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2016 IL App (3d) 160185-U

Order filed August 26, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

<i>In re</i> E.H.,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
a Minor,)	McDonough County, Illinois,
)	
(The People of the State of Illinois,)	
)	Appeal No. 3-16-0185
Petitioner-Appellee,)	Circuit No. 14-JA-1
)	
v.)	
)	
Brittany P.,)	Honorable
)	Patricia A. Walton,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice O'Brien and Justice Carter concurred in the judgment.

ORDER

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

¶ 2 On January 5, 2015, the State filed a petition to terminate parental rights of mother with regards to E.H., a minor. After finding mother unfit, the court found it was in the best interest of

the child to terminate mother's parental rights. Mother appeals the trial court's finding resulting in the termination of her parental rights. We affirm.

¶ 3

BACKGROUND

¶ 4

On February 3, 2014, the State filed a petition for adjudication of wardship, alleging that mother neglected her daughter, E.H., born on January 6, 2014. On February 3, 2014, the trial court entered a temporary custody order placing E.H. in shelter care with "The Guardianship Administrator of the Illinois Department of Children and Family Services" (DCFS). According to the visitation plan established on February 20, 2014, mother had weekly supervised visits with E.H. The service plan dated April 1, 2014, required mother to complete services including: individual counseling, parenting classes, domestic violence sessions, and a substance abuse assessment.

¶ 5

On April 14, 2014, mother admitted to reports of domestic violence between mother and father in mother's home. Based on mother's admission, the court entered an adjudicatory order finding E.H. was adjudicated neglected due to an injurious home environment.

¶ 6

A permanency review report filed on November 12, 2014, indicated that mother continued to visit with E.H. as scheduled, but explained the visits became sporadic at times due to mother's reported illness. On November 20, 2014, a permanency review order was entered changing the goal from return home to substitute care, pending a determination of termination of parental rights. Additionally, on November 20, 2014, mother's weekly visits were reduced from three hour visits to one hour visits. A status report filed on December 30, 2014, indicated that mother was visiting E.H. and was happy to see E.H. during these reduced visits.

¶ 7

The State filed a petition to terminate mother's parental rights on January 5, 2015. The termination petition stated that mother failed to, among other things, make reasonable efforts to

correct the conditions that were the basis for the removal of E.H. during the nine-month period following the adjudication of neglect from April 14, 2014, to January 14, 2015, under 750 ILCS 50/1(D)(m)(i). The termination petition alleged mother made minimal progress in services, could not financially support herself or E.H., did not have appropriate housing, had a mental impairment, and reported an incident of domestic violence between mother and father since the filing of the termination petition.

¶ 8 The hearing on the termination petition began on April 13, 2015. Kirsten Burns, DCFS case manager of E.H., testified that she was E.H.'s caseworker from February 2014 until May 2014. Burns completed an initial client service plan, which is included in the integrated assessment. Based on the integrated assessment, initial recommendations of what each parent should do in order to have E.H. returned home were made. Parenting classes were recommended.

¶ 9 Burns testified that she was concerned about domestic violence, noting that mother and father fought often. Burns noted that mother did not demonstrate an ability to recognize what was needed or required of her in order to be a successful parent to E.H. During her time as caseworker, Burns observed mother needing prompting on how to properly calm or hold E.H. during visitation.

¶ 10 According to Burns, mother's lifestyle was not conducive to being a parent to E.H. Mother frequented bars and did not account for who would care for E.H. while she socialized outside of the home. Further, Burns said that mother had not made reasonable efforts or substantial progress toward the return home of E.H. during the time that she was a caseworker.

¶ 11 Misty Malda, The Center for Youth and Family Solutions caseworker on this case from May 2014 to August 2014, testified that although mother appeared to be making reasonable efforts, mother was not making reasonable progress towards the return home of E.H. Malda

based her opinion on mother's decreased IQ and mother's inability to retain information concerning parenting skills.

¶ 12 Amanda Shankels, a former employee at The Center for Youth and Family Solutions, testified that from May 2014 to December 2014, she observed mother's interactions with E.H. and had concerns about mother's inability to stay focused on E.H., mother's inability to retain information about how to better parent E.H., and mother's general lack of safety concerns when taking E.H. on walks and such common activities.

¶ 13 Next, the court heard from mother's therapist, Mallory Hipler. Hipler testified concerning her observations of mother during the period of April 14, 2014 to January 14, 2015. Hipler stated that she had concerns about mother's ability to retain skills and meet goals. Hipler testified that mother's counseling was unsuccessful because mother did not make significant progress towards her goals.

¶ 14 Finally, Emily Beaulieu, a caseworker from the Center for Youth and Family Solutions, testified concerning the period from August 2014 to the time of the hearing. Beaulieu testified that mother rated as unsatisfactory in her client service plan because she failed to implement skills she was taught, failed to keep appointments, had police contact, and stopped taking prescribed medication. Further, mother cancelled several visits with E.H., had no stable housing and no stable income. Beaulieu was also concerned for E.H.'s safety based on incidents she observed during mother's visits.

¶ 15 On January 31, 2016, the trial court found that the State met their burden and mother failed to make reasonable progress dating back to the court's dispositional order entered on May 19, 2014, as alleged in the termination petition. The court entered an order finding mother unfit.

¶ 16 DCFS filed a best interest report on February 25, 2016. The report indicated that E.H. had lived with her paternal grandmother for a total of one year and ten months. Prior to placement with paternal grandmother, E.H. resided in a traditional foster home from January 31, 2014 to April 2, 2014. During E.H.'s placement with paternal grandmother, E.H.'s basic needs for food, shelter, healthcare, and clothing were met. The report summarized that "[i]t is this worker's recommendation and belief it is in the best interest of [E.H.] to terminate the biological mother's parental rights. It is in the child's best interest due to the above stated facts and according to the best interest factors set forth in the Juvenile Court Act."

¶ 17 The best interest report indicated that E.H. had last visited her mother on February 16, 2016. Prior to that, mother and E.H. visited on July 7, 2015, September 1, 2015, and September 15, 2015. The report stated that the visits had become sporadic since the permanency goal changed on November 20, 2014, from return home to substitute care pending determination of termination of parental rights. The report noted that E.H. had a strong relationship with her foster parent, paternal grandmother. E.H. attends PACT Head Start and appears comfortable. E.H. will have access to elementary school and social services within paternal grandmother's community. The report indicated that while with paternal grandmother, E.H. had developed into a loving and social child, and E.H. has bonded with paternal grandmother.

¶ 18 A best interest hearing was held on March 7, 2016. Misty Malda, the caseworker assigned to this case in August of 2015, testified that her last observation of mother and E.H. showed minimal connection between the two, however, E.H. does reach out and call mother "mom." Malda stated that prior to the change in goal from return home to adoption, mother's visitations were more consistent. Although mother had monthly scheduled visits, she cancelled numerous visits and had not asked to reschedule. Finally, Malda testified that E.H.'s placement

with paternal grandmother provides for all of E.H.'s physical, emotional, medical, and psychological needs. Malda believed it was in the best interest of E.H. to terminate mother's parental rights.

¶ 19 Paternal grandmother also testified at the best interest hearing. Grandmother testified that if she were granted adoptive rights, she understood that she would be in the position to determine whether either parent would continue to visit E.H., and that she would make that decision based on E.H.'s best interest. At the hearing, paternal grandmother believed it was in E.H.'s best interest to continue to have contact with her parents.

¶ 20 Following the hearing, the trial court commented on the evidence. The court hoped that paternal grandmother would maintain contact between E.H. and her biological parents. The court noted E.H. felt secure and was bonded with paternal grandmother. The court found E.H.'s best chance of permanency was with paternal grandmother, not with E.H.'s mother, who seems to parent on her own schedule. On March 7, 2016, following the best interest hearing, the trial court found it was in the best interest of E.H. to terminate mother's parental rights.

¶ 21 On April 6, 2016, mother filed a timely notice of appeal.

¶ 22 ANALYSIS

¶ 23 Mother argues on appeal that the State failed to meet their burden of proof during the best interest hearing by a preponderance of the evidence. Thus, the trial court erred in terminating mother's parental rights. The State argues the trial court's finding that it was in E.H.'s best interest to terminate mother's parental rights was not against the manifest weight of the evidence.

¶ 24 The judicial proceedings for a termination petition consist of a two-step, bifurcated process. 705 ILCS 405/2-29 (West 2014); 750 ILCS 50/1(D) (West 2014). The court first conducts a fitness hearing, and if the court adjudicates the parent unfit based on the allegations in

the termination petition, the court then conducts a separate dispositional or “best interest” hearing to determine whether it is in the best interest of the child that the parent’s rights be terminated. 705 ILCS 405/2-29(2) (West 2014); *In re D.F.*, 201 Ill. 2d 476, 494-95 (2002). Following a finding of unfitness, the focus of the proceedings shifts to consider only the best interests of the child. *In re D.T.*, 212 Ill. 2d 347, 363-364 (2004). Therefore, at the best interests hearing, “the parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life.” *Id.* at 364; *In re S.D.*, 2011 IL App (3d) 110184, ¶ 34. In the present case, mother is only challenging the trial court’s best interest finding.

¶ 25 In making this determination, the court considers statutory factors “in the context of the child’s age and developmental needs.” 705 ILCS 405/1-3(4.05) (West 2016). These statutory factors include: (1) the child’s physical safety and welfare; (2) the development of the child’s identity; (3) the child’s familial, cultural and religious background; (4) the child’s sense of attachment, including love, security, familiarity, continuity of relationships with parent figures; (5) the child’s wishes and goals; (6) community ties; (7) the child’s need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the person available to care for the child. *Id.*

¶ 26 During the best interest hearing, the State had to prove by a preponderance of the evidence that it was in the child’s best interest to terminate mother’s parental rights. *In re D.T.*, 212 Ill. 2d at 365 (2004). A trial court’s best interest finding will not be disturbed on appeal unless the finding is contrary to the manifest weight of the evidence. *In re S.D.* at ¶ 33. A trial court’s ruling will be found to be against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d at 498

¶ 27 First, we note that according to the court’s order following the best interest hearing, the trial judge measured the evidence by a clear and convincing standard rather than the required preponderance standard. Though the court held the State to a higher standard of proof, we must examine whether the court’s best interest findings were against the manifest weight of the evidence. We further note that our review is not *de novo*, but is restricted to evaluating the factual basis for the court’s stated findings and conclusions.

¶ 28 In this case, it is clear that the trial court considered the relevant statutory factors in making its best interest determination. The record reveals that at the time of the best interest hearing, E.H. was two years old. E.H. resided with her paternal grandmother in the same home from April 2014 to February 2016, the majority of E.H.’s life. E.H. had formed a strong continuous relationship with her grandmother, and has developed into a loving and social child. To meet E.H.’s needs, grandmother possesses a large support system, community resources, and a part-time job. E.H.’s basic needs of food, shelter, healthcare, and clothing are met. E.H. also looks to her grandmother for comfort, stability, and permanency.

¶ 29 After a careful review of the record, we conclude the trial court’s decision that it was in the best interest of E.H. to terminate mother’s parental rights was not against the manifest weight of the evidence.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, the judgment of the circuit court of McDonough County is affirmed.

¶ 32 Affirmed.