court proceedings. We affirm the trial court's judgment.

¶ 3 **FACTS**

¶ 4 Respondent and John W. were the biological parents of the minor child, J.F., who was born in March 2007. In October 2012, the Department of Children and Family Services (DCFS) took temporary custody of J.F. after receiving and investigating calls that were made to the DCFS hotline about the alleged abuse of J.F. Shortly thereafter, DCFS filed a juvenile abuse and neglect petition in the trial court. The petition alleged first that J.F. was an abused minor because he had been sexually molested by respondent's boyfriend, Marcus Childs, during a specified time period in 2012. Second, the petition alleged that J.F. was a neglected minor because he had been subjected to an injurious environment in several respects, which included, among other things, the allegation of sexual molestation of J.F. by Childs; an allegation that Childs had been residing with respondent and J.F., even though respondent was aware that Childs had sexual abuse charges pending and that J.F. had reported being molested by Childs; and an allegation that J.F. reported that he had seen respondent and Childs engaged in a sexual act. Respondent and John W. were given court-appointed attorneys to represent them in the juvenile court proceedings.

¶ 5 On March 8, 2013, after an adjudicatory hearing in which respondent stipulated that the petition could be proven and John W. did not demand strict proof thereof, J.F. was found to be an

abused and neglected minor. A dispositional hearing was held, at the conclusion of which, the trial court found that respondent was an unfit parent. A separate finding of parental unfitness was made as to John W. at a later date. The finding of parental unfitness as to respondent was based upon the contents of the petition, including the failure to protect J.F., and a lack of cooperation and participation. The trial court made J.F. a ward of the court and named DCFS as J.F.'s guardian.

¶ 6 At the time of disposition, respondent was given certain tasks to complete in order to correct the conditions that led to the adjudication and removal of J.F. Those tasks included, among other things, to: (1) cooperate fully and completely with DCFS; (2) obtain a drug and alcohol assessment and successfully complete the recommended treatment; (3) complete two random drug tests per month; (4) obtain a psychological examination and follow the recommendations made; (5) participate in and successfully complete individual counseling; (6) participate in and successfully complete a parenting course; (7) participate in and successfully complete a domestic violence course; (8) obtain and maintain stable housing; and (9) attend scheduled visits with J.F. and demonstrate appropriate parenting conduct during those visits.

¶ 7 The first permanency review hearing was held in August 2013. Respondent appeared in court for that hearing and was represented by her attorney. A report, which had been prepared for the hearing by the caseworker, indicated that as for the positive aspects of respondent's performance during the period, respondent: (1) had attended her visits with J.F. and had interacted with J.F. appropriately; (2) had actively sought employment; (3) had attended her individual counseling sessions; and (4) had attended domestic violence classes since the end of July 2013. As for the negative aspects of respondent's performance during the period, the report indicated that respondent: (1) had not obtained stable housing; (2) had not obtained employment;

and (3) had initially failed to attend her domestic violence classes. The caseworker recommended that DCFS remain guardian of J.F. After considering the caseworker's report, the trial court found that respondent's efforts toward achieving the service plan/permanency goal were mixed and that she needed to do better. The trial court set the permanency goal for J.F. as return home within 12 months and kept DCFS as the guardian of J.F.

¶ 8 The next permanency review hearing was held in February 2014. Respondent was present in court for the hearing and was represented by her attorney. A report, which had been prepared for the hearing by the caseworker, indicated that as for the positive aspects of respondent's performance during the period, respondent: (1) had attended her visits with J.F. and had interacted with J.F. appropriately; (2) had continued to seek employment; (3) had actively participated in domestic violence group counseling; (4) had obtained a psychological evaluation; and (5) had continued to attend individual counseling and continued to make progress. As for the negative aspects of respondent's performance during the period, the report indicated that respondent: (1) had not obtained stable housing; (2) had not obtained employment; and (3) had not completed any of her random drug tests. The caseworker recommended in the report that respondent be found to still be an unfit parent and that DCFS remain guardian of J.F. After considering the caseworker's report, the trial court found that respondent had made mixed efforts to achieve the service plan/permanency goal in that respondent had failed to complete a number of the drug tests and had made no effort to find stable housing, but in other respects her efforts were reasonable. The trial court ordered that DCFS was to retain guardianship of J.F., and a new permanency review hearing date was scheduled.

¶ 9 A third permanency review hearing was held in August 2014. Respondent failed to appear in court for the hearing but her attorney was present. The permanency review report,

which the caseworker had prepared for the hearing, indicated that as to the positive aspects of respondent's performance during the period, respondent: (1) had continued to seek employment; (2) had successfully completed a parenting course; (3) had successfully completed a 20-week domestic violence course; (4) had attended individual counseling until July 2014; and (5) had interacted appropriately with J.F. at the visits she attended. As for the negative aspects of respondent's performance during the period, the report indicated that respondent: (1) had failed to obtain stable housing; (2) had failed to obtain employment; (3) had completed only 1 of the 12 required randomly-scheduled drug tests and had tested positive for marijuana in that test; (4) had reported that she used marijuana on occasion to deal with the sadness of not having J.F. in her care; (5) had been unsuccessfully discharged from individual counseling in July 2014 for lack of attendance and lack of progress; and (6) had frequently missed visits with J.F. and had missed at least one of her weekly visits per month since the last permanency review hearing. At the conclusion of the report, the caseworker recommended that the service plan/permanency goal be changed to return home pending status hearing, that respondent be found to still be an unfit parent, and that DCFS remain guardian of J.F. After considering the caseworker's report, the trial court found that the current service plan/permanency goal of return home within 12 months was no longer appropriate and changed the permanency goal to substitute care pending the court's decision on termination of parental rights. In the permanency review order, however, the goal was written incorrectly as "return home pending court's decision [on] termination of parental rights."¹ The trial court also found that respondent had not made reasonable efforts to achieve the service plan/permanency goal in that respondent was not completing random drug

¹ The format of this quote has been changed for the ease of the reader. Some of the capital letters have been omitted.

tests as required, had tested positive for marijuana, and had been unsuccessfully discharged from individual counseling. The trial court ordered that DCFS was to retain guardianship of J.F., and a new permanency review hearing date was scheduled.

¶ 10 A fourth permanency review hearing was held in February 2015. Respondent was present in court for the hearing and was represented by her attorney. The permanency review report, which the caseworker had prepared for the hearing, indicated that as to the positive aspects of respondent's performance during the period, respondent: (1) had continued to seek employment; (2) had reported to the caseworker that she was planning on starting GED classes, although she had not provided proof of enrollment to the caseworker; and (3) had consistently attended her visits with J.F. and had interacted appropriately with J.F. during those visits. As for the negative aspects of respondent's performance during the period, the report indicated that respondent: (1) had failed to obtain stable housing; (2) had failed to obtain employment; (3) had not done any of her randomly-scheduled drug tests; and (4) had not attended any counseling services. At the conclusion of the report, the caseworker recommended that respondent be found to still be an unfit parent and that DCFS remain guardian of J.F. After considering the caseworker's report, the trial court found that the current service plan/permanency goal of substitute care pending the court's decision on termination of parental rights was appropriate. The trial court orally found that respondent had made reasonable efforts, noting the difficulty that respondent's financial situation posed to her completion of some of the tasks assigned. The written order, however, incorrectly stated that the trial court made no finding as to the reasonableness of respondent's efforts. The trial court ordered that DCFS was to retain guardianship of J.F., and a new permanency review hearing date was scheduled.

¶ 11 In March 2015, the State filed a petition to terminate respondent's parental rights to J.F. The termination petition alleged that respondent was an unfit person as defined in section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)) in that she had failed to make reasonable progress toward the return home of the minor within nine months following the adjudication of J.F. as an abused and neglected minor.² The nine-month period specified in the petition was from May 1, 2014, through February 1, 2015. Respondent filed an answer and denied the count of the termination petition that applied to her.

¶ 12 A hearing was held on the parental-unfitness portion of the termination petition in June 2015. Respondent failed to appear in court for the hearing, but her attorney was present. The State asked the trial court to take judicial notice of the original abuse and neglect petition, the adjudication and disposition orders relating to that petition, and the subsequent permanency review orders. The State also admitted two exhibits—a certified copy of respondent's random drug test records and a certified copy of respondent's counseling records—and asked the court to consider only the portion of those exhibits that pertained to the time period referenced in the termination petition. The caseworkers testified in a manner that was consistent with the prior permanency review reports as to respondent's progress during the specified time period. During the testimony, one of the caseworkers acknowledged, however, that once the service plan/permanency goal was changed to substitute care pending the court's decision on termination of parental rights, the agency stopped paying for respondent's services, such as a substance abuse assessment, counseling, or random drug screens, and that respondent would have had to pay for those services on her own. After all of the evidence had been presented, the trial court heard the

² The State also sought to terminate John W.'s parental rights to J.F. John W. was later defaulted for failing to appear, and his parental rights to J.F. were subsequently terminated.

arguments of the attorneys. Respondent's attorney argued, among other things, that it was unfair to respondent in terms of due process for the State to pick a nine-month period in the termination petition that included a time period when services for respondent were no longer being paid for by the agency. Respondent's attorney made no other due process argument. At the conclusion of the hearing, the trial court found that the unfitness portion of the termination petition had been proven by clear and convincing evidence. The case was scheduled for a hearing on the best-interest portion of the termination petition.

¶ 13 A hearing on the best-interest portion of the termination petition was started in September 2015. Respondent was present in court for the hearing and was represented by her attorney. A best-interest report and addendum (collectively referred to as the report) had been prepared by the caseworker in preparation for the hearing and had been filed with the court. In the report, the caseworker noted that J.F. was 8 years old and had resided in the current foster placement for the past 11 months. The foster parents had adequately provided for all of J.F.'s needs. J.F. was doing well in the home and was the only child that was currently placed in the home, which allowed J.F. to receive constant one-on-one attention from the foster parents. J.F. had developed a healthy relationship and attachment to the foster parents; they appeared to be bonded and to love one another. J.F. was doing well in school, and there were currently no reported academic or behavioral concerns from the school. The foster parents had J.F. involved in the community with such activities as baseball camp, swimming lessons, daily daycare, counseling, and church. As for J.F.'s relationship with respondent, the caseworker indicated in her report that J.F. had regular supervised monthly visits with respondent and appeared to enjoy the time he spent with her. The foster parents reported that if they did adopt J.F., they were open and willing to have on-going contact between J.F. and respondent, if it was in J.F.'s best interest to do so. Based on

all of the above, the caseworker recommended and believed that it was in J.F.'s best interest to be adopted by the foster parents. The caseworker recommended, therefore, that respondent's parental rights to J.F. be terminated.

¶ 14 Early into the best interest hearing, respondent's attorney requested a continuance, noting that a typographical error in the best interest report had led her to believe that J.F. had only been with the current foster parents for a very short time, rather than for almost a year. Respondent's attorney told the court that a big part of her defense was going to be based upon that fact—that J.F. had only been with the current foster parents for a very short period of time. The trial court granted the continuance over the State's objection.

¶ 15 The best interest hearing resumed the following month in October 2015. Respondent was again present for the hearing and represented by her attorney. After asking some questions of the caseworkers, respondent's attorney presented the testimony of respondent. Respondent testified that she was J.F.'s mother, that he was currently 8 years old, and that she saw him every month. Respondent was currently looking for work and was receiving township relief of about \$400. She had an interview for employment at McDonald's scheduled for later that day. According to respondent, she needed to obtain a medical card to pay for services before she could start going to counseling again. Respondent had a temporary medical card initially, but it had expired, and she had not obtained a permanent medical card, although she was trying to get one.

¶ 16 After respondent testified, her attorney called the current guardian *ad litem* (GAL) to testify. The GAL stated that she had been the GAL since about the time the case was set for termination of parental rights. When the GAL was asked when she had last met with J.F., she responded that she had not met with J.F. and that she had not talked to him on the phone. The trial court continued the best interest hearing at that point so that the GAL could meet with J.F.

¶ 17 The best interest hearing resumed in November 2015. Respondent was present for the hearing that day and was represented by her attorney. The GAL reported that she had met with J.F., and that J.F. had told her that he was not going to talk about the underlying incident. J.F. indicated that he liked school and where he was living and that he felt comfortable and safe. A worker from CASA reported that she had visited with J.F. most recently in August and again in October 2015. The CASA worker had not yet filed a report with the court about those visits. The visit in October was different than the worker's usual visit with J.F. because for the first time, J.F. expressed to the worker his desire about where he wanted to live. J.F. told the worker that he wanted to live with his current foster mother forever. Over the State's objection, the trial court continued the best interest hearing again so that the worker could document what J.F.'s wishes were about where he wanted to live and so that a new counseling report on J.F. could be obtained, if one was available.

¶ 18 The best interest hearing resumed the following month in December 2015. Respondent was present in court that day for the hearing and was represented by her attorney. Prior to the court date, the CASA worker had filed a new report and some additional documentation was filed regarding J.F.'s counseling. In a letter from J.F.'s new counselor, the counselor indicated that J.F. seemed very connected to his foster mother and that he seemed content, happy, and well adjusted. According to the counselor, J.F. referred to his current foster mother as his mom and referred to respondent by her first name. Respondent was called to testify briefly during the hearing and stated that J.F. always called her, "Mom," and never called her by her first name. Following the presentation of the evidence, the trial court heard the arguments of the attorneys. The State and the GAL argued for termination of respondent's parental rights, and respondent's attorney argued against termination.

¶ 19 After reviewing the reports, the testimony, and the arguments, the trial court made its ruling. The trial court ultimately found that it was in the best interest of J.F. to terminate respondent's parental rights and made a specific oral and written finding to that effect. The trial court terminated respondent's parental rights, set J.F.'s permanency goal to adoption, and named DCFS as the guardian of J.F. with the right to consent to adoption. Respondent filed this appeal to challenge the trial court's ruling.

¶ 20 ANALYSIS

¶ 21 I. Respondent's Challenge as to Best Interest

¶ 22 As her first point of contention on appeal, respondent argues that the trial court erred in entering an order terminating respondent's parental rights. Respondent claims that trial court had no authority to enter such an order because the trial court made no oral or written finding that the State had met its burden of proof on best interest by a preponderance of the evidence. In making that claim, respondent asserts that she does not concede that the State met its burden to establish either parental unfitness or best interest and that she submits that the State did not do so. Respondent asks, therefore, that we reverse the trial court's judgment.

¶ 23 The State argues that the trial court's ruling was proper and should be upheld. The State asserts that the respondent's initial claim is contradicted by the record, which shows that the trial court found both orally and in its written order that termination of J.F.'s parental rights was in J.F.'s best interest. The State asserts further that no additional finding was necessary and that the trial court was not required to use the phrase, "by a preponderance of the evidence," in making its best interest determination. The State also contends that respondent's claim is forfeited because respondent did not object at trial when the oral and written finding were made and because respondent has not cited any authority on appeal to support that claim. As for the statement in

respondent's brief that she was not conceding that the State had proven parental unfitness or best interest, the State posits that respondent has forfeited that claim as well because respondent made no argument in her appellate brief to support that claim. In the alternative, the State contends that it did prove both the unfitness and best interest components of the termination petition and that the trial court's findings in that regard were not against the manifest weight of the evidence. The State asks, therefore, that we affirm the trial court's judgment terminating respondent's parental rights to J.F.

¶ 24 The involuntary termination of parental rights is a two-step process, which is governed by the provisions of both the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2014)) (Juvenile Court Act) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2014)). See *In re D.T.*, 212 Ill. 2d 347, 352 (2004). In the first step of the proceedings, the State must prove by clear and convincing evidence that the parent is an "unfit person" as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). 705 ILCS 405/2-29(2) (West 2014); *In re C.W.*, 199 Ill. 2d 198, 210 (2002). If the State has satisfied that burden, the case moves on to the second step of the proceedings. See *C.W.*, 199 Ill. 2d at 210. In the second step, the State must prove by a preponderance of the evidence that termination of parental rights is in the minor's best interest. See 705 ILCS 405/2-29(2) (West 2014); *C.W.*, 199 Ill. 2d at 210; *In re Tiffany M.*, 353 Ill. App. 3d 883, 891 (2004). The trial court's findings as to fitness and best interest in a termination proceeding will not be reversed on appeal unless they are against the manifest weight of the evidence; that is, unless it is clearly apparent from the record that the trial court should have reached the opposite conclusion. See *In re C.N.*, 196 Ill. 2d 181, 208 (2001); *In re Austin W.*, 214 Ill. 2d 31, 51-52 (2005); *In re A.M.*, 358 Ill. App. 3d 247, 252-53 (2005); *Tiffany M.*, 353 Ill. App. 3d at 889-92.

¶ 25 In the present case, after considering respondent's argument on this issue, we find that respondent's argument must be rejected. As the State correctly notes, the trial court specifically found in both its oral and written ruling that termination of respondent's parental rights was in J.F.'s best interest. Contrary to respondent's assertion on appeal, the trial court was not required to specifically find that the State had met its burden of proof on best interest by a preponderance of the evidence. Rather, absent some strong affirmative evidence to the contrary, we presume that the trial court knew the law and that it applied the law correctly. See *In re N.B.*, 191 Ill. 2d 338, 345 (2000). Having reviewed the record thoroughly in the instant case, we find no evidence to rebut that presumption.

¶ 26 Furthermore, although respondent states in her brief that she does not concede that the State met its burden of proof as to either the parental unfitness or best interest portion of the termination proceeding and that she submits that the State did not meet its burden, respondent presents no argument to support that claim. Thus, respondent has forfeited that claim on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc.*, 118 Ill. 2d 389, 401 (1987); *People v. Ford*, 301 Ill. App. 3d 56, 59 (1998).

¶ 27 **II. Respondent's Due Process Claim**

¶ 28 As her second point of contention on appeal, respondent argues that her constitutional right to due process was violated during the trial court proceedings in this case. Respondent asserts that there were so many violations of the provisions of the Juvenile Court Act that the proceedings in this case were "slipshod" and fundamentally unfair. Specifically, respondent points out that: (1) the GAL was changed numerous times in this case without any orders of substitution being entered by the court (see 705 ILCS 405/2-17(7) (West 2014)); (2) the case had to be continued during the best interest hearing because the current GAL had never spoken to

J.F. (see 705 ILCS 405/2-17(8) (West 2014)); (3) there was no indication that the GAL had spoken to J.F.'s current foster parents (see *id.*); (4) none of the permanency review hearings in this case addressed whether the services required by the court and the service plan were appropriate, successful, or being provided; (5) the written order for the permanency review hearing in August 2014 incorrectly listed the new service plan/permanency goal as "return home pending court's decision [on] termination of parental rights," rather than " substitute care pending the court's decision on termination of parental rights," (see 705 ILCS 405/2-28(2)(C) (West 2014)); (6) the order for the February 2015 permanency review hearing failed to state why the particular service plan/permanency goal was selected and others ruled out and incorrectly stated that the trial court had made no finding as to respondent's efforts when the trial court had actually found that respondent's efforts were reasonable given her financial situation; (7) respondent had three different appointed attorneys throughout the proceedings in this case but no withdrawals or substitutions were filed (see 705 ILCS 405/1-5(1) (West 2014)); (8) the proceedings in this case were conducted by several different judges (see Ill. S. Ct. R. 903 (eff. Jul. 1, 2006)); and (9) respondent was assigned multiple different caseworkers throughout the course of this case, who committed various errors as well. Based upon the alleged violation of due process, respondent asks that we reverse the trial court's judgment.

¶ 29 As the State correctly notes, however, respondent has forfeited her due process claim by failing to object to those alleged errors in the trial court.³ *Fawcett v. Reinertsen*, 131 Ill. 2d 380,

³ The State also makes assertions as to the legitimacy of each of the individual allegations of error and as to the non-final nature of some of the trial court's orders in question. We need not address those assertions, however, since we find that respondent's due process claim has been forfeited on appeal.

386 (1989) (issues not raised in the trial court, even constitutional matters, are generally considered to be forfeited on appeal). Although respondent made a due process argument in the trial court, it was a completely different argument—that it was somewhat unfair to respondent for the State to pick a nine-month period that included a time period during which the agency was no longer paying for respondent's services—and did not pertain to any of the alleged errors that respondent seeks to raise here. The only alleged error cited above that respondent raised in the trial court was that the person who was serving as the GAL at the time of the best interest hearing had not met with or spoken to J.F. Any potential error in that regard was immediately remedied, however, when the trial court continued the best interest hearing so that the GAL could meet with J.F. None of the other alleged errors above were raised or objected to by respondent in the trial court at any time. Thus, under the circumstances of this case, we find that respondent's due process claim has been forfeited on appeal. See *id.*

¶ 30

CONCLUSION

¶ 31

For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 32

Affirmed.