

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) 160878-U

NO. 4-16-0878

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 5, 2017
Carla Bender
4th District Appellate
Court, IL

In re: L.L., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Sangamon County
v.)	No. 14JA168
DEMARCO LOCUST,)	
Respondent-Appellant.)	Honorable
)	Karen S. Tharp,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, finding the trial court did not err in (1) denying respondent’s motion to continue or (2) determining it was in the minor’s best interests to terminate respondent’s parental rights.

¶ 2 In December 2014, the State filed a petition for adjudication of wardship with respect to L.L., the minor child of respondent, Demarco Locust. In January 2016, the trial court made the minor a ward of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS). In May 2016, the State filed a motion to terminate respondent’s parental rights. In September 2016, the court found respondent unfit. In November 2016, the court determined it was in the minor’s best interests that respondent’s parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in (1) denying his motion to continue and (2) determining it was in the minor’s best interests that his parental rights be

terminated. We affirm.

¶ 4

I. BACKGROUND

¶ 5 In December 2014, the State filed a petition for adjudication of wardship with respect to L.L., born in November 2014, the minor child of respondent and Laqueetta Day. The petition alleged L.L. was a neglected minor pursuant to section 2-3(1) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1) (West 2014)) based on an injurious environment due to Day's mental-health issues and as evidenced by L.L.'s siblings being adjudicated neglected and Day's failure to make reasonable progress toward having the children returned to her care. Respondent appeared at the shelter-care hearing, and the trial court appointed counsel. The court found probable cause for neglect, ruled it was a matter of immediate and urgent necessity to remove L.L. from the home, and placed temporary custody with the guardianship administrator of DCFS.

¶ 6

In November 2015, the trial court found L.L. neglected based on L.L.'s siblings having been adjudicated neglected and Day's failure to make reasonable progress toward having the children returned. In its January 2016 dispositional order, the court found L.L.'s parents unfit, unable, or unwilling for some reason other than financial circumstances alone to care for, protect, train, educate, supervise, or discipline the minor. The court adjudged the minor a ward of the court and placed custody and guardianship with DCFS.

¶ 7

In May 2016, the State filed a motion to terminate respondent's parental rights. The motion alleged respondent was unfit because (1) he failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) he failed to make reasonable efforts to correct the conditions that were the basis for the minor's removal from him (750 ILCS 50/1(D)(m)(i) (West 2014)); (3) he deserted the minor for more than three months preceding the commencement of the motion to terminate parental rights

(750 ILCS 50/1(D)(c) (West 2014)); (4) he abandoned the minor (750 ILCS 50/1(D)(a) (West 2014)); and (5) L.L. was in the temporary custody and guardianship of DCFS and respondent was incarcerated as a result of a criminal conviction at the time the motion was filed; prior to incarceration, he had little or no contact with L.L.; and his incarceration will prevent him from discharging his parental responsibilities for L.L. in excess of two years after the filing of the motion (750 ILCS 50/1(D)(r) (West 2014)). In August 2016, the State filed a supplemental motion for termination of respondent's parental rights, alleging respondent was unfit because he failed to make reasonable progress toward the return of the minor within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 8 In September 2016, the trial court conducted a hearing on the motions to terminate respondent's parental rights. Prior to the start of the hearing, respondent's counsel asked for a continuance. Counsel stated respondent, who participated in the hearing via telephone, was incarcerated at the time in Tennessee. Counsel stated L.L. was born in November 2014, and respondent was taken into custody in January 2015. Counsel stated respondent came to Illinois to participate in the shelter-care hearing but, in doing so, he violated his probation in Tennessee because he did not obtain permission to leave the state. Counsel believed respondent would be paroled in November 2016 and asked for a continuance until he could be discharged from prison in Tennessee. The State objected, and the court denied the motion to continue. Thereafter, respondent stipulated to the allegation of unfitness based on reasonable progress set forth in the supplemental motion.

¶ 9 In November 2016, the trial court conducted the best-interests hearing, and respondent appeared via telephone. Trisha Brownlow, L.L.'s caseworker at Lutheran Child and Family Services, testified L.L. is two years old and has been in her foster placement since she

was three days old. L.L. is “flourishing” in the home and attends day care and church. She is “very attached” to her foster parents and calls them “mom” and “dad.” L.L. also lives with her half-brother and her foster parent’s biological children. Brownlow stated L.L.’s foster parents were willing to adopt her.

¶ 10 Laqueetta Day testified on respondent’s behalf. She believed respondent developed a bond with L.L. during the three-day period after her birth. Respondent testified he is the father of two children, L.L. and A.M. At the time of L.L.’s birth, respondent was on parole in Tennessee and was picked up on a parole violation shortly thereafter. From late November 2014 to late January 2015, respondent had “four to five” visits with L.L. He stated he could be released from prison in May or June 2017.

¶ 11 Following arguments, the trial court found it in L.L.’s best interests that respondent’s parental rights be terminated. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 A. Motion To Continue

¶ 14 Respondent argues the trial court erred in denying his oral motion to continue at the start of the unfitness hearing. We disagree.

¶ 15 In Illinois, a litigant has no absolute right to a continuance. *In re Tashika F.*, 333 Ill. App. 3d 165, 169, 775 N.E.2d 304, 307 (2002). Continuances in juvenile cases may be granted “[u]pon written motion of a party filed no later than 10 days prior to hearing, or upon the court’s own motion and only for good cause shown.” 705 ILCS 405/2-14(c) (West 2014). “The court may continue the hearing ‘only if the continuance is consistent with the health, safety and best interests of the minor.’ ” *In re K.O.*, 336 Ill. App. 3d 98, 104, 782 N.E.2d 835, 841 (2002) (quoting 705 ILCS 405/2-14(c) (West 2000)).

¶ 16 The trial court's decision denying a motion to continue will not be overturned on appeal absent an abuse of discretion. *Tashika F.*, 333 Ill. App. 3d at 169, 775 N.E.2d at 307. Further, "the denial of a request for a continuance is not a ground for reversal unless the complaining party has been prejudiced by the denial." *In re A.F.*, 2012 IL App (2d) 111079, ¶ 36, 969 N.E.2d 877.

¶ 17 In the case *sub judice*, the State filed its motion to terminate respondent's parental rights on May 25, 2016. Counsel first appeared on respondent's behalf on July 20, 2016. On August 25, 2016, the State filed its supplemental motion to terminate respondent's parental rights. On September 15, 2016, the trial court conducted the unfitness hearing. Prior to the start of the hearing, respondent's counsel asked the court to continue the matter "until such time as [respondent] can be discharged from the Tennessee Department of Corrections." Counsel stated respondent had been asked to complete a parenting class and a drug and alcohol assessment, but he was picked up on a probation warrant in Tennessee. Counsel argued termination of respondent's parental rights "before he has a chance to complete his service plan he feels is tremendously unfair to him as a parent to this child."

¶ 18 Here, respondent did not file a written motion to continue 10 days prior to the hearing. He also did not allege the continuance would be in the best interests of the minor. Instead, respondent only complained about the unfairness of proceeding with the unfitness hearing before he had an opportunity to engage in services and stated his hope he would be paroled so L.L. could be placed with him.

¶ 19 Respondent has not shown he was prejudiced by the denial of the continuance. Respondent has not argued counsel needed more time to prepare for the hearing. Moreover, the allegations in the State's motions were based on respondent's conduct in the period following the

adjudication of neglect, and his parole or denial of parole would have no relevance to these allegations. We find the trial court did not abuse its discretion in denying the continuance.

¶ 20 B. Best-Interests Determination

¶ 21 Respondent argues the trial court’s determination that it was in the minor’s best interests that his parental rights be terminated was against the manifest weight of the evidence. We disagree.

¶ 22 “Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights.” *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, “all considerations must yield to the best interest of the child.” *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). When considering whether termination of parental rights is in a child’s best interests, 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:

“(1) the child’s physical safety and welfare; (2) the development of the child’s identity; (3) the child’s familial, cultural[,] and religious background and ties; (4) the child’s sense of attachments, 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; (7) the child’s need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to

substitute care; and (10) the preferences of the person available to care for the child.” *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2014).

¶ 23 A trial court’s finding that termination of parental rights is in a child’s best interests will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re B’yata I.*, 2014 IL App (2d) 130558-B, ¶ 41, 43 N.E.3d 139. A trial court’s decision will be found to be against the manifest weight of the evidence “ ‘where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence.’ ” *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24, 16 N.E.3d 930 (quoting *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008)).

¶ 24 At the best-interests hearing, Brownlow testified L.L., then two years old, had lived with her foster family since she was three days old. L.L. has become “very attached” to her foster parents and calls them “mom” and “dad.” She lives with her half-brother and the foster parents’ biological children, and she has her own room. She also attends day care and church. Brownlow stated L.L.’s foster parents have shown a willingness to adopt her. L.L. has had little interaction with respondent, as he has been incarcerated most of her young life. Moreover, the evidence was unclear regarding when respondent would be released on parole, as he stated he could only begin a required drug-treatment program when he could get reclassified to another facility.

¶ 25 While acknowledging L.L.’s bond with her foster parents and that her needs are being met, respondent argues his request L.L. be placed with her maternal aunt was not considered. However, the record does not establish respondent specifically asked that L.L. be

