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July 10, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 170162-U

NO. 4-17-0162

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Z.O., a Minor	)	Appeal from
(The People of the State of Illinois,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
v.	)	No. 15JA13
Mario Oliea,	)	
Respondent-Appellant.)	)	Honorable
	)	Karen S. Tharp,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err by terminating Mario Oliea's parental rights with respect to Z.O.

¶ 2 In February 2017, the trial court found Z.O.'s interests would be best served by terminating the parental rights of respondent, Mario Oliea. See 705 ILCS 405/2-29(2) (West 2016). Oliea appeals, arguing the court's best-interest finding was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Oliea is the biological father of Z.O., who was born in April 2007. Oliea has been incarcerated since 2007—the same year Z.O. was born—and is serving a prison sentence for four

separate felony charges. He is expected to be released in 2026, at which time Z.O. will have reached the age of majority.

¶ 5 In January 2015, Z.O. and her minor siblings were taken into protective custody following a physical altercation between their mother and grandmother. Temporary custody was granted to the State the following day, and the children were then placed in foster homes. Z.O. is currently placed in a foster home along with one of her siblings. Though she is not a party to this appeal, we note the minor children's mother was adjudicated unfit and her parental rights were terminated in the same proceedings in which Oliea was adjudicated unfit and his parental rights were terminated.

¶ 6 A. Fitness Hearing

¶ 7 In December 2016, the trial court held a fitness hearing pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2016)). At the fitness hearing, the court determined Oliea was depraved due to his multiple felony convictions. See 750 ILCS 50/1(D)(i) (West 2016). Oliea was therefore adjudicated unfit. See *id.* Oliea does not challenge the court's fitness finding.

¶ 8 B. Best-Interest Hearing

¶ 9 In February 2017, the trial court held a hearing to determine whether Z.O.'s interest would be best served by terminating Oliea's parental rights pursuant to section 2-29(2) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-29(2) (West 2016)). Brittani Provost, a caseworker with the Family Service Center, handled the case involving Z.O. and her minor siblings. Provost testified at the February 2017 hearing as follows.

¶ 10 Z.O. was making progress in her foster placement, and all of her medical, social,

and emotional needs were being met. Z.O. had bonded with the foster family, including her foster siblings. Her long-term goals included remaining with the foster family permanently, and the family was willing to provide permanence for her and her minor sibling. Provost noted a "small attachment" between Z.O. and Oliea, "but it's not been something that's really developed throughout her life." (At the fitness hearing, it was established Z.O. and Oliea had approximately eight supervised visits, and Oliea expressed interest in maintaining a relationship with Z.O. and had sent her letters and cards.) Provost opined Z.O. would not be harmed if Oliea's parental rights were terminated.

¶ 11 On cross-examination by Oliea's attorney, Provost described the recent contact between Z.O. and Oliea. They interacted "appropriately and affectionately," and Z.O. was "excited" about receiving letters from Oliea. When asked whether Z.O. had mentioned whether she wished to maintain a relationship with Oliea, Provost stated she had asked for a final visit with Oliea, but she had not asked about the visit since October 2016. Provost indicated this final visit would be scheduled.

¶ 12 On cross-examination by the minor children's guardian *ad litem*, Provost stated the minor children's foster parents worked together to arrange monthly sibling visits so all the children could maintain relationships with one another. Provost noted the foster parents have each other's contact information and work well together.

¶ 13 The State argued the children deserve permanence, and no services completed by the fathers, including Oliea, outweigh this need for permanence. Accordingly, the State requested the Oliea's parental rights be terminated. Oliea's attorney argued Z.O.'s interest would not be best served by terminating his parental rights because she has a desire to maintain a relationship

with her father. The guardian *ad litem* expressed concern about the children being "spread out" in three different homes but stated she would defer to the court's judgment.

¶ 14 With respect to Oliea, the trial court held as follows:

> "With regard to Mario, he did make some efforts to maintain contact, but, obviously, the amount of contact that he had is limited by his circumstances of choices that he has made in his life. As I went through earlier, his four different felony convictions which led to just an incredibly long sentence of his last one in the Federal system that has put him in a position where he will not be able to parent this child day in and day out, get her up in the morning and get her dressed and get her to school, meet any of those day-to-day needs. By his projected parole date, she will be an adult by then or very, very close.
>
> So, while there is a relationship there and I do give him credit for that, still, I have to look at how this child is ever going to obtain permanence or some hope of obtaining permanence.
>
> She is in a secure placement and doing well. She has developed a good bond where she is at, and I believe the best hope of her obtaining permanence is if the parental rights of Mr. Oliea be terminated so she can obtain that permanence and not have to go through the rest of her childhood as being a foster child. She has the right to obtain permanence and be called a child of someone

> who is willing to love her day in and day out and be there for her in the same home day in and day out."

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, Oliea argues the trial court's best-interest finding was against the manifest weight of the evidence.

¶ 18 A. Termination of Parental Rights and the Standard of Review

¶ 19 When considering whether to terminate parental rights, the trial court must make two distinct findings:

> "(1) the biological parents of the child have validly executed a voluntary surrender of their parental rights and a consent to adoption, or, alternatively, it has been proven, by clear and convincing evidence, that the parents are 'unfit persons' within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)); and (2) it has been proven, by a preponderance of the evidence, that it would be in the best interest of the child to terminate parental rights and to appoint a guardian and authorize that guardian to consent to an adoption of the child. [Citations.]" *In re M.H.*, 2015 IL App (4th) 150397, ¶ 20, 45 N.E.3d 1107 (citing 705 ILCS 405/2-29(2) (West 2014)).

¶ 20 We will uphold a trial court's best-interest finding unless it is against the manifest weight of the evidence. *Id.* ¶ 22. "A finding is against the manifest weight of the evidence only if

it is 'clearly evident,' from the evidence in the record, that respondent's conformance to the statutory definition in question was unproven." *Id.* Even "[i]f reasonable minds could disagree whether a given statutory definition was proven by clear and convincing evidence, we will uphold the trial court's finding." *Id.*

¶ 21 B. Best-Interest Finding

¶ 22 Once a parent is found unfit, the trial court may terminate parental rights if the court finds, by a preponderance of the evidence, termination is in the best interest of the child. 705 ILCS 405/2-29(2) (West 2016); see also *M.H.*, 2015 IL App (4th) 150397, ¶ 20, 45 N.E.3d 1107. At this stage in the proceeding, the focus is on the child, and "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 347, 364, 818 N.E.2d 1214, 1227 (2004). Section 1-3(4.05) of the Juvenile Act states:

> "Whenever a 'best interest' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:
>
> (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) (West 2016).

¶ 23 Oliea's argument focuses on his, and purportedly Z.O.'s, desire to maintain a father-daughter relationship. Nonetheless, he concedes Z.O. has bonded with her foster family and is in a placement where her needs are being met. He cites *In re Brandon A.*, 395 Ill. App. 3d

224, 240, 916 N.E.2d 890, 904 (2009), noting the father there had been incarcerated repeatedly and was not expected to be released from prison until his child was an adult. The trial court there determined the child's interest would be best served by terminating the father's parental rights in light of the stability provided by the child's foster home and the inability of the incarcerated father to provide permanence during the child's minority. *Id.* Despite the stark similarities to his own situation, he claims his case is distinguishable from *Brandon A.* because he demonstrated "he can have a meaningful parental relationship with Z.O. with continued contact." He further argues cases involving the termination of parental rights are *sui generis,* so factual comparisons to other cases "are of little value," citing *In re C.M.*, 305 Ill. App. 3d 154, 163, 711 N.E.2d 809, 815 (1999). We agree with Oliea's contention cases involving the termination of parental rights are *sui generis* and should be viewed in light of the special circumstances relevant to each particular case (*In re Adoption of Syck*, 138 Ill. 2d 255, 279, 562 N.E.2d 174, 185 (1990)), but we disagree with his contention his case is distinguishable from *Brandon A.*, though the factual comparison is of little value.

¶ 24 In *Brandon A.*, the father's relationship with his child was similar to Oliea's relationship with Z.O., as he corresponded with his child and had scheduled visits with his child at the prison in which he was incarcerated. *Brandon A.*, 395 Ill. App. 3d at 232, 916 N.E.2d at 898. The father there had attempted to maintain a relationship with the child despite his incarceration, as Oliea has done here. *Id.* We do not see how the efforts by the father in *Brandon A.* differ from Oliea's efforts to maintain a relationship with Z.O. Though *Brandon A.* is quite similar to this case, we turn to the specific facts implicating Z.O.'s interest.

¶ 25 We conclude the manifest weight of the evidence demonstrated Z.O.'s interests

were best served by terminating Oliea's parental rights. Though Oliea had begun to establish a relationship with Z.O., his interest in maintaining that relationship must yield to Z.O.'s "interest in a stable, loving home life." See *D.T.*, 212 Ill. 2d at 364, 818 N.E.2d at 1227. Oliea concedes Z.O. is in a good foster home where her needs are being met. She has bonded with a family who is ready and willing to provide permanence for both her and her sibling throughout their minority. Oliea is unable to provide permanence due to the fact he is incarcerated and will remain incarcerated until Z.O. is an adult. While it is true Z.O. has expressed interest in maintaining contact with her father, we see no other factors favoring maintaining Oliea's parental rights. Oliea points to no statutory factor favoring maintenance of his parental rights. Rather, Oliea only argues he has made progress during Family Service Center's intervention and his rights should be maintained because he desires to maintain his relationship with Z.O.

¶ 26 Though this court is sympathetic to a father's desire to maintain a relationship with his child, the focus of the best-interest analysis is not on the parent's desire or his or her efforts to establish and maintain a parental relationship. It is on the child's best interests. We see no evidence indicating Z.O.'s interests would be best served by maintaining Oliea's parental rights when Oliea will never be able to provide the care or support Z.O. needs during her minority, even if he were to maintain a meaningful relationship with her.

¶ 27 III. CONCLUSION

¶ 28 We affirm the trial court's judgment.

¶ 29 Affirmed.