

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (3d) 170502-U

Order filed December 4, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

<i>In re</i> J.B., D.R., and C.B.-R.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois.
)	
(The People of the State of Illinois,	)	Appeal Nos. 3-17-0502
	)	3-17-0503
Petitioner-Appellee,	)	3-17-0504
	)	Circuit Nos. 15-JA-301
v.	)	15-JA-302
	)	15-JA-303
M.B.,)	
	)	Honorable Katherine Gorman,
Respondent-Appellant).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The trial court's finding that it was in the best interests of the minors to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 Respondent, M.B., appeals the trial court's termination of the parental rights to her children, J.B. (born May 29, 2009); D.R. (born August 2, 2011); and C.B.-R. (born June 22,

2012). Specifically, respondent challenges the court's finding that it was in the best interests of the minors to terminate her parental rights. We affirm.

¶ 3

FACTS

¶ 4

On November 23, 2015, the State filed petitions alleging abuse and neglect of the minors. Specifically, the petitions alleged that (1) respondent's paramour, V.A., inflicted physical injury upon J.B. by shoving him into a wall and injuring his shoulder on November 11, 2015, and (2) the minors' environment was injurious to their welfare for the following reasons: (a) V.A. shoved J.B. into a wall and injured his shoulder on November 11, 2015; (b) respondent and other adults in the home smoked cannabis in front of the minors on November 11, 2015; (c) respondent "repeatedly lied" to authorities regarding the cause of J.B.'s injury; (d) J.B. and D.R. had previously been under the Department of Children and Family Services' (DCFS) guardianship and, at the time that case closed, C.R., respondent's paramour at the time and the father of D.R. and C.B.-R, remained unfit and was not to have unsupervised visits, but the entire family moved out of state and C.R. failed to report as a sex offender, hiding the fact that he resided with the minors; (e) C.R.'s criminal history included convictions for unlawful restraint, disorderly conduct, and failure to register as a sex offender; and (f) V.A.'s criminal history included convictions for battery, possession of cannabis, aggravated kidnapping, armed robbery, and manufacture/delivery of a controlled substance. Respondent stipulated to all allegations in the abuse and neglect petitions with the exception that she repeatedly lied to authorities regarding the cause of J.B.'s shoulder injury. Following a shelter care hearing the following day, the trial court placed the minors into the temporary custody of DCFS.

¶ 5

On February 23, 2016, the trial court adjudicated the minors neglected based on respondent's stipulations to the allegations in the abuse and neglect petitions. Also on that date,

the court entered its dispositional order finding respondent unfit and ordering her to perform certain tasks to correct the conditions that led to the removal of the minors from her care. In particular, the court ordered respondent to (1) execute authorizations for releases of information requested by DCFS, (2) cooperate fully with DCFS, (3) perform random drug drops twice per month, (4) participate and successfully complete counseling, (5) participate and successfully complete a parenting course, (6) participate and successfully complete a domestic violence course, (7) obtain and maintain stable housing, (8) provide any change in address or phone number to the caseworker, (9) provide requested information pertaining to any individual whom DCFS believed her to be in a relationship with, (10) participate in visits with the minors, and (11) use her best efforts to obtain and maintain a legal source of income.

¶ 6 In anticipation of an August 2016 permanency review hearing, the Center for Youth and Family Solutions (CYFS) submitted a report detailing respondent's progress between February 23, 2016, and July 11, 2016. The report indicated as follows. Respondent had successfully completed Phase 1 of a group-based parenting education course with CYFS. Respondent completed five random drug drops which came back negative for drugs; however, she failed to appear for five random drug drops. Respondent was participating in individual counseling, but her therapist reported that respondent "has limited insight into the severity of her current situation" and "minimizes what happened between [J.B.] and her previous paramour, [V.A.]" Respondent failed to sign up for a domestic violence class, although she had been instructed to do so numerous times. She also continued to involve herself with "dangerous men." In particular, she had been in contact with C.R., a sex offender and the father of two of her children. She also remained in a relationship with V.A. even after he physically harmed her child. She then spent time with another man who had a criminal history and current DCFS involvement,

and finally a fourth man, D.G., who also had a criminal history, including a recent domestic battery, criminal damage to property, and unlawful possession of a weapon—charges that arose from an incident with his ex-girlfriend at respondent’s house. During the review period, respondent maintained her employment at Kroger and consistently visited the minors. The CYFS worker opined that while respondent loved her children, “she has not shown any improvement in regards to the issues that brought her boys into care for the second time.” In particular, respondent continued to involve herself with dangerous men and she “seems to put the men in her life before her sons.”

¶ 7 An addendum to the report covered respondent’s progress through August 3, 2016. The addendum indicated that respondent’s counseling goals included developing healthy relationships, understanding how respondent’s past affects her, learning how to be independent and empathetic with her children, and managing her anxiety and depression. It also noted respondent had failed to attend another drug drop. Respondent called the CYFS worker on July 25, 2016, and told her she missed the drop because she did not have a ride. At the same time, she informed the worker she had been arrested the past weekend due to driving on a suspended license. Also attached to the addendum was a report of respondent’s psychological evaluation.

¶ 8 Following an August 9, 2016, permanency review hearing, the permanency goals were changed to return home pending status.

¶ 9 In anticipation of the December 2016 permanency review hearing, CYFS submitted a second report covering the period of August 9, 2016, through November 21, 2016. The report indicated respondent had been “unstable” during the reporting period. She was fired from her job in late August 2016, her living arrangements had not been stable, and she was currently staying with various friends throughout the week. In addition, respondent continued to involve herself

with dangerous men, failed to appear for two of eight random drug drops, and tested positive for cannabis on September 7, 2016. The report indicated respondent consistently visited her children, although she was often late for the visits. Respondent was inconsistent in providing snacks for the boys and the visits were “often chaotic and there is no structure.” During one visit, respondent arrived late and “visibly upset.” She told her children that D.G. hit her.

¶ 10 An addendum to the report covered respondent’s progress through December 13, 2016. It indicated that respondent was living with a friend, but the home was not an appropriate living environment for children. It also noted that respondent had failed to appear at her next two drug drops on November 28, 2016, and December 12, 2016.

¶ 11 The record also shows that as of November 7, 2016, respondent demonstrated unsatisfactory progress in the following areas of her service plan: finding stable and safe housing, participating in domestic violence prevention classes, demonstrating progress on the issue of mental health by developing an understanding of its effect on parenting and relationships, following up with her physician regarding her need for medication, applying what she learns in counseling regarding healthy relationships to her everyday life, abstaining from drug use, providing healthy snacks for the minors during visits, and demonstrating appropriate parenting skills during visits.

¶ 12 Following a December 13, 2016, permanency review hearing, the trial court changed the permanency goals to substitute care pending termination of parental rights, citing a lack of effort on respondent’s part and no indication that her efforts would change.

¶ 13 On February 15, 2017, the State filed petitions to terminate respondent’s parental rights, asserting that respondent failed to make reasonable progress toward the return of the minors

during any nine-month period following the adjudication of neglect and specifically between April 1, 2016, and January 1, 2017.

¶ 14 At the May 30, 2017, adjudicatory hearing, the trial court took judicial notice of the files in all cases. Thereafter, the following evidence was elicited.

¶ 15 Chelsea Smalley, the CYFS caseworker assigned to respondent's case, testified as follows. Respondent had been ordered to participate in drug drops twice per month and provide proof of doing so, but she failed to complete scheduled drug drops on April 4, June 1, June 28, July 5, July 7, September 6, November 28, and December 12, 2016. Respondent told Smalley that she tested positive for cannabis on September 7, 2016, because "her friends had been passing around blunts and cigarettes and *** she didn't realize what they were doing. She *** didn't realize it was a blunt and not a cigarette" when she smoked it. Respondent had two negative drug drops on August 22 and September 18, 2016.

¶ 16 Smalley recalled that respondent told her D.G. "had raised his hand at her" during a meeting with respondent on November 15, 2016. Although respondent never referred to D.G. as her paramour, she spent "a decent amount of time with" him. This incident happened on November 14, 2016. After the incident, respondent went to V.A.'s house, her previous paramour with whom there was a history of domestic violence. While at his house, respondent smoked cannabis. Smalley also recalled that respondent had shown up approximately 15 minutes late to a scheduled visit with her children and was visibly upset. Smalley was not present at this visit. However, during the visit, respondent stated that D.G. hit her. Smalley spoke to respondent by telephone and urged her to call the police and get away from D.G.

¶ 17 On cross-examination, Smalley testified that respondent tested negative for illegal drugs several times. Respondent also participated in counseling, completed "a majority" of her

psychological evaluation, and she had successfully completed a parenting class. Smalley agreed that respondent had lived with her friend, Heidi, during most of the review period, although she did describe a couple of times where respondent “was couch surfing.” Respondent slept on the couch at Heidi’s apartment, but Smalley recalled a few occasions where she would go to the apartment unannounced and Heidi told her respondent had not been there for a few days, and another occasion when Heidi told her she was no longer living there. During the last couple months of the review period, respondent had been living at another address. Smalley mentioned several housing options to respondent prior to April 1, 2016, including transitional housing through the Center for Prevention of Abuse and the Dream Center.

¶ 18 Chad Oberle, a police officer for the city of Peoria, testified that he was dispatched to a residence on McClure Street on June 25, 2016, in response to a fight. When he arrived, another officer had D.G., who resided at the house, on the ground at gun point. D.G. matched the description of a suspect who was armed with a gun. Oberle took D.G. into custody. Respondent was present at the residence during the event and reported having seen D.G. and Deanna Booker fighting. Specifically, respondent told him that Booker wanted to fight her, but D.G. was holding respondent back. At one point, Booker pushed D.G. into the glass door at a nearby furniture store causing the door to shatter.

¶ 19 John Peterson, a police officer for the city of Peoria, testified that he was dispatched to the residence on South Matthew Street on December 12, 2016, for a domestic issue. When he arrived, he found D.G. and Booker. Respondent was not present, but she arrived shortly thereafter. Respondent told him that she had been sleeping in an upstairs bedroom when she heard pounding on the door downstairs. She then heard Booker screaming. Booker then came upstairs and yelled at her to get out of the house. Booker then grabbed her by her hair and began

pulling her out of the house. Respondent left after putting her shoes on. Peterson recalled that respondent had some hair pulled out of her head.

¶ 20 Respondent testified that she attempted to contact the Center for Prevention of Abuse to start domestic violence classes in August or September 2016. She called them approximately four times, but had not heard anything back. She told her caseworker she was having trouble contacting them. Respondent was frustrated and stopped trying to contact the Center. Respondent was living with D.G. on Matthew Street on December 12, 2016, but did not return to that address following the incident with Booker. She stayed with her son's cousin for about a month and then moved back in with Heidi in February 2017.

¶ 21 Following closing arguments, the trial court stated it had considered the relevant time period of April 1, 2016, through January 1, 2017, the exhibits, and the testimony presented. The court then found respondent unfit for failing to make reasonable progress by clear and convincing evidence. In making its determination, the court noted respondent's failure to complete the required drug drops as well as her "inability to make choices that are good for [her], and that if [she] would have had [her] children, been good for [her] children." It noted that respondent "place[s herself] in situations time and time again where [she] is surrounded by people who don't treat [her] properly," including placing herself in a position where three incidents of domestic violence occurred within a nine-month period.

¶ 22 The trial court conducted a best interest hearing on July 11, 2017. In anticipation of the hearing, CYFS submitted best interest hearing reports, which the court took into consideration.

¶ 23 The first report, authored by J.B.'s caseworker, indicated that J.B. had been in his foster home since May 26, 2016. His foster parents were meeting his basic needs, and J.B. was developing well in the home. His foster home was clean and safe and CYFS had no concerns

with his placement. J.B. had a bond with his foster parents that had “strengthened over time.” By experiencing behavior barriers together, J.B. had come to learn that his foster parents were committed to him. J.B. was “viewed as a respected member of the family.” His foster parents provided a home environment conducive to healthy, age appropriate development. J.B. received therapeutic services that helped him process his emotions and feelings, a service that would continue post adoption. J.B.’s foster parents were willing and able to adopt him; they intended to continue visits with his siblings post adoption. J.B.’s caseworker opined that termination of respondent’s parental rights would be in his best interest.

¶ 24 The second report, authored by D.R. and C.B.-R.’s caseworker, indicated as follows. D.R. had been in his behavioral specialized foster home since December 2, 2016. D.R. had adjusted well to his foster home, which consisted of his foster father and a foster brother. His foster father had experience with children exhibiting behavioral issues and was able to meet all of D.R.’s emotional, behavioral and social needs. His foster father had previously adopted a male child with specialized behavior issues and the child had thrived since his adoption. D.R.’s basic needs were being met in his foster home and his foster father was working with D.R. in areas where he was developmentally delayed. D.R. was attached to his foster father who provides the structure necessary due to D.R.’s issues with hyperactivity and inability to self-regulate his emotions. D.R. and his foster father were affectionate toward one another and D.R. told the caseworker that he loves “my Dana” and his “brother Keegan.” The family enjoyed the outdoors and they go camping twice a month. D.R.’s foster father is willing and able to provide D.R. permanency. The caseworker noted that D.R. greets his mother with a hug when he sees her and appears to have some attachment to her, but he does not mention her outside of the visits.

¶ 25 The report further indicated that C.B.-R. resided with his medically specialized foster family since the case began. C.B.-R. had medical diagnoses of Laryngomalacia, GERD, Fetal Alcohol Syndrome, a recessed jaw, and a heart murmur. C.B.-R. has thrived in his placement, improving medically, socially, and developmentally. His foster parents treat him like their own child and provide the stability and consistency that he needs. C.B.-R. also had a relationship with his foster parents' extended family. C.B.-R.'s foster family was meeting his basic needs. C.B.-R. is affectionate with his foster parents and they reciprocated his affection. C.B.-R.'s foster family is active in church and they have a "wonderful" support group. They also provide a fun and active lifestyle for C.B.-R. and his foster brother. His foster family was willing and able to provide him permanency. The caseworker noted that D.R. has "some attachment" to respondent and will give her a hug when she asks for one, but he typically plays by himself or with his siblings during visits and he does "not ask for his mother outside of the visits."

¶ 26 D.R. and C.B.-R.'s caseworker opined that it was in the minors' best interests to terminate respondent's parental rights. Specifically, the caseworker noted that respondent "continued to make poor choices that put herself at risk" and "fails to understand how these poor choices in dangerous men could impact her children." The caseworker further noted that "[d]espite all three boys being in separate homes, this appears to work well due to all the boys having their own unique and individual needs" and that "the boys thrive when they are separated." Finally, she noted that D.R. and C.B.-R.'s foster parents understood the importance of, and were willing to keep, sibling contact post adoption.

¶ 27 Respondent testified that she had been visiting with her children once a month. Her last visit was in June 2017. The children all knew each other and got along "like normal brothers." Although they were not all placed in the same foster home, her visits were always with all three

of them together. Respondent stated that her children recognize her, call her “mom,” and run to greet her at visits. They were happy to see her. J.B. and D.R. had previously expressed a desire to live with her. She stated that she had a strong bond with her children. Respondent was living with a friend, Vanessa, and her housing was stable. She has been applying for jobs and had an interview scheduled for next week. She also planned to start school in the fall to obtain her general equivalency diploma (GED). She thought she would be in a position to have her children return home in the near future.

¶ 28 During arguments, the State asked the trial court to terminate respondent’s parental rights. Specifically, it noted that all three children, who had been in care for two years, were in foster homes that were ready, willing, and able to adopt them, and that each foster home was doing “a very good job of handling the boys and their individual difficulties.” The guardian *ad litem* also asked the court to terminate respondent’s parental rights. He noted that the children had “become bonded with their foster families” and with their extended foster families. Thereafter, the trial court found that the termination of respondent’s parental rights was in the best interests of the children. In rendering its decision, the court noted that respondent was not doing what was necessary to regain custody of her children, whereas the children were doing well with their foster families and it was “just patently unfair” to make the children wait for her to “catch up.”

¶ 29 This appeal followed.

¶ 30 ANALYSIS

¶ 31 On appeal, respondent challenges only the trial court’s finding that it was in the children’s best interests to terminate her parental rights. Essentially, she argues that the trial court

allowed the factors which formed the basis for its unfitness finding to “overr[i]de [it’s] determination as to best interests.” We disagree.

¶ 32 At the best-interest stage of the proceedings, “all considerations must yield to the best interest of the child.” *In re I.B.*, 397 Ill. App. 3d 335, 340 (2009). In particular, “the parent’s interest in maintaining a parent-child relationship yields to the child’s interest in a stable, loving home life.” *Id.* At this point, the State must prove by a preponderance of the evidence that termination of parental rights is in the child’s best interest. *Id.*

¶ 33 In considering the child’s best interest, the court takes into account (1) the safety and welfare of the child, (2) the development of the child’s identity, (3) the child’s background and ties, (4) the child’s sense of attachment, including where the child feels loved, has a sense of security and familiarity, continuity of affection, and where the least-disruptive placement alternative would be, (5) the child’s wishes and goals, if applicable, (6) the child’s community ties, (7) the child’s need for permanence, (8) the uniqueness of each family and child, (9) the risks of being in substitute care, and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). A trial court’s finding regarding a child’s best interest will not be reversed on appeal unless it was against the manifest weight of the evidence. *In re I.B.*, 397 Ill. App. 3d at 340.

¶ 34 Here, our review of the record reflects that the children have been in foster care since November 2015. At the time of the best interest hearing, C.B.-R. had been in his current foster home for 1½ years, D.R. for almost one year, and J.B. for approximately 6 months. Although two of the children had switched foster homes since entering care, the record shows they are all thriving in their current respective foster homes and that they feel secure there. In fact, the record indicates that the children thrive when they are in separate homes. Further, the record

demonstrates that the children are bonded with their respective foster families, that they feel loved by their foster families, and they are each treated as members of the family. In addition, the children's respective foster parents are meeting their specific needs, including addressing both behavioral issues and developmental delays. Most importantly, each of the children's foster parents expressed a desire, willingness, and an ability to adopt the children and provide them permanency while also allowing continued contact with their siblings.

¶ 35 On the other hand, respondent appears no closer to having the children returned to her care now than she did when the case was opened. During the relevant review period, respondent continued to put herself into situations where domestic violence occurred, which is not a safe and secure environment to raise children. Further, although the record reveals the children have some kind of attachment to respondent, it does not appear to be parental in nature.

¶ 36 Based on the above evidence, and keeping in mind the children's best interests, we find that the trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 37 **CONCLUSION**

¶ 38 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 39 Affirmed.