2016 IL App (4th) 160332-U

NO. 4-16-0332

FILED
September 22, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: D.L., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 14JA73
DERRICK LAMBERT,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

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

¶ 2 Respondent, Derrick Lambert, appeals the termination of his parental rights to his daughter, D.L., born September 30, 2014. He does not challenge the trial court's finding that he is an "unfit person" (750 ILCS 50/1(D)(s) (West 2014)), but he challenges the court's subsequent finding that it would be in D.L.'s best interest to terminate his parental rights.

¶ 3 Because we are unconvinced that the best-interest finding is against the manifest weight of the evidence, we affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 A. The Unfit-Person Hearing

¶ 6 On February 17, 2016, in an adjudicatory hearing on the State's petition for the termination of parental rights, respondent offered to admit count IV of the petition in return for the State's dismissal of the remaining three counts against him. Count IV alleged he was an "unfit person" within the meaning of section 1(D)(s) of the Adoption Act (750 ILCS 50/1(D)(s) (West 2014)) in that (to quote count IV) "he [was] incarcerated as a result of a criminal conviction, [he] ha[d] repeatedly been incarcerated as a result of criminal convictions, and his repeated incarceration ha[d] prevented him from discharging his parental responsibilities for the respondent minor."

¶ 7 After admonishing respondent, the trial court found his admission of count IV to be knowing and voluntary. The court requested a factual basis.

¶ 8 The assistant State's Attorney proposed that the hearing proceed and that when a caseworker, Kelsey Hoover, took the stand and testified, the trial court would consider her testimony not only for purposes of the case against the mother but also as a factual basis for respondent's admission of count IV. Respondent's attorney and the court agreed to that proposal.

¶ 9 The State called Hoover to the stand. We will recount only the portions of her testimony that are relevant to respondent.

¶ 10 She testified she was a foster care family worker for The Center for Youth and Family Solutions and that ever since D.L. came into care on October 3, 2014, she was the caseworker assigned to the case. At the time Hoover assumed her case-management duties, respondent was living in Urbana, Illinois, with his sister. There was supervised visitation each week. No problems emerged during the visitations, and the plan was to progress through supervised visitation and then unsupervised visitation and then ultimately to place D.L. with respondent. After only two weeks, however (and two supervised visitations), respondent was

jailed in Urbana. This happened so soon that Hoover never had much of an opportunity to refer him for services. Around January 2015, he was transferred from the Urbana jail to the Illinois Department of Corrections, where, as of the date of the unfit-person hearing (February 17, 2016), he had remained ever since. His imprisonment limited Hoover in the referrals she could make; the availability of services was up to the facility. She knew that, in prison, respondent had participated in a program called "West Care," which addressed chemical dependency, social skills, and relapse prevention. She did not know if he still was in that program.

¶ 11 After hearing the testimony in the unfit-person hearing, the trial court took judicial notice of respondent's four convictions of residential burglary (Champaign County case Nos. 08-CF-947, 08-CF-1002, 08-CF-1003, and 08-CF-1113) and his most recent conviction, of unlawful use or possession of a weapon by a felon (Champaign County case No. 14-CF-1428), for which he was serving a six-year prison sentence.

¶ 12 On March 24, 2016, the trial court entered an adjudicatory order finding respondent to be an "unfit person" as alleged in count IV, a count he had "admitted *** in open court" and for which there was "a sufficient factual basis to sustain the burden of clear and convincing evidence," to quote the order. (The court also found the mother to be an "unfit person" (750 ILCS 50/1(D)(b), (m)(i), (D)(m)(ii) (West 2014)).)

¶ 13 B. The Best-Interest Hearing

¶ 14 On April 20, 2016, the trial court held a best-interest hearing. The assistant State's Attorney told the court she had no testimony to add to the best-interest report written by The Center for Youth and Family Solutions.

¶ 15 The report, filed on April 13, 2016, is signed by Hoover and a "site supervisor," Jessica Bennett. It states that D.L. was placed with the foster mother on October 3, 2014, when D.L. was three days old. The foster home has three bedrooms, and it is safe and clean. D.L. lives there with the foster mother and three other children, whom the foster mother has adopted: D.L.'s half-brother and half-sister and another young girl.

¶ 16 According to the report, D.L. "is bonded to the foster parent and the other children in the home, as evidenced by her smiles and interactions with the family," and the foster mother allows D.L.'s aunt (respondent's sister) to visit with D.L. This is "the only home that [D.L.] ha[d] ever known."

¶ 17 The report says, in summary:

> "[D.L.] is a happy, healthy, 18 month old girl. There have been no concerns since her placement in the home at 3 days old. Currently, [D.L.] is up to date on her medical appointments and dental appointments, as well as her immunizations. [D.L.] is enrolled in a full time licensed home daycare. [D.L.] is not in need of or engaged in any services at this time, and [The Center for Youth and Family Solutions] will continue to monitor the need for this in the future. This worker has been in the foster home on a monthly basis since the case opening, and [D.L.] is always cheerful and smiling. [D.L.] has a loving relationship with her foster mother, as well as the other children in the home. [D.L.]'s foster parent signed the Permanency Commitment by Foster Parent/Relative Caregiver form on 9/28/2015, and she is committed to adopting [D.L.] at this time."

¶ 18 The guardian *ad litem* requested that an addition be made to this report: that respondent's parole date was May 5, 2017. Respondent's attorney told the trial court: "Well, that

is what shows on the website currently. I actually plan to call my witness briefly to discuss that issue."

¶ 19 The State, the mother, and the guardian *ad litem* had no witnesses to call, so the hearing proceeded to respondent's evidence on the issue of D.L.'s best interest. Respondent took the stand and testified substantially as follows. He was D.L.'s father and was imprisoned in Sheridan Correctional Center, where he was participating in a "substance abuse program."

¶ 20 For every 90 days he participated in the program, he received 45 days of good-conduct credit. A counselor at the Illinois Department of Corrections had told him his "actual out date" "should be December of 2016."

¶ 21 Respondent's attorney asked him:

> "Q. Okay. And Mr. Lambert, you're aware of where [D.L.] is placed; is that correct?
>
> A. That's right, sir.
>
> Q. And you appreciate what those people are doing for your child?
>
> A. Yes, sir.
>
> Q. But you want to be given a chance yourself when you get out?
>
> A. Yes, sir.
>
> Q. And I assume you would show the same diligence in doing what's asked of you as you're doing in your [Department of Corrections] programs?
>
> A. Yes, sir."

¶ 22 On cross-examination, the assistant State's Attorney asked respondent if he "participate[d] in [Alcoholics Anonymous] or [Narcotics Anonymous] meetings." He answered

yes. She asked him if he was "doing step work." He answered yes. She asked him what step he was on. He answered:

"A. We do one through—we do one through 12 over and over.

Q. What are you on personally right now?

A. I'd say I'm on step—I'd probably say I'm on step five."

¶ 23 On cross-examination, the guardian *ad litem* asked respondent what he meant by " 'I'd say I'm on step five?' " Respondent answered he was "stuck at step five." The guardian *ad litem* asked him: "How are you stuck in step five?" Respondent answered: "I'm not there yet, you know what I'm saying? I'm still, I'm still learning as I go." The guardian *ad litem* then said:

"Q. And I don't know what step five is. What's step five?

A. I don't know it by heart, but that's what step I'm on, though. If you look it up, that's what step I'm on. I don't know that part.

Q. You finished step four?

A. Yeah.

Q. What's step four?

A. Man, step four.

MR. McAVOY [(guardian *ad litem*)]: I would like the record to reflect a significant pause. I've counted off at least a ten second pause as the respondent father looks off into the distance thinking.

THE COURT: Well, the record will reflect there's been about a ten second interlude. Mr. Lambert, do you understand Mr. McAvoy's last question?

RESPONDENT FATHER: Yeah, I understand it. It just—I don't know. I can't think of it off the top of my head on the spot."

¶ 24 On redirect examination, respondent testified he was "in good standing with the program" and that he "believe[d] [he was] benefiting from [the program.]"

¶ 25 At the conclusion of the evidence, the trial court heard arguments by the attorneys. The court then found it would be in D.L.'s best interest to terminate the parental rights of respondent and the mother. In explanation of its decision, the court stated:

> "[T]o put it succinctly as possible, this child now has had for almost her entire life a home, the home that people would think of traditionally as a home, a place of stability, a place of comfort, a place of physical safety, shelter, health and clothing and the stability of parental relationships and ability to have, you know, that stable and healthy home that each child deserves to have. That's what she has now and predicting into the future and the evidence about into the future, that's what she would continue to enjoy if she's allowed to stay in that home, and that can be done by terminating parental rights.
>
> ***
>
> Then in regard to [respondent], even using his calculation, which it's hopeful that it comes true that he is released later on this year rather than next year, by that time [D.L.] is past two years old. She—then if the petition was not granted and the alternative of return home would provide a long-term and questionable process as to whether she would ever be able to return to the care and custody with [respondent], again, I think at best given the record, that would be a questionable process, but no doubt, it would be a long-term process and a significant adjustment for her. It's clearly not in her best interest.

> She deserves to have permanency now and—that will last for her in the future, and to have those things, to have shelter, health, clothing, family attachments, parents who can care for her. And then the other thing in that sentence that's well pointed out is because of the now placement, but future potential adoptive home preserves family ties with the half siblings, so those, those things that the Court tries to preserve even when issues of termination of parental rights are present, you know, the ability to have those continuing relationships with other family members.
>
> It's clear according to all the evidence and the Court does find by a preponderance of the evidence and also by clear and convincing evidence it's in the best interest of the respondent minor and the public that [the mother] and [respondent] have all residual and actual parental rights and responsibilities terminated as to this minor, [D.L.], and the minor be relieved of all obligations of obedience and maintenance with respect to [the mother] and [respondent]."

¶ 26 Accordingly, the trial court ordered the termination of parental rights, and the court ordered that the Illinois Department of Children and Family Services would continue as D.L.'s guardian, with authority to consent to adoption.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 Respondent reminds us that until he was jailed in Urbana, the Department of Children and Family Services had planned to work with him and ultimately to place D.L. with him. He never lost interest in D.L. He never stopped showing his interest in her. He frequently sent her cards and letters while he was in jail and in prison, and he "ha[d] been an active

participant in all available services" during his imprisonment. He argues, therefore, that it was "premature and not in [19-month-old] D.L.'s long-term best interest to terminate [his] parental rights."

¶ 30 It is not our place to decide, however, whether terminating respondent's parental rights was in D.L.'s best interest. Instead, we decide whether the trial court's best-interest finding was against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005). The court's finding is against the manifest weight of the evidence only if the finding is "unreasonable, arbitrary[,] or not based upon the evidence." *Rhodes v. Illinois Central Gulf R.R.*, 172 Ill. 2d 213, 242 (1996).

¶ 31 It would be untenable to say the trial court's best interest finding is any of those things. The court's stated rationale makes a lot of sense. D.L. has lived with the foster mother all her life; this is the only home she ever has known. See 705 ILCS 405/1-3(4.05)(d)(iii), (g) (West 2014) ("the child's sense of familiarity" and "the child's need for permanence which includes the child's need for stability"). Evidently, she is attached to the members of the household—her foster mother, her half-brother, her half-sister, and the girl with whom she shares a bedroom—and they are attached to her. See 705 ILCS 405/1-3(4.05)(d)(i), (g) (West 2014) ("where the child actually feels love, attachment, and a sense of being valued" and "the child's need for permanence which includes the child's need for *** continuity of relationships with parent figures and with siblings and other relatives"). Not only her emotional needs but her physical needs are being met in the foster home. See 705 ILCS 405/1-3(4.05)(a) (West 2014) ("the physical safety and welfare of the child, including food, shelter, health, and clothing"). Removing her from this home would inevitably be disruptive to her. See 705 ILCS 405/1-3(d)(v) (West 2014) ("the least disruptive placement alternative for the child"). One hopes that defendant

has changed, but his record has not been good (we mean his recidivism), and arguably, when the welfare of a child is at stake, it would be imprudent to exchange good, stable circumstances for precarious ones. 705 ILCS 405/1-3(4.05)(d)(ii) (West 2014) ("the child's sense of security").

¶ 32 We understand this is a painful outcome for respondent, but "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340 (2009).

¶ 33

¶ 34 III. CONCLUSION

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

¶ 36 Affirmed.