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2017 IL App (3d) 170114-U

Order filed July 19, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

|   |   |                               |
|---|---|-------------------------------|
| <i>In re</i> ADOPTION OF S.B., a Minor, | ) | Appeal from the Circuit Court |
|   | ) | of the 14th Judicial Circuit, |
| (Jami Bollinger and Tyler Crouse,       | ) | Rock Island County, Illinois, |
|   | ) |                               |
| Petitioners-Appellants                  | ) | Appeal No. 3-17-0114          |
|   | ) | Circuit No. 15-AD-45          |
| v.                                      | ) |                               |
|   | ) |                               |
| Christopher J.,                         | ) | Honorable                     |
|   | ) | Peter Church,                 |
| Respondent-Appellee).                   | ) | Judge, Presiding.             |

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PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices O'Brien and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court erred when it found that it was not in the best interest of the minor to terminate the parental rights of the respondent after it found that the respondent was unfit.

¶ 2 Jami Bollinger and Christopher J. dated between April and July of 2009. Jamie had a child, S.B., in January 2010. Christopher subsequently acknowledged that S.B. was his child, but was not present at her birth and no contact with the minor thereafter. Jami and Tyler Crouse began a relationship in October 2015 and began living together sometime thereafter. At the same

time that Jami and Tyler began their relationship, Christopher filed a petition seeking visitation with S.B. On November 9, 2015, Jami and Tyler filed a petition seeking to terminate Christopher's parental rights and to have Tyler adopt S.B. Jami and Tyler were married in March 2016. A bifurcated hearing on their petition was held on January 6, 2017.

¶ 3 Following the hearing to address Christopher's parental fitness, the circuit court entered an order finding that Christopher was unfit due to a failure to maintain a reasonable degree of interest, concern and/or responsibility toward S.B. Following the best interest hearing, later that same day, the court found that it was not in the best interest of S.B. that Christopher's parental rights be terminated and denied the petition for adoption. Jamie and Tyler appeal the circuit court's order finding that it was not in S.B.'s best interest to terminate Christopher's parental rights. Christopher did not appeal the court's finding that he was unfit. We reverse the circuit court's best interest determination and remand the matter for entry of an order terminating Christopher's parental rights and a further determination regarding the petition for adoption.

¶ 4 **FACTS**

¶ 5 Jami and Christopher were involved in a relationship for approximately four months in 2009. They never lived together and had stopped seeing each other approximately six months prior to the birth of S.B. After S.B. was born, Jami took a break from college, but ultimately obtained a Bachelor's degree from St. Ambrose University and began work in a Master's program. While completing her advanced degree in social work, Jami began employment with the Center for Youth and Family Solutions. The record established that S.B. had been under Jami's exclusive care, custody, and control since birth. Jami testified that S.B. does not know who her biological father is, has never met Christopher, and would not recognize him if they were ever to be in the same room.

¶ 6 Christopher testified that he graduated from welding school in 2008 and has been continuously employed as a pipefitter/welder by United Construction out of Eldridge, Iowa since graduating from welding school. He testified that his work causes him to travel up to 20 weeks per year, taking him to job sites from Wyoming to New York. Christopher further testified that he had wanted to be part of S.B.'s life, but he "knew it would be a slow go" due to Jami's attitude toward him. He also testified that he had never provided any financial support, nor made any attempt to send cards, gifts, letters or made any attempt to communicate with S.B., who was seven years of age at the time of the hearing. He claimed that he had driven past Jami's parent's home on occasions when he thought S.B. was there, but he never stopped because he thought they might have him arrested if he stopped.

¶ 7 The court found Christopher to be unfit under sections 1(D)(b) and (n)(2)(ii) of the Adoption Act (750 ILCS 50/1(D)(b) and (n)(2)(ii) (West 2012)) concluding that he had failed to maintain a reasonable degree of interest, concern or responsibility as to S.B.'s welfare, and failed to provide reasonable financial support since the child's birth. After finding Christopher to be an unfit parent, the court proceeded to a hearing on whether the best interests of the child were served by terminating Christopher's parental rights and granting the adoption petition.

¶ 8 At the best interest hearing, Tyler Crouse testified that he wished to formally adopt S.B. and take on the emotional and financial responsibility of parenting S.B. along with Jami, whom he married in March 2016. Tyler also testified that since beginning his relationship with Jami, he has treated S.B. as if she was his own child; teaching her to ride a bicycle, helping with her homework, playing games with her, reading to her and helping her to learn how to read, and helping her with age appropriate household chores. He also testified that when he came home from work, S.B. would often run to him, hug him, and tell him about her day. In addition, Tyler

further testified that he has the financial means to support, nurture, and educate S.B. He testified that he has been continuously employed as a corrections officer at the Henry Hill facility of the Illinois Department of Corrections since 2008, where he works 7 a.m. to 3 p.m. Sunday through Thursday. He wants S.B. to know that he will always be there to support her and wants to formally adopt her in order to express his full commitment to her and Jami.

¶ 9 Jami testified that S.B. is well adjusted to their life with Tyler and is very loving and affectionate toward him. She also testified that Tyler is very supportive and affectionate toward S.B., observing that when S.B. became ill, it was Tyler who would get up in the night to take care of her. Jami testified that on a recent trip to Disneyland, which Tyler could not attend due to work, S.B. called Tyler every night to tell him about her day. Jami opined that it would be in S.B.'s best interest for Tyler to adopt her because Tyler has always been there for S.B., has shown her love and support, and S.B. is very attached to him, often referring to Tyler as "Dad." Jami testified without objection that S.B. told her that she wants Tyler to adopt her and wants to change her last name to Crouse.

¶ 10 Jennifer and Jason Bollinger, Jami's mother and father, each testified that S.B. appears to be healthy and happy with Jami and Tyler. They both testified that they observed S.B. interact with Tyler on several occasions. Both S.B. and Tyler were always happy and engaged and, along with Jami, always gave the appearance of a happy family.

¶ 11 Christopher testified that he has a home on 16 acres located outside Viola, Illinois, where he lives with his girlfriend and her six-year-old son. He testified that he has a bedroom set up for S.B. with a bed, dress, clothes in a closet and Christmas presents for S.B. He further testified that his income earning potential is good and he has an expectation of continued employment as a pipefitter/welder. Although he admitted that he has not participated in the financial support of

S.B., he is now ready to provide some level of support. He testified that he has no desire to take S.B. away from Jami or Tyler, and that he merely seeks to have a relationship with S.B. He testified that he believed that it was in S.B.'s best interest that his rights not be terminated and that Tyler not be allowed to adopt her since he is her biological father, he wishes to be part of her life, and he wants to participate with child-raising activities with her. He also opined that it would be in S.B.'s best interest that she should have a relationship with his extended family, although he admitted that she has never met any member of his family.

¶ 12 Christopher acknowledged that S.B. has never had a connection to him or his extended family at any time. He again acknowledged that if S.B. “were to walk into the courtroom, she would not recognize [him].”

¶ 13 The guardian *ad litem* (GAL) reported that Jami, Tyler, and S.B. presented a very stable, close, and happy family unit, and that it was unquestionably in the child's best interest that she should remain part of this family unit. The GAL opined, however, that it would be in the best interest of S.B. that she should have the opportunity, as she became older, to “know about” her biological father and have “an opportunity to explore” a relationship with him. The GAL opined that it would be a mistake to terminate the biological father's parental rights because doing so might prevent S.B. from having a possible future relationship with him.

¶ 14 At the conclusion of the hearing, the court noted that the best interest standards set forth in section 1-3(4.05) of the Juvenile Court Act should apply in the instant matter. 705 ILCS 405/1-3(4.05) (West 2012). The court then accepted the analysis articulated by the GAL, finding that S.B. having a possible future relationship with Christopher outweighed all other factors which weighed in favor of termination of his parental rights and granting the petition for Tyler to adopt S.B. The court speculated that, even if he were not permitted to adopt S.B., Tyler would

always remain her *de facto* father, and would, at some future date, willingly share that role with Christopher. The court further observed that, at some point in the future, Christopher would be expected show some degree of interest “going forward” in order to establish a father-daughter relationship with S.B., which the court acknowledged more accurately described Tyler’s current relationship with S.B. The court further noted that S.B. already had a guaranteed relationship with Tyler by virtue of his marriage to Jami and it would not be in her best interest to formalize that relationship by adoption if that action meant permanently severing her potential relationship with Christopher, her biological father. The court entered an order finding that it was not in the best interest of S.B. to terminate Christopher’s parental rights. Jami and Tyler filed a timely appeal.

¶ 15

#### ANALYSIS

¶ 16

In this appeal, the petitioners in a contested adoption maintain that the circuit court erred in finding that it was not in the best interest of the child to terminate the biological father’s parental rights after finding him unfit due to a lack of interest in and support for the child. The appellants further maintain that it was error for the court not to grant their petition for adoption.

¶ 17

In Illinois, the court's power to terminate parental rights is derived from the Adoption Act (750 ILCS 50/0 *et seq.* (West 2012)) and the Juvenile Act (705 ILCS 405/1-1 *et seq.*(West 2012)). *In re E.B.*, 231 Ill. 2d 459, 463 (2008). The involuntary termination of parental rights involves a two-step process. First, it must be must established that the parent is “unfit” under one or more of the grounds set forth in section 1(D) of the Adoption Act by clear and convincing evidence. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). After finding a parent unfit, the court then determines whether it is in the best interests of the minor that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 352 (2004).

Following a finding of parental unfitness, a trial court shifts its focus to the child and determines whether in the child's best interest, parental rights should be terminated. *In re D.T.*, 212 Ill. 2d at 364. At this stage in the proceeding, once a parent is found unfit, the child's best interest takes precedence over the parent's rights. *In re Tashika F.*, 333 Ill. App. 3d 165, 170 (2002). In other words, “the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.” *In re D.T.*, 212 Ill. 2d at 364. The petitioners have a burden of providing by a preponderance of the evidence that termination is in the child's best interest. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 45. The circuit court’s finding regarding the best interest of the child will not be overturned on appeal absent a clear abuse of discretion. *In re Precious W.*, 333 Ill. App. 3d 893, 902 (2002); *In re Joshua K.*, 405 Ill. App. 3d 569 (2010). A trial court abuses its discretion where it acts arbitrarily without conscientious judgment, exceeds the bounds of reason, or ignores recognized principles of law, so that substantial prejudice results. *In re G.L.*, 329 Ill. App. 3d 18, 25 (2002). On appeal, there is a strong and compelling presumption in favor of the result reached by the trial court (*In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 20), and a reviewing court must not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given the evidence or the inferences to be drawn from that evidence. *In re B.B.*, 386 Ill. App. 3d 686, 698 (2008). However, where credibility and the weight accorded to the evidence and inferences are not in dispute and the record leads to a conclusion that the trial court’s determination was erroneous, we will not hesitate to reverse the trial court’s best interest finding. *In re M.F.*, 326 Ill. App. 3d 1110, 1118 (2002). After reviewing the record, we are convinced that the trial court’s finding that it was not in the best interest of S.B. to terminate Christopher’s parental rights and thereby permit her adoption by Tyler was an abuse of discretion.

¶ 19 In making a best interest determination, the trial court shall consider the factors listed in section 1–3(4.05) of the Juvenile Act (705 ILCS 404/1-3(4.05) (West 2012)). The court need not delineate each statutory factor, nor is it required to make specific references to each factor. *In re Jaron Z.*, 348 Ill. App. 3d 239, 262-63 (2003). The best interest determination must, however, clearly emanate from the Juvenile Court Act factors. *In re K.S.*, 203 Ill. App. 3d 586, 599 (1990). These factors include: (1) the physical safety and welfare of the child, including food, shelter, health, and clothing; (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 attachment, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school and friends; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and with siblings and other relatives; (8) the uniqueness of every family and child; (9) the risks related to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. *In re Dal D.*, 2017 IL App (4th) 160893, ¶ 52.

¶ 20 In the instant matter, the trial court, after noting the proper statutory best-interest factors, found that the overriding factor was a concern that terminating Christopher's parental rights and granting the adoption petition might impede S.B.'s ability to have a future relationship with him; apparently agreeing with the GAL's theory that S.B. should not be denied the opportunity to explore a future relationship with her biological father. We have carefully reviewed each of the factors listed in section 1-3 of the Juvenile Court Act and we are unable to determine which of the statutory factors were being addressed in that finding. Our review of the uncontroverted facts in this matter, without any regard to credibility of witnesses, the weight of competing evidence,



or any inferences from the evidence, is that the statutory best-interest factors lead to a clear conclusion that it is in the best interest of S.B. that Christopher's parental rights be terminated and that the adoption petition be granted.

¶ 21 We will not address each of the ten best-interest factors, but will instead focus on those that bear particular relevance to this matter. We note, however, that viewing the record as a whole and giving the degree of deference required by the requisite standard of review, we find that not a single factor weighs in favor of the court's ruling. Turning to the factors that are particularly germane to this appeal, we note that: 1) the development of the child's identity; 2) the child's sense of attachment; 3) her need for permanence, stability and continuity in family relationships; 4) her need for the least disruptive environment; and 4) her own wishes and long-term goals are all factors that are particularly at odds with the trial court's ruling.

¶ 22 The record is uncontroverted that S.B. identifies with the family unit created by the marriage of Jami and Tyler and wishes to be identified as part of that family. The record contains evidence that S.B. desires to be adopted by Tyler and to have his last name. She clearly feels a sense of attachment to Tyler and wishes that attachment to grow. The trial court observed that S.B. was closely bonded to Tyler and their relationship was that of a parent and child. Given bonding that has obviously taken place between S.B. and Tyler, it is clearly in her best interest to permit that relationship to be formalized by allowing Tyler to adopt S.B. The notion that S.B.'s relationship with Tyler should be forestalled in order to see if she might someday develop a relationship with her biological father exceeds the bounds of reason. This is particularly prescient given the fact that, by all accounts, S.B. would not know Christopher if she were in the same room with him. To expect a relationship to develop from that starting point is particularly unreasonable.

¶ 23 Of equal importance, terminating Christopher’s parental rights and permitting the adoption to take place would undoubtedly bring permanence, stability, and continuity to S.B.’s life that allowing Christopher to “stay in the picture” would not. The court speculates that even if Tyler is not permitted to adopt S.B., he will always be there for the child. That speculation is not necessarily correct. The formality of an adoption provides financial support, inheritance rights, and legal protections that are simply not present without the adoption process. See *DeHart v. DeHart*, 2013 IL 114137, ¶ 42-66 (legal or equitable adoption necessary to protect rights of intestacy and inheritance); *In re Marriage of Englekens*, 354 Ill. App. 3d 790, 797 (2004) (other than court-ordered visitation, stepparents have no rights or obligations toward a child upon the death of natural parent spouse). In point of fact, the trial court’s order has left S.B. in the most unstable of circumstances. Tyler, the man who has expressed a desire to provide financial support to her for her entire childhood is under no legal obligation to do so, while Christopher, who has thus far exhibited a distinct avoidance of any financial responsibility toward his child, would be the only one legally obligated to provide some future court-ordered support.

¶ 24 Given this record, it is clear that S.B.’s best interest, from a legal, equitable, emotional, social, and developmental standpoint is served by terminating Christopher’s parental rights and granting the petition to adopt. The trial court’s decision to the contrary, based as it was solely upon the speculation that S.B. might develop some future relationship with Christopher if the petition were denied, was a clear abuse of discretion.

¶ 25 We reverse the order of the circuit court which found that it was not in the best interest of the child to terminate the respondent’s parental rights. The matter is remanded to the circuit court with instruction that the respondent’s parental rights be terminated and that the petition for adoption be granted.

¶ 26

## CONCLUSION

¶ 27

The judgment of the circuit court of Rock Island County is reversed and the matter is remanded for entry of an order terminating the respondent's parental rights and granting the petition for adoption.

¶ 28

Reversed and remanded with instructions.