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2017 IL App (3d) 160789-U

Order filed June 2, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

<i>In re</i> K.H.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Tazewell County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-16-0789
)	Circuit No. 13-JA-66
v.)	
)	
Loretta W.,)	The Honorable
)	Mark E. Gilles,
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 the trial court's best interest determination was not against the manifest weight of the evidence. The appellate court, therefore, affirmed the trial court's judgment, terminating the respondent mother's parental rights to her minor child.
- ¶ 2 In the context of a juvenile neglect proceeding, the State filed a petition to involuntarily terminate the parental rights of respondent mother, Loretta W., to her minor child, K.H. 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, challenging the best interest determination. We affirm the trial court's judgment.

¶ 3

FACTS

¶ 4

Respondent was the biological mother of the minor child, K.H., who was born in October 2013. About a week after K.H.'s birth, a hotline call was made to the Department of Children and Family Services (DCFS) regarding K.H.'s welfare. After investigating the matter, DCFS took protective custody of K.H. Shortly thereafter, DCFS filed a juvenile petition alleging that K.H. was a neglected minor and seeking to make K.H. a ward of the court. More specifically, the petition alleged that K.H. was neglected because her environment was injurious to her welfare in that: (1) respondent and Ryan W., who was listed in the petition as K.H.'s legal father, had been found unfit in two prior juvenile cases and had never been restored to fitness; and (2) respondent and Ryan W. could not provide minimal parenting to K.H. Respondent subsequently filed an answer and admitted portions of the juvenile petition. Through paternity testing, it was later determined that Eric H. (the putative father), and not Ryan W. (the legal father), was K.H.'s biological father. As a result, Ryan W. was dismissed as a party from the case.

¶ 5

On March 13, 2014, an adjudicatory hearing was held and K.H. was found to be a neglected minor as alleged in the petition. A dispositional hearing was held the following month, at the conclusion of which, the trial court found that respondent was an unfit parent. The finding of unfitness as to respondent was based upon the fact that she had previously been found to be an unfit parent in the two prior juvenile cases and had never been restored to fitness. The trial court made K.H. a ward of the court and named DCFS as K.H.'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 the child. Those tasks included, among other things, to: (1) cooperate fully and completely with DCFS; (2) complete three random drug tests per month; (3) participate in and successfully complete individual and couples counseling; (4) attend scheduled appointments with her psychiatrist and comply with her psychotropic medication regimen; (5) obtain and maintain stable housing; and (6) attend scheduled visits with K.H. and demonstrate appropriate parenting conduct during those visits.

¶ 7 Over the next two years, several permanency review hearings were held. Permanency review hearing took place in October 2014, April 2015, October 2015, and April 2016 (after the petition to terminate parental rights had been filed). Respondent appeared in court for all of her permanency review hearings and was represented by her appointed attorney. Initially, from the date of disposition through the April 2015 permanency review hearing, respondent performed fairly well—she attended and participated in all or most of her counseling sessions (including domestic violence classes, which were later added as a requirement by the court), although her progress was listed as minimal; completed all of her random drug tests and tested negative for the presence of drugs (the number of tests was eventually reduced by the trial court to one per month); attended her appointments with her psychiatrist and took her medications; and attended all of her visits with K.H. and performed very well at those visits. The only negative aspects of respondent's performance initially was that she did not have stable housing or employment and that she was involved in an on-again, off-again relationship with Eric H. where there was possibly domestic violence taking place.

¶ 8 After the April 2015 permanency review hearing, however, respondent's performance deteriorated. Respondent tried to commit suicide in July 2015, stopped completing any of her

random drug tests, told her caseworker that she had given up because there was no point in trying (as to the drug tests), stopped attending individual counseling sessions after January 2016, and eventually failed to maintain contact with her caseworker. Respondent did, though, continue to attend and perform very well at her visits with K.H. In a legal screening that was filed in September 2015, both respondent and respondent's mother indicated that they wanted respondent's mother to be granted guardianship of K.H. Respondent's mother already had guardianship of respondent's two other children and had been serving as K.H.'s foster parent since January 2014.

¶ 9 In October 2015, the State filed a petition to terminate respondent's parental rights to K.H.¹ The termination petition alleged that respondent was an unfit person as defined in section 1(D)(m)(iii) of the Adoption Act (750 ILCS 50/1(D)(m)(iii) (West 2012)) in that she had failed to make reasonable progress toward the return home of the minor during any nine-month period after the end of the initial nine-month period following the adjudication of neglect. The nine-month period specified in the petition was from January 8, 2015, through October 8, 2015. Respondent filed an amended answer and admitted the allegation that she was an unfit parent/person but challenged the allegation that it was in the minor's best interest to terminate her parental rights.

¶ 10 In November 2016, a hearing was held on the parental unfitness portion of the termination petition. Respondent was present in court for the hearing and was represented by her attorney. At the conclusion of the hearing, the trial court found that the State had proven by clear and convincing evidence that respondent was an unfit parent/person as alleged in the petition.

¹ A petition for termination of parental rights was also filed as to K.H.'s father, Eric H., and his parental rights were eventually terminated.

The following month, in December 2016, a hearing was held on the best interest portion of the termination petition. Respondent was present in court for the hearing and was represented by her attorney. A best-interest 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 K.H. was three years old and had resided in the same foster home with the current foster parent, her maternal grandmother, for nearly all of the past three years. K.H.'s two older siblings, ages five and seven, also lived in the home, and the maternal grandmother served as the guardian of those two children. The foster parent/grandmother adequately provided for K.H.'s basic needs of food, shelter, health, and clothing, and also provided for K.H.'s medical needs. The foster parent's home had adequate food, was in a good state of repair, had no visible safety or fire hazards, had adequate space for the family size, and was the only home that K.H. had ever known. The foster parent was willing to provide permanency for K.H., and the foster parent's home was listed in the best interest report as an "adoptive home" for K.H. K.H. was very attached to her siblings and the foster parent and was strongly bonded to the foster parent. K.H. would go to the foster parent for protection and soothing when she felt scared and would give the foster parent hugs and kisses. K.H. was excited to see the foster parent and her siblings, and there was a clear bond and sense of security between K.H., the foster parent, and the siblings. The foster parent had an extended support system of family and colleagues. K.H. was attending and doing well at daycare, had many friends, and had a good relationship with her daycare provider. As for K.H.'s relationship with respondent, the caseworker indicated in her report that respondent had regularly visited with K.H. since K.H. had come into DCFS care. K.H. had a noticeable attachment and relationship with respondent, would call respondent "mom," and was happy when respondent was present. During the supervised visits, however, which always took place at the foster

parent's home or in the community because respondent did not have housing, K.H. would still look to the foster parent for her daily needs. At the conclusion of her report, the caseworker stated that it was her belief that it was in K.H.'s best interest to terminate respondent's parental rights.

¶ 12 At the beginning of the best interest hearing, the trial court acknowledged that it had received the best interest report. The State then called its only witness, the caseworker, who testified consistently with her report. In addition, the caseworker stated that she believed that K.H. had a stronger bond with the foster parent than with respondent and that she did not believe that K.H. would be harmed by termination of respondent's parental rights. The caseworker did not know whether the foster parent had become the guardian of K.H.'s two siblings by agreement or through a prior juvenile case. The caseworker acknowledged that respondent currently visited all three children twice a week and that respondent's visitation with the children would remain the same even if respondent's parental rights to K.H. were terminated. The caseworker did not believe that it would be confusing for the children if the legal relationship between K.H. and respondent was different than the legal relationship between respondent and K.H.'s other siblings. According to the caseworker, all three children knew that the foster parent was their grandmother, that they lived with her, that she cared for them, and that she was the one who provided for them. The children also knew that respondent was their mother and that she would come over to the home and would visit them. The caseworker commented that the age of the child was one of the factors that she considered in recommending a permanency goal. According to the caseworker, guardianship was usually recommended as a goal for older children who had more of an understanding and adoption was recommended as a goal for younger children.

¶ 13 Following the presentation of the evidence, the trial court heard the arguments of the attorneys. The State argued for termination of respondent's parental rights. Respondent's attorney argued against termination, stating that he believed that a goal of adoption and, presumably, termination of respondent's parental rights, would potentially lead to confusing, differing relationships between respondent and all three children. The guardian *ad litem* indicated that she felt that it was in the best interest of K.H. to terminate respondent's parental rights and commented that K.H. needed permanency.

¶ 14 After considering the report, the testimony, the arguments, and the statutory best interest factors, the trial court made its ruling. The trial court found by a preponderance of the evidence that termination of parental rights was in K.H.'s best interest. The trial court terminated respondent's parental rights to K.H., set K.H.'s permanency goal to adoption, and named DCFS as the guardian of the minor with the right to consent to adoption. Respondent filed this appeal to challenge the trial court's ruling.

¶ 15 ANALYSIS

¶ 16 As her only contention on appeal, respondent argues that the trial court erred when it found that termination of her parental rights was in K.H.'s best interest. In support of that argument, respondent asserts that the State failed to prove by a preponderance of the evidence that termination was appropriate. In making that assertion, respondent acknowledges that some of the statutory best interest factors weighed in favor of termination. Respondent contends, however, that because termination of her parental rights would not further serve the development of K.H.'s identity, her background and ties, her sense of attachment and familiarity, her continuity of affection, or her need for stability and continuity of relationships with her parent figures and siblings, this court should find that termination of respondent's parental rights was

not in K.H.'s best interest. Respondent asks, therefore, although somewhat implicitly, that we reverse the trial court's best interest determination and that we remand this case for further proceedings.

¶ 17 The State argues that the trial court's best interest determination was proper and should be upheld. The State asserts that many or all of the statutory best interest factors weighed in favor of terminating respondent's parental rights in this case. In support of that assertion, the State points out that K.H. had been living with her maternal grandmother, the foster parent, for the past three years (nearly all of K.H.'s life), that K.H.'s two older siblings also lived with the grandmother, that K.H. had a strong bond with her grandmother and her two siblings, that the grandmother provided for all of K.H.'s needs, that K.H. was doing well in the home, and that K.H.'s grandmother was willing to provide permanency for K.H. In addition, the State emphasizes that in this particular case, the relationship between respondent and K.H. will be preserved, despite the termination of respondent's parental rights, because the foster parent is respondent's mother and respondent will still be allowed to visit with K.H. and with K.H.'s siblings. For all of the reasons set forth, the State asks that we affirm the trial court's order terminating respondent's parental rights to K.H.

¶ 18 Respondent asserts in reply that contrary to the State's contention, termination of respondent's parental rights will not ensure K.H.'s family ties or the continuity of K.H.'s relationships. Rather, according to respondent, termination will only serve to put K.H. on a different legal footing than her siblings and may very well allow for K.H. to be separated from her siblings if K.H.'s grandmother passes away while K.H. is still a minor. Respondent maintains, therefore, that termination of her parental rights was not in K.H.'s best interest.

¶ 19 In a termination proceeding, once the trial court finds that a parent is unfit as defined in section 1(D) of the Adoption Act, the trial court must then determine, pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act), whether it is in the minor's best interest to terminate parental rights. See 705 ILCS 405/2-29(2) (West 2014); *In re Tiffany M.*, 353 Ill. App. 3d 883, 891 (2004). The burden of proof in the trial court is upon the State to show by a preponderance of the evidence that termination is in the minor's best interest. *Tiffany M.*, 353 Ill. App. 3d at 891. The trial court's ruling in that regard will not be reversed on appeal unless it is 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 or that the conclusion itself is unreasonable, arbitrary, or not based on the evidence presented. *In re Austin W.*, 214 Ill. 2d 31, 51-52 (2005), *abrogated on other grounds by In re M.M.*, 2016 IL 119932, ¶ 28; *Tiffany M.*, 353 Ill. App. 3d at 890-92.

¶ 20 In a best interest hearing, the focus of the termination proceeding shifts to the child, and the parent's interest in maintaining the parent-child relationship must yield to the child's interest in having a stable and loving home life. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The issue is no longer whether parental rights can be terminated, but rather, whether in the child's best interest, parental rights should be terminated. See *id.* In making a best interest determination, the trial court must consider, in the context of the child's age and developmental needs, the numerous statutory best interest factors listed in section 1-3(4.05) of the Juvenile Court Act. See 705 ILCS 405/1-3(4.05) (West 2014); *Tiffany M.*, 353 Ill. App. 3d at 892-93. Some of those factors include the child's physical safety and welfare, the development of the child's identity, the child's background and ties, the child's sense of attachment, the child's need for permanence and stability, and the preferences of the persons available to care for the child. See 705 ILCS 405/1-

3(4.05) (West 2014); *Tiffany M.*, 353 Ill. App. 3d at 892-93. The trial court may also consider the nature and length of the child's relationship with the current caretaker and the effect that a change in placement would have on the child's emotional and psychological well-being. *Tiffany M.*, 353 Ill. App. 3d at 893. Although the trial court is required to consider the statutory factors in making its best-interest determination, it is not required to articulate any specific rationale for its decision. *Id.*

¶ 21 In the present case, after having reviewed the record, we find that the trial court's best interest determination (that it was in K.H.'s best interest to terminate respondent's parental rights) was not against the manifest weight of the evidence. The evidence presented at the best interest hearing indicated that K.H. was in the stable, secure, and loving home of her maternal grandmother where K.H. was doing well and all of her needs were being met. K.H. had lived in that home for almost all of the past three years, nearly her entire life. K.H.'s two siblings also lived in the home, and K.H.'s grandmother served as both the foster parent of K.H. and the guardian of K.H.'s two siblings. K.H. had a strong relationship with her grandmother and her two siblings, and K.H.'s grandmother was willing to provide permanency for K.H. It was the opinion of the caseworker and the GAL that it was in K.H.'s best interest to terminate respondent's parental rights. The trial court's ruling in this case has ample support in the record and, based upon the standard of review, must be affirmed. See *Tiffany M.*, 353 Ill. App. 3d at 890-92.

¶ 22 In reaching that conclusion, we must note that although there is a bond of affection or emotion between respondent and K.H., that factor alone is not dispositive in making a best interest determination. See *Austin W.*, 214 Ill. 2d at 50; *In re K.H.*, 346 Ill. App. 3d 443, 463 (2004) (the existence of a parent-child bond does not automatically ensure that the parent will be

fit or that the child's best interest will be served). The other statutory best interest factors, such as K.H.'s need for permanency and stability, must be considered. See 705 ILCS 405/1-3(4.05) (West 2014); *Austin W.*, 214 Ill. 2d at 49-50; *Tiffany M.*, 353 Ill. App. 3d at 892-93. In this particular case, as even respondent acknowledges on appeal, many of those other factors support termination. K.H. has been in foster care for almost three years and there is no indication that respondent will be restored to fitness anytime soon. The trial court properly considered all of the evidence before it and the statutory best interest factors in making its determination, and we will not re-weigh those factors on appeal or substitute our judgment for that of the trial court merely because respondent asserts that the factors should have been weighed differently. See *In re A.W.*, 231 Ill. 2d 92, 102 (2008) (when the manifest weight standard of review applies, the reviewing court will not substitute its judgment for that of the trial court on such matters as witness credibility, the weight to be given evidence, and the inferences to be drawn from the evidence, even if the reviewing court would have reached a different conclusion if it had been the trier of fact); *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998) (because of the delicacy and difficulty involved in a child custody case, wide discretion is placed in the trial court to an even greater degree than in an ordinary appeal where the manifest weight standard of review is applied).

¶ 23

CONCLUSION

¶ 24

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

¶ 25

Affirmed.