

**NOTICE**

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2017 IL App (4th) 170234-U

NO. 4-17-0234

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

July 27, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

<i>In re: T.S., a Minor</i>	)	Appeal from
	)	Circuit Court of
	)	Adams County
(The People of the State of Illinois,	)	No. 15J8
Petitioner-Appellee,	)	
v.	)	Honorable
Sterling Serano,	)	John C. Wooleyhan,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Turner and Justice Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in finding that termination of the father’s parental rights was in the child’s best interest.

¶ 2 In March 2017, the trial court terminated the parental rights of respondent, Sterling Serano, to his minor child, T.S. (born December 25, 2010). Respondent appeals, arguing the court’s best-interest determination was against the manifest weight of the evidence. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2015, when T.S. was four years old, her mother died from a respiratory condition. At the time, respondent was serving a 160-day jail sentence for the unlawful manufacture of cannabis. On June 19, 2015, the day after T.S.’s mother’s death, the State filed a

petition for adjudication of wardship, alleging T.S. was a dependent minor without a parent, guardian, or legal custodian. That same day, the Illinois Department of Children and Family Services (DCFS) was granted temporary guardianship and custody of T.S., and she was placed in a relative foster home with her maternal aunt and uncle. In December 2015, the trial court entered a dispositional order adjudicating T.S. a dependent minor, making her a ward of the court, and placing custody and guardianship with DCFS. She remained with her aunt and uncle.

¶ 5 On November 17, 2016, the State filed a motion to terminate respondent's parental rights. Specifically, the State alleged respondent was unfit and his parental rights should be terminated because of his failure to make reasonable progress toward the return of T.S. The State further alleged termination of respondent's parental rights was in T.S.'s best interest.

¶ 6 On March 23, 2017, the trial court held a hearing on the State's motion. Michael Hugenberg testified he was T.S.'s caseworker at Chaddock Foster Care and Adoption Services. He explained respondent was serving a 160-day jail sentence in June 2015 when T.S.'s mother passed away. According to Hugenberg, after respondent completed his jail sentence in August 2015, he moved to Atlanta, Georgia, for "employment opportunities." Hugenberg cautioned respondent that relocating to another state would create a "barrier" for his "return home goal" and it would interfere with his ability to regularly visit T.S. He further testified that respondent eventually obtained employment at a music studio in Georgia. However, Hugenberg explained, respondent was unable to provide proof of income. Hugenberg also stated that respondent failed to provide documentation of recommended substance abuse services during his time in Georgia. As a result, Hugenberg explained, respondent generally received unsatisfactory ratings on his service plans for "overall tasks."

¶ 7 Hugenberg further testified that respondent relocated to Harvey, Illinois, after obtaining employment in June 2016. Respondent was subsequently charged with driving on a suspended license on June 8, 2016. Three months later, respondent was arrested again for possession of cannabis with intent to deliver. He was convicted and sentenced to two years' incarceration.

¶ 8 Respondent testified on his own behalf, stating he was the father of T.S. He described his work history, noting that he moved to Georgia because he had more employment opportunities there. He testified that his brother and "other friends" resided in Georgia, he "had a place to stay," and he had a "support system." While in Georgia, he made phone calls to T.S. "a few times a week." He further explained that he sought treatment for substance abuse; however, he could not afford those services. Respondent acknowledged Hugenberg informed him that substance abuse services would be less expensive or potentially free if he returned to Illinois. Respondent explained he returned to Illinois months later because Hugenberg cautioned him that "the likelihood of \*\*\* getting [T.S.] back was basically slim to none" so long as he remained in Georgia. Respondent decided to relocate to Harvey, Illinois, and he secured full-time employment at a Trader Joe's warehouse. Shortly thereafter, he was convicted for possession of cannabis with intent to deliver. Respondent testified that his projected parole date is September 17, 2017.

¶ 9 Based on these facts, the trial court found respondent unfit for failure to "make reasonable progress for the return of the minor within any nine-month period."

¶ 10 Immediately following the fitness hearing, the trial court conducted the best-interest hearing. The State's evidence showed T.S. resided in a foster home with her aunt, uncle,

and two cousins, ages six and two. Hugenberg testified T.S. was bonded to her aunt and uncle, with whom she had a relationship prior to the death of her mother. Hugenberg explained T.S. “goes to them for nurture, and \*\*\* they interact \*\*\* like they are her parents.” He observed that the foster parents appropriately discipline T.S., ensure she receives a proper education, and provide opportunities for T.S. to visit her half-sister, who resides with her father. Further, Hugenberg described the counseling services T.S. receives, explaining that the counseling is designed to address her grief from the loss of her mother and her attention deficit/hyperactivity disorder. Hugenberg testified T.S. receives counseling on a weekly basis, and her foster parents ensure she attends each appointment. Additionally, Hugenberg testified the foster parents “are willing to adopt [T.S.], if that is presented to them.” Though they had not yet signed a written permanency commitment form, Hugenberg noted “they are willing to do that,” and he discussed the matter with them “numerous times.”

¶ 11 On cross-examination, Hugenberg acknowledged that he observed respondent interact with T.S. on one occasion when Hugenberg was “passing through the hall” at “the agency office.” Hugenberg described respondent as “smiling” and “attentive” to T.S. He also confirmed T.S. misses her father. In addition, according to Hugenberg, the foster parents have reported T.S. continues to have screaming fits at bedtime, which is being addressed during her counseling sessions.

¶ 12 On redirect examination, Hugenberg reiterated that he never observed respondent in a “true parenting role” outside “the agency.” He also testified that he was never able to recommend any unsupervised or extended visitation because of respondent’s “overall lack of progress.” Indeed, Hugenberg explained, no visitation occurred after November 7, 2016, due to

respondent's incarceration.

¶ 13 At the conclusion of the hearing, the trial court found it was in T.S.'s best interest to terminate respondent's parental rights. The court stated, in pertinent part, as follows:

“On the issue of the best interests of the minor, the court is required to consider that issue in relation to the evidence presented on it. Today, that evidence has been in the form of one witness called by the People, who has testified about the minor and her current circumstances and living arrangements.

The evidence in that regard has shown that the minor, age six, has been living with relatives in placement, since June of 2015[,] [and] [t]hat all of her needs have been met in that placement by her relatives, [her] aunt and uncle, as the foster parents. She appears to be bonded to them and to other extended family members. The home has been safe and appropriate. Her educational needs have been met. She's been attending counseling. The foster parents have expressed interest in the adoption of the minor.

The evidence has also shown that the minor's father does have a relationship with the minor and loves the minor. There is a bond between them.

The evidence is also on the record that the father, at some point during the nine-month periods, which the court is considering, had turned down or rejected the option of a possible guardianship arrangement with the foster parents.

The goal in the case is to try to achieve permanency for the minor as soon as that can be achieved. We know that the minor[,] in her current placement[,] is currently experiencing some degree of permanency in having a regular home to

live in with family members and having all of her needs being met.

There may come a time in the future, \*\*\* currently unknown, \*\*\* when the father, [respondent], would no longer be incarcerated, would be employed somewhere, able to provide for his child, [and] would have a residence to have her be in.

Right now, we're not able to say when that date would be. It is some unknown date in the future, and under the requirements of the Juvenile Court Act, the court is not in a position to trade that uncertainty for the certainty of the minor's current circumstances."

¶ 14 The trial court subsequently entered its written judgment terminating respondent's parental rights to T.S.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, respondent argues the trial court's best-interest determination was against the manifest weight of the evidence. We disagree.

¶ 18 After a parent is found unfit, the trial court moves to the best-interest stage of the termination proceedings and considers whether the State has proved "by a preponderance of the evidence that termination is in the child's best interest." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). We will not disturb the trial court's best-interest determination unless it is against the manifest weight of the evidence. *Id.* at 1071, 918 N.E.2d at 291. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

¶ 19 Under the Juvenile Court Act of 1987, there are several factors a court should consider when making a best-interest determination. 705 ILCS 405/1-3(4.05) (West 2016). These factors, considered in the context of the child’s age and developmental needs, include the following:

“(1) the child’s physical safety and welfare; (2) the development of the child’s identity; (3) the child’s background and ties, including familial, cultural, and religious; (4) the child’s sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child’s wishes; (6) the child’s community ties; (7) the child’s need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child.” *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291 (citing 705 ILCS 405/1-3(4.05) (West 2008)).

¶ 20 Here, respondent contends T.S. has a strong bond with him, she identifies herself as his daughter, and terminating his parental rights “disrupts the continuity of relationship with [T.S.’s] only remaining parent figure.” Respondent concedes, however, that “the aunt and uncle’s home does offer permanence for [T.S.]”

¶ 21 Indeed, the evidence at the best-interest hearing showed T.S. remained in the same foster home after her mother’s death, she was described as bonded to her foster parents, and she interacts with them “like they are her parents.” The trial court properly found this evidence supported its decision to terminate respondent’s parental rights, stating, in pertinent

part:

“The evidence \*\*\* has shown that the minor \*\*\* has been living with relatives in placement, since June of 2015[,] [and] [t]hat all of her needs have been met in that placement by her relatives, [her] aunt and uncle, as the foster parents. She appears to be bonded to them and to other extended family members. The home has been safe and appropriate. Her educational needs have been met. She’s been attending counseling. The foster parents have expressed interest in the adoption of the minor.”

¶ 22           Conversely, the evidence shows respondent was unable to offer T.S. permanency or stability after she was adjudicated a dependent minor. Although respondent shared a bond with T.S., she also shared a strong bond with her foster parents, who were able to provide the permanency that respondent was unable to offer. Indeed, respondent was arrested on more than one occasion during the pendency of this case, and his incarceration prevented him from making any meaningful progress toward reunification with his daughter.

¶ 23           Nevertheless, respondent complains T.S. “is not adjusted to the foster home” and her behavioral problems at bedtime reflect her “insecurity in this home.” In response, the State aptly points out respondent fails to demonstrate how reversal of the trial court’s determination would alleviate T.S.’s alleged behavioral problems. Obviously, respondent is in no better position to address his daughter’s emotional needs during his incarceration. In addition, we note that when respondent was not incarcerated, he moved to another state, where he was unable to even visit his daughter. The trial court noted that “[t]here may come a time in the future” when respondent is “no longer \*\*\* incarcerated” and “able to provide for his child”; however, “this



court is not in a position to trade that uncertainty for the certainty of the minor's current circumstances."

¶ 24 Based on these facts, we find the trial court's best-interest determination was not against the manifest weight of the evidence.

¶ 25 III. CONCLUSION

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

¶ 27 Affirmed.