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2016 IL App (4th) 160279-U

NO. 4-16-0279

FILED
September 2, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.F., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 15JA17
TERRELL ADAMS,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's decision to terminate respondent father's parental rights was not against the manifest weight of the evidence.

¶ 2 In April 2016, the trial court terminated the parental rights of respondent, Terrell Adams, to his child, K.F. (born February 6, 2015). Respondent appeals, arguing both the court's fitness and best-interest findings were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In February 2015, the State filed a petition alleging K.F. was a neglected minor because his environment was injurious to his welfare. Specifically, it asserted K.F. was a newborn infant and his mother's parental rights to two other children had been involuntarily terminated the previous month. The basis for termination in those cases was that K.F.'s mother was

unable to discharge her parental responsibilities due to mental impairment, mental illness, or intellectual or developmental disability. The State alleged the mother's diagnoses indicated "long-term, if not permanent disabilities that [would] prevent her from ever independently parenting a child." It further asserted that the legal name and whereabouts of K.F.'s father were unknown. Ultimately, however, respondent was identified as K.F.'s father.

¶ 5 In June 2015, the trial court entered an adjudicatory order, finding K.F. was a neglected minor. The court based its finding on facts showing K.F.'s mother "had two prior termination of [parental] rights cases" that were "due to her intellectual/cognitive deficit" and inability to parent a child. It further based its finding on facts showing respondent was an inmate in the Illinois Department of Corrections. In July 2015, the court's dispositional order was entered, adjudicating K.F. a neglected minor, making him a ward of the court, and placing custody and guardianship of K.F. with the Illinois Department of Children and Family Services (DCFS).

¶ 6 In October 2015, the State filed an expedited motion to terminate respondent's parental rights. (We note K.F.'s mother was also named in the State's petition and her parental rights to K.F. were terminated in the underlying proceedings; however, K.F.'s mother is not a party on appeal and, therefore, we address the facts and the issues only as they relate to respondent and K.F.) The State alleged respondent was unfit (1) for failing to maintain a reasonable degree of interest, concern, or responsibility as to K.F.'s welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) because he was depraved in that he was convicted of predatory criminal sexual assault of a child under the age of 13 (750 ILCS 50/1(D)(i) (West 2014)); (3) because K.F. was in the temporary custody or guardianship of DCFS, respondent was incarcerated as the result of a criminal conviction, respondent had little or no contact with K.F. prior to his incarceration, and

respondent's incarceration would prevent him from discharging his parental responsibilities for K.F. for a period in excess of two years after the filing of the motion for termination of parental rights (750 ILCS 50/1(D)(r) (West 2014)); and (4) because K.F. was in the temporary custody or guardianship of DCFS, respondent was incarcerated, respondent had been repeatedly incarcerated as a result of criminal convictions, and respondent's repeated incarceration prevented him from discharging his parental responsibilities for K.F. (750 ILCS 50/1(D)(s) (West 2014)). The State further alleged that termination of respondent's parental rights was in K.F.'s best interest.

¶ 7 In February 2016, the trial court conducted a fitness hearing in the matter. Monique Howell testified she was K.F.'s caseworker. She stated respondent had been incarcerated since the case began and throughout the underlying proceedings. Due to his incarceration, the only recommended service for respondent was "father/child bonding," which required Howell to take K.F. for visits with respondent. Visitations were scheduled once every three months and Howell testified she had taken K.F. to visit respondent on three occasions. She acknowledged respondent fulfilled the "father/child bonding" requirement of his service plan, noting he never refused a visit.

¶ 8 As part of its case, the State asked the trial court to take judicial notice of Macon County case No. 14-CF-733. It noted respondent was convicted in that case of predatory criminal sexual assault of a victim under the age of 13, he received a six-year prison sentence, and he had an anticipated parole date of July 2019. Respondent raised no objection to the State's request and the court stated it would consider the file in case No. 14-CF-733.

¶ 9 At the conclusion of the State's case, respondent rested without presenting any evidence. Following the parties' arguments, the trial court found respondent unfit based upon

each ground alleged by the State in its motion to terminate.

¶ 10 In April 2016, the trial court conducted a best-interest hearing. The State's evidence showed one-year-old K.F. resided in a foster home with his two older siblings. Howell testified he had been in that home since being discharged from the hospital at three days old. She stated K.F. was "doing awesome" and was "very well bonded" to his foster parents, who wanted to adopt him. The foster parents were also in the process of adopting K.F.'s older siblings and were meeting all of K.F.'s needs.

¶ 11 The record reflects the trial court also reviewed two reports prepared in connection with the State's motion to terminate. The reports showed respondent was the father of K.F.'s older siblings and his parental rights to those children were terminated in January 2015. They further showed respondent was in prison and would remain imprisoned until July 2019. While in prison, he had three visits with K.F. but was otherwise unable to engage in any services.

¶ 12 At the conclusion of the hearing, the trial court determined termination of respondent's parental rights was in K.F.'s best interest. The same date as the best-interest hearing, the court entered its written judgment terminating respondent's parental rights.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, respondent argues the trial court erred in terminating his parental rights to K.F. Specifically, he argues both the court's finding that he was unfit and its best-interest determination were against the manifest weight of the evidence.

¶ 16 A. Fitness

¶ 17 A trial court has authority to involuntarily terminate parental rights where it finds

that (1) the State has proved, by clear and convincing evidence, that a parent is unfit as set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)); and (2) termination is in the child's best interest. *In re J.L.*, 236 Ill. 2d 329, 337-38, 924 N.E.2d 961, 966 (2010). "A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). "A reviewing court will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 18 Here, the State alleged respondent was unfit based on multiple grounds, including the ground of depravity set forth in section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2014)). Under that section, a conviction for predatory criminal sexual assault of a child "create[s] a presumption that a parent is depraved, which can be overcome only by clear and convincing evidence." *Id.*

¶ 19 At the hearing to determine respondent's fitness, the State presented evidence that respondent had been previously convicted of predatory criminal sexual assault of a victim under the age of 13; that he received a six-year prison sentence for that offense, which he was currently serving; and he had an anticipated parole date of July 2019. On appeal, respondent acknowledges that this conviction created a presumption of depravity but maintains the presumption was rebutted by his continued visitations with K.F. while imprisoned. We disagree. Respondent presented no evidence to rebut the State's case and little evidence was presented regarding respondent's visits with K.F. We know only that three visits occurred and respondent never refused a visit. Evidence was lacking as to the length of the visits, what occurred during the visits, the re-

lationship between respondent and K.F., or respondent's efforts outside of visitation to demonstrate any care or concern for K.F.'s well-being.

¶ 20 Moreover, respondent fails to explain on appeal precisely how his participation in three visitations with K.F. warrants a finding that he was not depraved. In *In re Shanna W.*, 343 Ill. App. 3d 1155, 799 N.E.2d 843 (2003), the First District was called upon to address the same issue presented here under similar circumstances. In that case, the State established a rebuttable presumption of depravity based on the respondent mother's criminal history. *Id.* at 1166, 799 N.E.2d at 851. In addressing the contention that the respondent rebutted the presumption of depravity based upon her participation with visitation while incarcerated, the court stated as follows:

> "[The] [r]espondent did not have to take any affirmative action to have visits with [her child]; she merely had to wait for the caseworker to drive the child to her on visiting days. This is not affirmative evidence of good conduct—it requires no real effort on the part of the parent." *Id.* at 1167, 799 N.E.2d at 851-52.

We similarly view respondent's conduct in the case at bar and find it insufficient to rebut the presumption of depravity arising from his criminal conviction.

¶ 21 Because respondent failed to rebut the presumption of depravity established by the State, he was unfit as set forth in section 1(D)(i) of the Adoption Act. As a result, the trial court's unfitness finding was not against the manifest weight of the evidence.

¶ 22 B. Best Interest

¶ 23 "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, 918 N.E.2d 284, 290-91 (2009). Section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2014)) sets forth 10 factors for a court to consider when making a best-interest determination. Those factors must be considered in the context of the child's age and developmental needs and include:

> "(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." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291 (citing 705 ILCS 405/1-3(4.05) (West 2008)).

¶ 24 On review, "[w]e 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.*

¶ 25 Here, evidence at the best-interest hearing showed K.F. lived in the same foster

home since shortly after his birth. He was described as "doing awesome" in the home and being "very well bonded" to his foster parents. K.F.'s two older siblings resided in the same home and the foster parents wished to provide all three children with permanency through adoption. Conversely, respondent had been in prison throughout the underlying proceedings. He had three visits with K.F. but was otherwise unable to engage in services due to his imprisonment. It was expected that respondent would remain in prison until July 2019, and, therefore, he would be unable to care for K.F. for the foreseeable future. Given these facts, the record amply supports the trial court's finding that termination of respondent's parental rights was in K.F.'s best interests. Its decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment.

¶ 28 Affirmed.