

NOTICE

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2016 IL App (4th) 160553-U

NO. 4-16-0553

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 13, 2016
Carla Bender
4th District Appellate
Court, IL

In re: K.D., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 13JA42
LARRY DRIGGERS,)	
Respondent-Appellant.)	Honorable
)	Brett N. Olmstead,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and 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 July 2016, the trial court terminated the parental rights of respondent, Larry Driggers, to his child, K.D. (born June 13, 2012). Respondent appeals, arguing the court's best-interest finding was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In August 2012, the Department of Children and Family Services (DCFS) opened an intact case following a hotline call which reported K.D.'s mother, Chelsea Bollman, had been leaving K.D. with her maternal grandmother for extended periods of time, and Bollman was under the influence of illicit drugs when she returned. Bollman is not a party to this appeal and

therefore, we will refer to her only when necessary to provide the appropriate context.

Respondent has been incarcerated in the Illinois Department of Corrections since June 2012.

¶ 5 On August 12, 2013, the State filed a petition for adjudication of neglect. In its petition, the State alleged that K.D. was a neglected minor pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)) in that her environment was injurious to her welfare while she resided with Bollman and/or respondent because it exposed her to substance abuse (count I); criminal activity (count II); and a risk of physical harm (count III).

¶ 6 At an October 2013 adjudicatory hearing, both respondent and Bollman stipulated to count I of the State's petition and the circuit court entered an adjudicatory order finding K.D. was a neglected minor.

¶ 7 Following a November 2013 dispositional hearing, the court entered an order adjudicating K.D. a neglected minor, making her a ward of the court, and placing custody and guardianship with DCFS. The court found Bollman and respondent "unfit and unable for reasons other than financial circumstances alone, to care for, protect, train or discipline the minor and the health, safety and best interest of the minor [would] be jeopardized if the minor remained in the custody of such parent." The court based its findings on Bollman's history of substance abuse and domestic violence and on the fact that respondent was incarcerated and was not expected to be released until July 2017. In addition, the court suspended respondent's visitation with K.D., an order that remained in place throughout this case.

¶ 8 In a February 2014 permanency report, Megan Fitzsimmons, the caseworker with the Center for Youth and Family Services (CYFS), reported that K.D., who was residing in a relative foster home with her maternal grandmother, was "doing very well," was bonded with her

foster family, and had all of her needs met by her foster family. Fitzsimmons noted that she had attempted to visit respondent in prison, but "due to miscommunication" between herself and personnel at the prison, she had been unable to do so. As a result, respondent was not then engaged in services.

¶ 9 In a May 2014 permanency report, Fitzsimmons reported that she had met with respondent at the prison and had referred him for individual counseling and parenting education classes through the prison. Fitzsimmons further noted that K.D. continued to reside in her maternal grandmother's home, where she was doing "very well" and was loved.

¶ 10 In a September 2014 permanency report, Fitzsimmons reported that respondent had been unable to participate in individual counseling and parenting education classes because they were unavailable at the prison. She noted respondent had informed her that he "was attempting to begin a parenting education class with the pastor at the prison." She reported that K.D. continued to do "very well" in her foster home, where she was loved and had all her needs met.

¶ 11 In a December 2014 permanency report, Fitzsimmons reported that respondent was still unable to participate in individual counseling and parenting education courses because they were not available at the prison. She had requested monthly documentation regarding the status of respondent's attempts to begin a parenting education class with the prison pastor, but she had not received any documentation. Fitzsimmons continued to note that K.D. was doing "very well" in her foster home, where she had all her needs met. She further stated that K.D. was well-adjusted to her foster home and sought out her foster mother for comfort.

¶ 12 In an April 2015 permanency report, Fitzsimmons reported that respondent had completed a two-day seminar titled "Transforming Incarcerated Dads." According to

Fitzsimmons, respondent informed her that "he did not agree with the presenter and did not feel he gained any new knowledge from the course." Respondent continued to be unable to engage in individual counseling and parenting education classes as they were not available at the prison. Fitzsimmons further reported that K.D. continued to do "very well" in her foster home and was developing appropriately.

¶ 13 In CYFS's June and December 2015 permanency reports, Fitzsimmons continued to report that respondent had been unable to engage in individual counseling or parenting education courses due to his incarceration. K.D. continued to do well in her foster home.

¶ 14 On July 7, 2015, the State filed a motion seeking a finding of unfitness and termination of the parental rights of Bollman and respondent.

¶ 15 In a March 1, 2016, permanency report, Fitzsimmons continued to report that respondent had been unable to engage in the recommended services because he was incarcerated. She noted that she had encouraged respondent to write letters to K.D., but that respondent did not see the benefit of doing so due to K.D.'s young age. Fitzsimmons further reported that K.D. continued to do well in her foster home.

¶ 16 At each permanency review hearing, conducted in March, June, and September 2014; January, April, and July 2015; and January and March 2016, the trial court found respondent had made neither reasonable efforts nor reasonable progress toward reunification due to his incarceration.

¶ 17 On March 9, 2016, Bollman voluntarily surrendered her parental rights to K.D.

¶ 18 On April 12, 2016, the State filed an amended motion seeking a finding of unfitness and termination of the parental rights of respondent. The State alleged that respondent was unfit because he (1) failed to make reasonable efforts to correct the conditions that were the

basis of K.D.'s removal within the initial nine months of adjudication of neglect (count I) (750 ILCS 50/1(D)(m)(i) (West 2014)); (2) failed to make reasonable progress toward the return of K.D. within the initial nine months of adjudication of neglect (count II) (750 ILCS 50/1(D)(m)(ii) (West 2014)); (3) failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of K.D. (count III) (750 ILCS 50/1(D)(b) (West 2014)); (4) was incarcerated and his repeated incarceration prevented him from discharging his parental duties for K.D. (count IV) (750 ILCS 50/1(D)(s) (West 2014)); and (5) was deprived in that he had been criminally convicted of at least three felonies, at least one of which was within the last five years (count V) (750 ILCS 50/1(D)(i) (West 2014)).

¶ 19 On April 28, 2016, respondent filed a petition seeking to appoint K.D.'s maternal grandmother as K.D.'s guardian.

¶ 20 At a June 2, 2016, adjudicatory hearing, respondent stipulated to count V (depravity) of the State's petition for purposes of unfitness. The State noted that the evidence would show respondent had been convicted of at least three felonies, most recently in 2012, and it withdrew counts I through IV as part of respondent's stipulation. After admonishing respondent regarding the effect of his stipulation of unfitness, the trial court accepted the stipulation and found respondent unfit as alleged in count V.

¶ 21 At the July 20, 2016, best-interest hearing, the trial court noted it had received a best-interest report prepared by CYFS. The report noted that K.D. was "a happy, healthy, 4[-]year[-]old girl" and that there were no concerns with her placement. She had resided in her maternal grandmother's home since birth and she was doing well there. K.D. was bonded with each member of her foster home, all of her needs were consistently met, and her foster mother was committed to adopting her. K.D. had no bond with respondent.

¶ 22 Thereafter, the trial court heard testimony. Ingrid Balthazar testified that she was a foster-care caseworker for CYFS and had been assigned to K.D.'s case since May 2016. She stated that since she was assigned to the case, there had been no visitations between respondent and K.D. due to respondent's incarceration and the court's order suspending his visitation. Balthazar had not been in contact with respondent, but she testified that in the two months she had been assigned to the case, he had mailed two or three cards to the agency for K.D. She also stated that prior to being assigned to the case, respondent sent cards for K.D. "about once a month." In her opinion, the cards were age-appropriate and expressed things such as, "Daddy loves you." Balthazar felt respondent's practice of sending K.D. cards was "good" because K.D. will be able to look back at the cards over time.

¶ 23 Balthazar further testified that she had visited K.D. in her foster home and that K.D. was "doing very well" and "seem[ed] happy and healthy." She reported K.D. had been in her foster home since birth and it was "natural" for her to be there. K.D. had no special needs and did not require any special services. K.D.'s immunizations were up-to-date and her dental work was being handled appropriately. Balthazar testified that K.D.'s foster mother was committed to adopting K.D. Balthazar stated that K.D.'s foster mother expressed a willingness to help build a bond and establish a relationship between respondent and K.D. if it would be healthy for K.D. to do so. Balthazar further testified that she had never considered referring K.D. to counseling to facilitate her understanding of "what's happening and where her father is."

¶ 24 Respondent offered into evidence, without objection, a certificate of completion of the "Transferring Incarcerated Dads" seminar and an August 2015 mental health progress note documenting his request for individual counseling services. Finally, the trial court took judicial notice of all prior orders and permanency reports in this case.

¶ 25 At the conclusion of the hearing, the trial court noted that the evidence showed respondent loved and cared for K.D. and wanted to be a part of her life, and that his incarceration hindered his ability to comply with the recommended services. The court further noted that, due to his incarceration, respondent was "forced to watch" as other people raised his child and "he was helpless to do anything about that and could not interact with his daughter, could not take any action to build that bond and relationship." However, the court noted that it had to consider K.D.'s best interest at that point.

¶ 26 In that regard, the circuit court stated as follows:

"[K.D.] sees her maternal grandmother's home as her home. She sees her maternal grandmother's family as her family. She sees her community ties as the community ties established by her maternal grandmother. She sees her background, both family and culturally, as her maternal grandmother. She sees a sense of familiarity and security and a continuity of affection with her grandmother and her grandmother's family. She has that sense of attachment with her grandmother. She sees her identity as being part of her grandmother's family."

Thereafter, the court found, by a preponderance of the evidence, that it was in K.D.'s best interest to terminate respondent's parental rights.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, respondent argues the trial court erred in finding it was in K.D.'s best interest to terminate his parental rights.

¶ 30 The involuntary termination of parental rights requires a two-step process. First, the court must find by clear and convincing evidence that a parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *In re J.L.*, 236 Ill. 2d 329, 337, 924 N.E.2d 961, 966 (2010). Second, the court must find by a preponderance of the evidence that the termination of parental rights is in the child's best interest. *Id.* at 337-38, 924 N.E.2d at 966; *In re M.R.*, 393 Ill. App. 3d 609, 617, 912 N.E.2d 337, 345 (2009).

¶ 31 Here, respondent does not challenge the finding he was unfit. Accordingly, we are concerned only with whether the manifest weight of the evidence supports the trial court's determination that terminating respondent's parental rights was in K.D.'s best interest.

¶ 32 "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). At this stage, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (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)).

"A trial court's finding that termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence." *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24, 16 N.E.3d 930. "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." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291.

¶ 33 On appeal, respondent does not take issue with the trial court's consideration of the best-interest standards set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2014)). Rather, he maintains that the termination of his parental rights was improper due to other matters, including (1) the lack of evidence regarding his parenting ability as a result of his incarceration and the court's order prohibiting visitation with K.D.; (2) the lack of services available to him while in prison; (3) his care and concern for K.D.; and (4) his attempt to develop services within the prison and his completion of the parenting seminar.

¶ 34 At the outset, we reiterate that, at the best-interest stage, the interests and rights of a parent must yield to the best interests of the minor child. The record here shows that the trial court appropriately weighed the factors provided for in section 1-3(4.05) of the Juvenile Court

Act (*id.*). Nonetheless, we note that the court struggled with its decision due to the very matters addressed by claimant in this appeal. In particular, the court noted that respondent clearly loved and cared for K.D., and it found that respondent's inability to comply with the recommended services or develop a bond and relationship with her was a direct result of his incarceration. It considered respondent's completion of a parenting seminar while in prison and his documented request for individual counseling. The court then weighed the effect of not terminating parental rights versus terminating parental rights and how its decision would affect K.D. In particular, it noted that if it did not terminate respondent's parental rights, K.D. would face "at least another year of limbo" in a case that had already been open for four years. On the other hand, by terminating respondent's parental rights, K.D. was available to be adopted by the person she viewed as her parent, and the person who had provided her with a sense of identity, familiarity, culture, and security. In the end, the court found that K.D.'s need for permanence and stability outweighed the frustrations suffered by respondent as a result of his incarceration, and it therefore terminated his parental rights. Based on our review of the record, we cannot say an opposite conclusion is clearly evident and the trial court's decision was not against the manifest weight of the evidence.

¶ 35 We further reject respondent's contention that the trial court's decision to terminate his parental rights violated the Juvenile Court Act's preference for the preservation of families. See 705 ILCS 405/1-2(1) (West 2014). While the Act certainly seeks "to preserve and strengthen the minor's family ties whenever possible," its fundamental purpose is to provide permanency for the minor child at the earliest opportunity. See *id.* Here, respondent has been incarcerated since June 2012, and he is not expected to be released from prison until July 2017. Further, as the trial court noted, even upon respondent's release, reunification would not be

immediate. It would take time for respondent and K.D. to develop a relationship. Here, it was reasonable for the court to find that K.D.'s need for permanency outweighed any preference to keep respondent's parental rights intact.

¶ 36

III. CONCLUSION

¶ 37

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

¶ 38

Affirmed.