

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 (4th) 160784-U
NO. 4-16-0784
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
February 24, 2017
Carla Bender
4th District Appellate
Court, IL

In re: S.P., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 15JA24
JUSTIN KENNEDY,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment terminating respondent's parental rights is affirmed.

¶ 2 In April 2015, the State filed a neglect petition as to S.P. (a male minor born in February 2013). Respondent, Justin Kennedy, is the father of S.P. In May 2015, the trial court adjudicated S.P. neglected as a result of his exposure to substance abuse when residing with his parents. Following a dispositional order filed on July 30, 2015, the court placed custody and guardianship with the Department of Children and Family Services (DCFS). In June 2016, the State filed a motion to terminate respondent's parental rights. Following a hearing in August 2016, the trial court found respondent unfit. In October 2016, the court found it in S.P.'s best interest to terminate respondent's parental rights. This appeal followed. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 2, 2015, the State filed a neglect petition, alleging S.P. was living in an

environment injurious to his welfare as a result of his exposure to substance abuse when residing with respondent and S.P.'s mother, Kari Pell, who is not a party to this appeal. On May 21, 2015, respondent and Pell admitted S.P. was neglected. The trial court, on June 25, 2015, made S.P. a ward of the court and placed custody and guardianship with DCFS. (The written order was filed July 30, 2015.) All visitation between S.P. and his parents was to be supervised.

¶ 5 The dispositional report filed by the Center for Youth and Family Solutions (CYFS) on June 18, 2015, revealed respondent was a heroin addict. A friend of respondent overdosed in the home when S.P. was present. Respondent described himself and Pell as "good parents, just junkies." Due to respondent's homelessness, S.P. had been staying with respondent's mother and stepfather since a month prior to DCFS's involvement. Respondent did not participate in any drug screens prior to the dispositional report. S.P. was bonded with respondent as well as with his grandparents.

¶ 6 The State filed its motion to terminate respondent's parental rights on June 3, 2016. The motion alleged respondent was unfit pursuant to statute (750 ILCS 50/1(D)(m)(i) (West 2014)) for failure to make reasonable efforts to correct the conditions that were the basis for the removal during the nine month period of May 22, 2015, to February 22, 2016. The motion also alleged respondent failed to make reasonable progress toward the return of S.P. during the same nine-month period pursuant to statute (750 ILCS 50/1(D)(m)(ii) (West 2014)). (Two other counts alleging unfitness are not at issue as the trial court found the State did not prove those counts by clear and convincing evidence.)

¶ 7 On August 29, 2016, the trial court held a hearing on the motion to terminate respondent's parental rights. Kelsey Hoover, a foster care caseworker with CYFS, testified she was assigned to S.P.'s case from April through August 2015. Hoover referred respondent for a

substance-abuse assessment, but he never obtained one. He also never participated in drug screens, despite Hoover's requests for him to do so. She supervised visits between S.P. and his parents. While the parents were attentive to S.P., they would "nitpick" at each other and then escalate to yelling and cursing in front of S.P. The parents showed up late for visits and sometimes did not show up at all because of transportation issues. Hoover also testified respondent was in need of counseling and a psychological assessment, but he needed to obtain a substance-abuse assessment first.

¶ 8 At the time of the integrated assessment, both parents reported they were homeless. Throughout her assignment to the case, respondent never obtained stable housing. When Hoover transferred the case at the end of August 2015, respondent and Pell were living in various hotels and with various friends.

¶ 9 The longest time respondent ever held a job was for nine months in 2012. During Hoover's oversight, respondent worked at Arby's restaurant.

¶ 10 Keyana Jackson was the caseworker who succeeded Hoover in late August 2015. She served as the caseworker until February 17, 2016. Respondent was still in need of services when Jackson took over the case. Respondent completed a substance-abuse assessment toward the end of her service on the case. Respondent was incarcerated in January 2016 and remained so while Jackson was assigned to the case. During her time with the case, respondent completed no services and never submitted to drug screens, although requested to do so. Respondent missed approximately 11 visits with S.P.

¶ 11 Lauren Zitkus, the caseworker since February 2016, testified she sent a letter to respondent while he was incarcerated and received a letter back from him. She also saw him one time in prison. She was not able to refer him for services due to his incarceration. Zitkus

became aware in July 2016 respondent was participating in services at the Department of Corrections (DOC).

¶ 12 Respondent offered a set of reports from Westcare, a service provider within DOC. The reports showed respondent attended various programs, including anger management and parenting classes, for three hours a day, five days a week, from February 2016 until the present. The trial court admitted respondent's exhibit without objection.

¶ 13 When making its findings, the trial court noted respondent had engaged in one of the more impressive array of services offered in DOC. However, the court noted during the first nine months following adjudication, "a critical period as identified by the law," respondent did not engage in any services. The court found respondent failed to make reasonable efforts or reasonable progress during this period. Respondent's engagement with services came as a result of his commitment to DOC. While the court found respondent's engagement with services to be a good thing, it also found it came too late in the nine-month period to amount to reasonable efforts and reasonable progress.

¶ 14 On October 25, 2016, the trial court held the best-interest hearing. The court considered a court-appointed special advocate (CASA) report and a best-interest report filed by Zitkus. The reports revealed the following. S.P. was transitioned to a new foster home on May 16, 2016. The foster mother lived across the road from S.P.'s grandparents and had been providing day care for S.P. since he entered foster care. S.P. had his own room, was up to date on vaccinations and well checks, was potty trained, and had vacationed with his foster family at the ocean. S.P. was currently attending early education classes five days a week. S.P. goes to play therapy one afternoon a week and attends religion classes on Sunday mornings. S.P. has weekly visits with his paternal grandparents and an aunt. The paternal grandparents have a close

relationship with the foster family. The foster mother also arranges play dates between S.P. and his younger brother and plans to continue to nurture that relationship.

¶ 15 S.P., age 3 years and 8 months, had been away from his biological parents for almost two years. S.P. is happy and funny. He is less aggressive and sleeps much better than when he first came into care. S.P. is bonded with the foster parents. He is familiar with his surroundings and his schedule and is thriving in part because he can count on his schedule and knows what to expect. He feels safe and loved and does not ask for either biological parent. S.P.'s foster parents are willing to provide permanency for him through adoption. The CASA report reflected S.P. is not bonded to either biological parent and becomes physically aggressive and even physically sick after spending time with them.

¶ 16 The reports reflect respondent was incarcerated in DOC from January 14, 2016, until his parole to an Aurora halfway house on October 3, 2016. Prior to his incarceration, respondent completed no services and was not consistent with visitation with S.P. Both Zitkus and the CASA recommended termination as being in S.P.'s best interest.

¶ 17 Respondent called Jeffrey Adams to testify. Adams worked for Westcare as a substance-abuse counselor at the DOC facility where respondent had been imprisoned and was respondent's primary counselor from February 2016 to September 2016. Adams saw respondent five days a week, working with him officially three to four hours a day. While in DOC, respondent participated in cognitive behavioral therapy, a "24/7 Dad's" program, and worked on anger-management issues. His participation in these programs was voluntary. Adams saw progress and growth on respondent's part over the course of his incarceration. Adams felt respondent learned coping skills to deal with his substance-abuse issues. Respondent also learned parenting skills and coping skills to deal with anger issues.

¶ 18 Respondent testified he was currently living in Champaign with his girlfriend and his son, S.P.'s younger half-brother. He had been "clean" since his release from incarceration. He had been drug tested twice at the halfway house to which he was initially paroled and tested negative for drugs. Respondent visited with S.P. on one occasion while in DOC, and he had a three hour visit with him the Saturday preceding the best-interest hearing. Respondent felt both visits went well. Respondent testified he believed he and S.P. had a bond between them and S.P. had a sense of attachment to him.

¶ 19 The trial court, in announcing its ruling, noted the positive changes respondent had made to his life. However, the court noted the question now was what was in S.P.'s best interest. The court stated as follows:

"Here's what we have. This child now and for this child's future has a stable home, has a home where he doesn't have to redevelop a bond, but has one, has clear attachments, has his sense of where he is, where he's going to be, where he's going to stay, where his home is going to be, who's going to be there, who's going to be there when he wakes up in the morning, who's going to see that he goes to school, now it's preschool stage, soon school stage and who's going to be the people around until—to take care of him until he's, you know, 18 or greater and goes through those phases. And it's, it's clear that this is where [S.P.] has his home. This is where he should have his home. This is where he's going to have, you know, those things that a child his age in his growing up needs, stability, permanence, parents who are going to—who are

there for him now, going to be there for him in the future, have his interests at heart. So he clearly has that sense of permanence, attachment, and the benefit in this particular instance in this placement, which I think will become permanent and has the opportunity to become permanent, offers [S.P.] the opportunity to not be removed from biological ties. He's got the ties with grandparents. They're going to be preserved better through terminating parental rights than through not terminating parental rights. He's going to have that opportunity to continue to grow up in the same neighborhood with grandparents present, have their involvement, and that's going to help develop his identity, it's going to preserve his family ties and it's all going to be to his benefit.

You know, the only factor isn't permanence, but when you look at best interest factors, what they're trying to talk about is achieving a home for a child where he doesn't have to worry about his home being there and he just has to grow up as a kid with parents there. That's what [S.P.] has now. That's what he'll have in the future if parental rights are terminated, and there's the opportunity for permanency in this new home. And it's not new to him now. It's a place that he has comfort and stability."

The court then found it in S.P.'s best interest to terminate respondent's parental rights.

¶ 20

II. ANALYSIS

¶ 21 Respondent does not challenge the trial court's finding of unfitness. The only issue is whether the court erred in finding it was in S.P.'s best interest to terminate respondent's parental rights.

¶ 22 After a parent is found unfit, the trial court shifts its focus in termination proceedings to the child's interest. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). At the best-interest stage, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.* Before a parent's rights may be terminated, a court must find the State proved, by a preponderance of the evidence, it is in the child's best interest those rights be terminated. *Id.* at 366, 818 N.E.2d at 1228.

¶ 23 When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2014). These include the following:

"(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

- (ii) the child's sense of security;
- (iii) the child's sense of familiarity;
- (iv) continuity of affection for the child;
- (v) the least disruptive placement alternative for the child;
- (e) the child's wishes and long-term goals;
- (f) the child's community ties, including church, school, and friends;
- (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
- (h) the uniqueness of every family and child;
- (i) the risks attendant to entering and being in substitute care; and
- (j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3 (4.05)(a) to (j) (West 2014).

¶ 24 The trial court's finding termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 25 This is a sad case for respondent. Once he was in a controlled environment, he

diligently engaged in services to help him with his substance-abuse issues and with becoming a better parent. The problem is, during the first nine months following the adjudication of neglect, respondent did nothing to improve his chances of having S.P. returned to him. During that time, and during the time respondent was incarcerated, S.P. was making new attachments. He became attached to his paternal grandparents, who are still involved in his life, and to his day-care provider, with whom he was placed in foster care. S.P. was thriving with the certainty of a caring, loving family and a schedule he could count on. His foster parents had agreed to provide permanence through adoption. They also planned to nurture S.P.'s relationship with his grandparents, who live across the street, and with his half-brother. We cannot say the facts here clearly demonstrated the court should have reached the opposite conclusion. Accordingly, we find the court did not err in terminating respondent's parental rights.

¶ 26

III. CONCLUSION

¶ 27

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

¶ 28

Affirmed.