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2017 IL App (4th) 160612-U

NO. 4-16-0612

FILED
February 17, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: P.F. and N.F., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	No. 14JA78
NICHOLAS HERALD,	)	
Respondent-Appellant.	)	Honorable
	)	Kevin P. Fitzgerald,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in terminating respondent father's parental rights.

¶ 2 Respondent father, Nicholas Herald, appeals the order terminating his parental rights to P.F. (born May 13, 2012) and N.F. (born December 1, 2010). Respondent argues the order improperly punishes him for using marijuana to treat his seizure disorder and is thus against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 17, 2014, the State filed a petition for adjudication of wardship on behalf of P.F. and N.F. The State alleged the children were neglected when they resided with their mother, Stefani Ferguson, because when residing with Ferguson, the children resided in an injurious environment. The State further alleged the mother had unresolved issues of alcohol or

substance abuse (705 ILCS 405/2-3(1)(b) (West 2014)). Ferguson is not a party to this appeal. At the time the petition was filed, respondent father was in the Illinois Department of Corrections (DOC).

¶ 5 In March 2015, Ferguson admitted the allegations in the petition. The trial court found the minors neglected based on Ferguson's admission and the fact the mother was inebriated on the day of the shelter-care hearing (she had a 0.375 blood alcohol level on breath test).

¶ 6 The record contains an April 2015 document entitled "Integrated Assessment Interview Activity," authored by Megan Rebbe of The Baby Fold. The interview occurred on January 20, 2015, while respondent was incarcerated in the Dixon Springs Boot Camp, a DOC facility. Respondent was sentenced to DOC following a residential-burglary conviction. Respondent anticipated his release in March 2015. Respondent explained he was introduced to marijuana at age 15 through his peers. After using marijuana for six months, respondent began using it every day. At that time, he also began consuming alcohol and illegally using prescription drugs. Respondent's use of drugs resulted in multiple arrests and incarcerations. Respondent committed the 2014 residential-burglary offense with the purpose of obtaining illegal drugs. During his incarceration, respondent participated in substance-abuse rehabilitation. Upon his release, respondent planned to return to his previous position as a cook at Logan's Roadhouse restaurant. His employer indicated he wanted respondent to return.

¶ 7 The dispositional hearing was held in April 2015. The dispositional report, prepared before the hearing, noted respondent was paroled from DOC in March 2015. While imprisoned, respondent completed a drug-rehabilitation program and participated in life-skills

classes. Respondent obtained employment with a nursery and a florist shop. Respondent resided with his brother, which concerned the report's author, Rebbe. Respondent's brother used marijuana. Respondent's drug screens, however, were negative as to all substances. The author reported respondent visited his children twice since his release from DOC. The visits went "very well":

> "The children enjoy spending time with him[,] and he seems to enjoy the time also. [Respondent] is very attentive to the children and engages with them for the duration of the visit. [Respondent] seems to struggle with telling the children goodbye, which shows an attachment to the children. This worker has not observed anything concerning during the visits with the children."

¶ 8 In the dispositional order, the trial court found respondent unfit to care for, protect, train, educate, supervise, or discipline his children. The court granted custody and guardianship to the Department of Children and Family Services. The court observed respondent needed to obtain appropriate housing and employment and successfully complete parenting classes, anger-management treatment, and substance-abuse treatment. The court further observed respondent needed to complete a domestic-violence assessment and "to demonstrate prolonged sobriety, stability, and [a] crime-free lifestyle." The permanency goal was set to return home within 12 months.

¶ 9 At a September 2015 permanency-review hearing, all parties agreed respondent was fit. Because of his background, he was having some difficulty in finding an apartment. The trial court, stating respondent "has done a great job," advised respondent "to try to get a fitness

finding before we close the case, and it starts with the substance abuse." The court further stated, "I hope you tackle that successfully." The permanency goal changed to return home within five months.

¶ 10 In December 2015, respondent informed a clinician at Chestnut Health Systems he relapsed on marijuana. Respondent attributed his relapse to his seizure disorder and having been prescribed a medication "that produced a sensation as though he were high." Respondent used marijuana daily over the previous three or four months. Respondent reported his use of marijuana affected all parts of his life, including the fact that he was unemployed.

¶ 11 In February 2016, the State filed a petition to terminate respondent's parental rights. The State alleged respondent was an unfit parent in that he failed (1) to maintain a reasonable degree of interest, concern, or responsibility as to his children's welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) to make reasonable efforts to correct the conditions that were the basis for the children's removal from the parents during the nine-month period of May 23, 2015, through February 23, 2016 (750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) to make reasonable progress toward the return of his children in the nine-month period of May 23, 2015, through February 23, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 12 At a May 2016 fitness hearing, respondent admitted the State's allegation he was an unfit person in that he failed to make reasonable progress toward his children's return (section 1(D)(m)(ii)). The court accepted respondent's admission and set a hearing on the best interests of the children.

¶ 13 At the hearing on the children's best interests, the trial court considered the July 2016 best-interests report authored by Tiffany Hashimoto, a case manager at The Baby Fold.

According to the report, in December 2014, the children were initially placed with their paternal grandmother. In February 2015, the children were moved to a traditional foster home. That placement ended in July 2015, and the children were moved to their current placement. The children now appeared well-adjusted and were strongly bonded to their foster parent, whom they called "mommy." In their foster home, both children had their own room, and the children felt safe. The author observed a "meltdown" by N.F. The foster mother calmly and appropriately addressed the situation.

¶ 14 Hashimoto further noted the children continued to visit with respondent at times when the foster mother was present. At the end of the visits, N.F. expressed anger that the visits were over. N.F. continued to see a counselor. Both children enjoyed spending time with respondent, and both enjoyed residing with their foster mother. Both respondent and the foster mother told the children they loved them. The least-disruptive placement, according to Hashimoto, was to remain in the foster mother's home.

¶ 15 Hashimoto further opined the children struggled with not having a permanent home. N.F.'s "behaviors have increased tremendously since the beginning of the case." N.F. struggled with anger "she may feel towards her [birth parents] but her therapist was working with her." Hashimoto believed more time in foster care may lead to increased mistrust and the absence of permanency. The foster mother "made it clear that she wishes to provide long term care for [N.F.] and [P.F.] if possible."

¶ 16 Attached to the best-interests report is document entitled "Chestnut Health Systems Discharge Summary Report". According to the report, respondent was admitted for treatment in Chestnut Health System's intensive outpatient treatment program on April 4, 2016.

While in treatment, respondent reported he had a prescription for Dilantin. Respondent was educated on the disease concept of addiction, but he failed to participate actively in treatment. Respondent completed the four requested urine screens, and all indicated marijuana use. On May 9, 2016, respondent was discharged from the program after missing three group sessions. Respondent's prognosis was poor.

¶ 17 In addition to authoring the best-interests report, Hashimoto testified at the hearing. She was first assigned to the case in February 2016. Respondent last visited his children the Friday before Father's Day. Hashimoto believed if parental rights were not terminated, respondent would have to start "from square one," meaning he would be "over two years" from having the children returned to him.

¶ 18 On cross-examination, Hashimoto testified she supervised the majority of the visits respondent had with his children. The interactions were positive. Respondent brought food for the children. He interacted with them and played with them. His behavior was appropriate. Hashimoto had not had to end a visit early for any reason. Hashimoto did not think respondent appeared at any visit while intoxicated or under the influence of any substance. Hashimoto had not been to respondent's home and did not know his address. She knew he was employed. No remaining services other than substance-abuse treatment were required of respondent.

¶ 19 According to Hashimoto, the children were bonded to respondent. Despite this bond, and because of respondent's substance abuse, Hashimoto continued to believe termination was in the children's best interests.

¶ 20 Tammy Truitt, foster mother for the children and the director of adult education at Heartland Community College, testified the children came to her home on July 14, 2015. Truitt

was unmarried and resided with her daughter, age 10. Truitt adopted her 10-year-old daughter on July 6, 2015, after fostering her for two years. When the younger children entered her home, N.F. was angry and confused. N.F. was in treatment. Truitt planned to continue the treatment for her.

¶ 21 Truitt testified the children were enrolled at a day care center near her work. N.F. would begin kindergarten in August 2016, and P.F. would participate in early childhood learning. The children called Truitt's parents "grandma and grandpa." Over time, they called her "mom." Truitt signed a permanency commitment, and she loved the children. The following colloquy occurred regarding Truitt's desire to adopt the children and the permanency commitment:

> "Q. And that indicated that if the children were free for adoption you wish to be the one to adopt them?
>
> A. That's what it says, yes.
>
> Q. Do you have any hesitancy about that?
>
> A. Usually no. [N.F.] can be really rough sometimes, but —
>
> Q. But in all seriousness?
>
> A. In all seriousness, no. I still feel like that would be the right course."

¶ 22 According to Truitt, she and respondent had "a fairly cordial relationship." Respondent had been invited to her home. He spent Easter with her and the children. If she adopted the children, Truitt planned to continue to allow the children to have contact with respondent. Truitt did not feel the same way about the mother at that time, but she felt the

children should see their mother, too.

¶ 23 On cross-examination, Truitt testified at no point did she have to ask respondent to leave for substance abuse or other unsafe behavior. The children loved their father. The children did not talk about their mother as much, but they talked "mostly about their father."

¶ 24 According to Truitt, when the children first entered her care, the children had more anger incidents or outbursts. The number of those incidents gradually dissipated over time. In the time period preceding Truitt's testimony, N.F.'s anger incidents had "increased slightly." The children missed their father. The increase in incidents seemed to coincide with the fact the visits with respondent were decreasing. In addition, Truitt's boyfriend had become involved in their lives. The children were sensitive to changes in their routines.

¶ 25 The trial court questioned Truitt. Truitt's daughter and the two younger children acted "[v]ery much like siblings." When asked about her desire to adopt both of the children, Truitt testified to the following: "I feel like I do want to adopt. But I feel like I just want to be truthful, and there are days when [N.F.] is at her worst that I wonder if I'm the right parent for this child. I don't know how I can get her to calm down and stuff. So that's what you heard in that. I felt like I needed to be truthful. But most days I'm like absolutely I want to adopt these kids." The court asked, "[A]re you committed on going forward with the adoption today?" Truitt responded, "I feel like today I'd like to move forward."

¶ 26 Respondent testified on his own behalf. At the time of his testimony, respondent resided in a two-bedroom mobile home with his uncle, where he lived for the previous two months. When asked if this home was appropriate if the children were returned to him, respondent testified it could be with some rearranging. The uncle could stay in his room, and the

children could have the second bedroom. Respondent would sleep in the living room. Respondent's plan, however, was to move to an apartment. Because respondent was not paying his uncle rent, he was able to save money for an apartment.

¶ 27 Regarding his visits with his children, respondent testified the first thing they did was "just play." They used their imaginations and had fun together. Then they would go eat.

¶ 28 According to respondent, he worked as a cook at Logan's Roadhouse 35 hours per week, earning $10 an hour. Respondent had not enrolled in the benefits program at Logan's Roadhouse or looked into whether those benefits would apply to his children.

¶ 29 Regarding his substance abuse, respondent testified his substance of choice was marijuana. At one point in the case, he was found "fit" by the trial court. At that time, he was not using marijuana. At the end of summer 2015, he relapsed, and marijuana was a continuing issue for him. Respondent was discharged from treatment at Chestnut Health Systems due to three unexcused absences because of his work schedule. While working at Logan's Roadhouse, most of his shifts were at night, when the classes were held. Respondent did not re-engage in substance-abuse treatment for a number of reasons. One is that Chestnut Health Systems wanted him to take a prescription medication for his seizure disorder. Respondent testified Chestnut Health Systems wanted him on that medication "for insurance basically." The medication had been prescribed to respondent before, but he did not like the side effects and did not want to be on a synthetic drug.

¶ 30 Respondent had not suffered a seizure since his relapse on marijuana, and he continued to use marijuana to treat his seizures. Generally, respondent's seizures occurred at night, disrupting his sleep. Marijuana, however, prevented the seizures and allowed respondent

to get a full night's rest. Respondent attempted to get a prescription for marijuana, but Illinois law required a patient to be established with a doctor before the doctor could write a prescription for marijuana. Respondent would become an "established patient" with his physician in March 2017.

¶ 31 Respondent did not believe it was in his children's best interests to have his parental rights terminated. He believed being with him was in their best interests. Respondent was willing to get back into treatment. When asked how he would be able to complete treatment "and not smoke," respondent replied, "Just do it. It's a decision. That's all it is."

¶ 32 On cross-examination, respondent testified he did not yet know the type of seizures he suffered. Because the seizures occurred in his sleep, the doctors had not identified their type. Respondent had another test scheduled to help identify the types of seizures he suffered. Respondent had been on three or four prescriptions in the previous year, but all had side effects respondent did not like. Respondent had not exhausted all of his medication alternatives.

¶ 33 Respondent admitted his children were receiving very good care in their current foster placement. He could not think of anyone who would provide better care.

¶ 34 At the close of the hearing, the trial court observed Truitt was committed to having the children maintain a relationship with respondent and found such commitment "a real positive thing." The court admitted to being "a little taken aback" by Truitt's testimony regarding adoption, but the court believed she was "just being honest." The court concluded Truitt was committed to providing the children permanency.

¶ 35 Regarding respondent, the trial court was certain he suffered from a disorder, but it stated "I'm really not prepared to take the leap of faith that marijuana is a treatment modality

for whatever he has." The court further observed the following:

> "[H]e said he sleeps better, but there's nothing to suggest that that is a medically validated treatment course for whatever he has. He may or may not have that happen next March, but it seems to me in this case that he really had some choices to make. And this case is different from most cases in that he admitted unfitness and then we continued the case out for over two months for this best-interest hearing. Parents I think understand when that happens that really is the very last chance they have to make things right, but there's still a chance.
>
> * * *
>
> There was an admission that even if he tested today he would still be positive, so I think the suggestion was that he's continued to use. I guess what that tells me, [respondent], is that the side effects—I mean, you could have taken the prescription medication to deal with your seizure disorder ever since the petition was filed or even before that to try to get your kids back. You knew you couldn't continue to use and get your kids back. So, it seems to me that you chose not having the side effects of traditional medicine over the ability to get your kids back. I mean, you're not an unintelligent man, and I think you knew what was going to happen if you went down that course.

I just don't know when permanency could happen for these kids if—we have to wait until March before he might be able to start and get back into treatment. I mean, even if it is medically validated that marijuana is an appropriate treatment for what he's got, he's not been able to not use for almost a year, since the end of last summer. And if he doesn't get that together we could be out another—I mean, up to two years. And we certainly need to see a sustained period of sobriety given how long he's had the issue."

¶ 36 The trial court noted both children called Truitt mom. They were bonded into that family, and they would have continued contact with respondent. After noting the case was closer than most, the court applied the best-interests factors of section 1-3 of the Juvenile Court Act of 1987 (705 ILCS 405/1-3 (West 2014)). The court found the following factors favored termination, even if only "slightly": (1) the physical safety and welfare of the children; (2) the children's sense of security; (3) the least-disruptive placement alternative; (4) the children's long-term wishes and goals; (5) community ties; and (6) permanency. The court found the uniqueness of N.F.'s issues favored not terminating parental rights. The remaining factors were neutral. The court concluded by finding by a preponderance of the evidence that it was in the children's best interests to terminate parental rights.

¶ 37 This appeal followed.

¶ 38 II. ANALYSIS

¶ 39 On appeal, respondent argues the trial court's decision terminating his parental rights is against the manifest weight of the evidence. Respondent emphasizes the record shows,

starting early in the case, his visits went well with his children and he was able to demonstrate what he learned during his parenting course. The record further established respondent completed all services other than substance-abuse treatment, and during visits, he engaged with the children, redirected them as needed, and often worked on P.F.'s speech. Respondent argues, despite his demonstrated ability to parent his children, he was punished for treating his illness with marijuana when treatment with medication did not work. Respondent cites Illinois law and various articles showing marijuana usage is more acceptable and its lawful usage should not be a basis for the termination of parental rights. Respondent maintains the decision to terminate his "excellent relationship" with his children "was more like Inquisition—a 1936 era *Reefer Madness* paranoia."

¶ 40 After a finding of parental unfitness, the attention and focus of the court shifts to the children's interests in securing "a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004) (observing a parent's wish to maintain a relationship with his children yields to the children's best interests). At this stage, the trial court considers a number of factors, including the following: (1) the safety and welfare of the children; (2) the development of the children's identities; (3) the children's familial, cultural, and religious background; (4) the children's sense of attachment; (5) the wishes and goals of the children; (6) the children's community ties; (7) the children's need for permanence; (8) the uniqueness of each child and family; (9) the risks of substitute care; and (10) the preferences of those available to care for the children. 705 ILCS 405/1-3(4.05) (West 2014). A trial court may terminate parental rights only if it finds the State proved, by a preponderance of the evidence, the termination is in the children's best interests. *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. We will not overturn a decision

terminating parental rights unless that decision is against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 961, 835 N.E.2d 908, 914 (2005). We may find a decision to be against the manifest weight of the evidence only when the opposite conclusion is clearly evident or the decision is arbitrary, unreasonable, or not based on evidence. *In re B.B.*, 386 Ill. App. 3d 686, 697-98, 899 N.E.2d 469, 480 (2008) (citing *In re D.F.*, 201 Ill. 2d 476, 498, 777 N.E.2d 930, 942-43 (2002)).

¶ 41 We reject respondent's characterization of the termination of his parental rights as "*Reefer Madness* paranoia," as the record does not show, as respondent characterizes, the trial court terminated the parental rights of a father who had no options for treating his seizure disorder other than through marijuana use. We recognize the record establishes respondent suffered a seizure disorder, and seizures are listed as a "debilitating medical condition" treatable under the Compassionate Use of Medical Cannabis Pilot Program Act (see 410 ILCS 130/10(h)(1) (West 2014)). We further recognize the record establishes respondent used marijuana to treat his seizures, and according to respondent, it was effective and his marijuana use did not prevent him from visiting his children or acting appropriately with them. The record also establishes marijuana was not respondent's only option to treat his seizure disorder. Respondent admitted he had not tried all of the medication options available to him. Of the medication he tried, respondent testified he did not like the side effects, but he provided no explanation of what those side effects were or how they affected his ability to function in daily life. Also, when asked how he could give up marijuana and complete treatment to get his children back, respondent stated he would simply stop. As the court observed, respondent's decision to forego attempting new medication or deal with unspecified side effects to continue

with illegal marijuana use was made even when respondent was aware the best-interests hearing was nearing. Further, respondent's previous marijuana use led to the illegal consumption of prescription drugs and multiple criminal offenses. This history supports the court's conclusion further substance-abuse treatment would be necessary even if respondent was prescribed marijuana, prolonging instability in the children's lives.

¶ 42 The record shows the court thoughtfully examined the best-interests factors before finding the State proved termination was in the children's best interests by a preponderance of the evidence. These findings are supported by evidence in the record and are not against the manifest weight of the evidence. While respondent points to testimony showing his bond with his children; the fact his children were in their third foster placement; and the foster mother had doubts regarding her ability to parent N.F. due to N.F.'s behaviors, the record also establishes the children were bonded with their foster mother and foster sister; the children resided in that placement for a year; the children called the foster mother's parents "grandma and grandpa"; N.F.'s behaviors had generally improved; and the foster mother was committed to adopting the children despite her doubts. Respondent essentially urges us to reweigh the evidence. We decline to do. See *In re S.M.*, 314 Ill. App. 3d 682, 687, 732 N.E.2d 140, 144 (2000) ("The reviewing court does not reweigh the evidence ***.").

¶ 43 We disagree with respondent's challenge to Hashimoto's and the trial court's conclusions, if parental rights were not terminated, it would take two years for respondent to complete substance-abuse treatment successfully. We do not agree the finding "defies logic" or is against the manifest weight of the evidence. We note the court did not conclude "two years" were necessary, but it found permanency could be delayed "*up to* two years" (emphasis added).

The court needed to "to see a sustained period of sobriety given how long he's had the issue." Given (1) respondent's employment history, (2) his history of marijuana leading to the use of other illegal substances and criminal conduct, (3) the length of time before respondent would become an established patient and medical marijuana could be considered as an alternative, and (4) respondent's decision to forego trying other means of treating his seizure disorder despite the consequences of continued illegal marijuana use, the anticipated two-year time period is not unreasonable.

¶ 44 Respondent argues Hashimoto, in her best-interests report, failed to mention or consider respondent in 8 of the 10 best-interests factors she listed. Hashimoto's conclusions were not adopted blindly by the trial court. The court weighed the evidence and reached its own conclusions.

¶ 45 Last, we note respondent quotes the trial court as stating, "The presumption in the law that someone who has a serious illness should be allowed to use this doesn't matter to this court." This language does not appear on the page cited by respondent, nor does it appear in the surrounding text, which provides the court's holdings at the end of the best-interests hearing. Given the court's statements to respondent and its holdings, we read the above sentence not as a rejection of statutory law but as the refusal to accept respondent's position that he had no choice but to use marijuana.

¶ 46 This case is a close case. However, the court found the State proved termination of respondent's parental rights was in the children's best interests by a preponderance of the evidence. Based on our review of the evidence, we do not find the opposite conclusion is clearly evident or the court's decision to be arbitrary, unreasonable, or not based on evidence. See *B.B.*,

386 Ill. App. 3d at 697-98, 899 N.E.2d at 480.

¶ 47 III. CONCLUSION

¶ 48 We affirm the trial court's judgment.

¶ 49 Affirmed.