2017 IL App (4th) 170260-U

NO. 4-17-0260

FILED
August 11, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: J.M., a Minor	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Sangamon County
Petitioner-Appellee,	)	No. 15JA111
v.	)	
Johnathan Campbell,	)	Honorable
Respondent-Appellant).	)	Jennifer M. Ascher,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment, which terminated respondent's parental rights.

¶ 2 In February 2017, the State filed a motion to terminate the parental rights of respondent, Johnathan Campbell, as to his daughter, J.M. (born March 10, 2008). Following an April 2017 fitness hearing, the trial court found respondent unfit within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). At a best-interest hearing held immediately thereafter, the court terminated respondent's parental rights.

¶ 3 Respondent appeals, arguing that the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Events Preceding the State's Motion To Terminate Parental Rights

¶ 6 In June 2015, the State filed a petition for adjudication of neglect and abuse under section 2-3 of the Juvenile Court Act of 1987 (705 ILCS 405/2-3 (West 2014)) with respect to J.M. and her minor siblings. With respect to J.M., the petition alleged that she was a neglected minor in that her environment was injurious to her welfare because of (1) domestic violence between her mother and grandmother and (2) her mother's failure to cooperate with intact family services. 705 ILCS 405/2-3(1)(b) (West 2014). The petition also alleged that J.M. was an abused minor in that (1) her mother inflicted excessive corporal punishment upon her (705 ILCS 405/2-3(2)(v) (West 2014)) and (2) she had been physically abused by her mother (705 ILCS 405/2-3(2)(i) (West 2014)). Following the domestic-violence incident between J.M.'s mother and grandmother, J.M.'s mother was arrested, and J.M. and one of her minor siblings were placed in the care of her maternal stepgrandmother.

¶ 7 At an April 2016 adjudicatory hearing, J.M.'s mother stipulated to paragraph two of the petition for adjudication of neglect, admitting J.M's environment was injurious to her welfare as evidenced by her mother's failure to cooperate with intact family services. The trial court therefore adjudicated J.M. to be a neglected minor. A May 2016 dispositional order made J.M. a ward of the court and placed her in the guardianship of the Illinois Department of Children and Family Services (DCFS).

¶ 8 B. The State's Petition To Terminate Respondent's Parental Rights

¶ 9 In February 2017, the State filed a petition to terminate respondent's parental rights as to J.M. The petition alleged respondent was unfit in that he (1) failed to maintain a

reasonable degree of interest, concern, or responsibility as to J.M.'s welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) failed to make reasonable efforts to correct the conditions which were the basis for the removal of J.M. from his care (750 ILCS 50/1(D)(m)(i) (West 2016)); (3) failed to make reasonable progress toward the return of J.M. to his care during the nine-month period of April 14, 2016, to January 14, 2017 (750 ILCS 50/1(D)(m)(ii) (West 2016)); and (4) (a) was incarcerated as a result of a criminal conviction at the time the motion to terminate parental rights was filed, (b) had little to no contact with J.M. prior to incarceration, (c) provided little to no support for J.M., and (d) the incarceration will prevent him from discharging his parental responsibilities with respect to J.M. for a period in excess of two years after the filing of this motion (750 ILCS 50/1(D)(r) (West 2016)).

¶ 10 At a March 2017 hearing, J.M.'s mother surrendered her parental rights as to J.M. and signed an irrevocable consent to adoption.

¶ 11 1. *The April 2017 Fitness Hearing*

¶ 12 At the start of the hearing, the trial court took judicial notice of the April 2016 adjudication of neglect and the mother's March 2017 surrender of her parental rights. The State then called Trisha Brownlow, a child welfare specialist with Lutheran Child and Family Services, as its witness. Brownlow testified as follows. She had served as the child welfare specialist in the case involving J.M. since June 2016. Respondent had been incarcerated in the Illinois Department of Corrections (IDOC) since 2012. His projected parole date was 2024.

¶ 13 Brownlow testified further that J.M. came into care because of (1) a domestic-violence incident between her mother and grandmother and (2) her mother's failure to comply with intact family services. A service plan was established with respect to respondent, which was

mailed to him at IDOC in June 2016. In November 2016, Brownlow mailed another copy of the service plan to him, and he indicated he had not received the prior copy. She therefore mailed a certified copy to him in December 2016. The service plan required that he participate in (1) domestic-violence classes; (2) a mental-health assessment; (3) parenting classes; and (4) a substance-abuse assessment and treatment, if so recommended in the assessment. Most Illinois prisons offer mental-health assessments and parenting classes, but domestic-violence classes are not typically offered. Substance-abuse assessments and treatments are sometimes offered in Illinois prisons. Brownlow could not recall which services were offered at the prison in Hillsboro, where respondent was located. Respondent completed a two-day parenting class at the prison, but the class did not fulfill the parenting-class requirement in the service plan because the curriculum was unknown and the class was significantly shorter than those offered by DCFS. Respondent did not complete, or attempt to complete, any other services.

¶ 14 Brownlow testified that respondent had not seen J.M. since she was under the age of two, and she was nine years old at the time of the hearing. J.M. did not remember respondent, and respondent indicated to Brownlow that he did not have a relationship with J.M. His only involvement with her, since she was two years old, was approximately four or five letters he sent to her during the pendency of these proceedings. J.M. did not respond to respondent's letters and stated several times that she did not want to visit respondent. Brownlow was never close to returning J.M. to respondent's care because he was incarcerated and had no relationship with J.M. By the time respondent was expected to be released from prison, J.M. would be 16 years old.

¶ 15 On cross-examination, Brownlow indicated respondent had been incarcerated

since the inception of this DCFS case. The prison in Hillsboro employed a counselor who would have been able to complete the mental-health assessment and counseling, but she did not set up those services for respondent because he had not signed the necessary releases. Brownlow did not send such releases to respondent. Respondent's counsel asked whether Brownlow was "aware that there is a slight possibility that [respondent] might be released within the next two years." Brownlow stated, "Slight possibility, might. There's no definite guarantee to that." Brownlow was unaware of the reason for this "slight possibility," and she responded in the negative when asked whether respondent had ever discussed with her "a post-conviction petition arguing for his release."

¶ 16 Respondent did not call any witnesses to testify on his behalf. The State argued he was unfit because he had not completed any services required by the service plan, was incarcerated as a result of a criminal conviction, had little to no contact with J.M., and provided little to no support for her prior to his incarceration. His incarceration would prevent him from discharging his parental responsibilities until 2024, and "even if he were to get out before then, he's provided no parenting duties to her."

¶ 17 Respondent argued that the State had not met its burden to prove him unfit because "he was never really given the opportunity to complete" the services required of him. He noted that Brownlow never sent the releases to him for the mental-health assessment and therapy. Respondent's attorney argued that respondent lacked a relationship with J.M. for the past five years because he was incarcerated; but respondent conceded that he had no relationship with J.M. when she was between the ages of two and four, before respondent was incarcerated. Respondent argued further that there was no relationship between the two "because [DCFS]

didn't bring the child to the prison for him to visit." Respondent argued that he had done everything he could, given his circumstances, and that he deserved a chance to "maintain his relationship with his child."

¶ 18 The trial court ruled as follows:

> "The court *** finds that the State has met its burden with respect to [J.M.] [Respondent's counsel], you argue that your client deserves a chance with the child, but in the same argument, you acknowledge that from age two to four, he had no relationship with this child. And his actions presumably [are] what got him incarcerated, and he's incarcerated at this point. I know of no obligation on the caseworker to send releases, there's no evidence presented that he attempted to get releases, they weren't sent to him. I don't know why these classes weren't done. I appreciate that he took a two-day class, but the bottom line is, is that he is incarcerated. Quite frankly, prior to his incarceration, he had two years to show that he wanted to maintain a reasonable degree of interest, concern, and responsibility. And he elected on his own, while not being incarcerated, [not] to do that.
>
> Since he's been incarcerated, the court finds that the State has also met its burden by clear and convincing evidence that he has remained in a position where he has not exerted any efforts to show a reasonable degree of interest with respect to this child. So the court is making a finding that the State has met its burden *** with respect to [J.M.]"

The court's subsequent written order suggested that the court found respondent unfit pursuant to

each of the four allegations made in the State's February 2017 petition to terminate parental rights.

¶ 19 2. *The Best-Interest Hearing*

¶ 20 Immediately after finding respondent unfit, the trial court conducted a best-interest hearing. Brownlow testified that in June 2016, J.M. was placed with her maternal grandparents. She was making progress in that placement, and the placement was meeting her educational, religious, social, and medical needs. The home was adequately sized, and she shared a bedroom with one of her sisters. The grandparents had indicated their desire to adopt J.M., and J.M. was attached to her grandparents. Brownlow noted a change in J.M. since being placed with her grandparents, indicating, "She smiles. She hugs. She laughs a lot more. She calls them nana and poppa. She's very happy." J.M.'s long-term goals included remaining in this placement, and J.M. had expressed the desire to remain with her grandparents. J.M. had "little to no" attachment to respondent and had not seen him since she was "under the age of two." Brownlow opined that J.M. would suffer no harm if respondent's parental rights were terminated.

¶ 21 Respondent did not cross-examine Brownlow or call any witnesses to testify on his behalf.

¶ 22 The State argued J.M.'s interests would be best served by terminating respondent's parental rights. "She has little to no recollection of her father, no bond with him, and she is in a stable placement that's willing to give her permanency for her future." The State argued J.M. was thriving while living with her grandparents and highlighted her desire to remain there.

¶ 23 Respondent's counsel stated: "Your Honor, my only argument is that my client

loves his daughter and wants to keep a relationship, keep a rapport with his daughter." He further noted that best-interest hearings often focus on the bond between the child and foster parents, "[b]ut no one ever asks about the bond that could be established with the biological parent who—with which there is no previous bond. That bond can be created if given the chance." Respondent's attorney closed by asking that respondent be given that chance.

¶ 24 The trial court determined J.M.'s interests would be best served by terminating respondent's parental rights. The court stated, "The State has proven that [J.M. is] placed in a stable residence where [her] needs are being met. There's a desire of the foster parents to adopt [J.M.]" The court highlighted the attachment between J.M. and her grandparents, in contrast to the lack of a relationship between J.M. and respondent. The court stated, "He certainly has been given a chance to bond with his now nine-year-old [daughter], and the court finds it's in her best interest for the termination."

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 Respondent argues that the trial court erred by finding that (1) respondent was unfit to parent and (2) it was in the best interest of J.M. to terminate respondent's parental rights. We disagree.

¶ 28 A. The Trial Court's Fitness Determination

¶ 29 The trial court's oral ruling indicated it determined respondent was unfit for a failure to maintain a reasonable degree of interest, concern, or responsibility as to J.M.'s welfare (750 ILCS 50/1(D)(b) (West 2016)). The court's written order found respondent unfit for each of the four reasons alleged in the petition to terminate respondent's parental rights, which included:

(1) respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to J.M.'s welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) respondent failed to make reasonable efforts to correct the conditions which were the basis for removal of J.M. from his care (750 ILCS 50/1(D)(m)(i) (West 2016)); (3) respondent failed to make reasonable progress toward the return of J.M. to his care within nine months of the adjudication of neglect (specifically, April 14, 2016, to January 14, 2017) (750 ILCS 50/1(D)(m)(ii) (West 2016)); and (4) (a) respondent was incarcerated as a result of a criminal conviction at the time the motion to terminate parental rights was filed, (b) respondent had little to no contact with J.M. prior to incarceration, (c) respondent provided little to no support for J.M., and (d) the incarceration will prevent him from discharging his parental responsibilities with respect to J.M. for a period in excess of two years after the filing of this motion (750 ILCS 50/1(D)(r) (West 2016)).

¶ 30 Both respondent and the State address each of these four bases on appeal. However, given the trial court's oral ruling and the lack of express factual findings with respect to the last three bases alleged in the petition, we limit our review to the first alleged basis for a finding of unfitness: respondent's failure to maintain a reasonable degree of interest, concern, or responsibility as to J.M.'s welfare.

¶ 31 1. *The Applicable Statute and the Standard of Review*

¶ 32 Section 1(D) of the Adoption Act provides, in pertinent part, as follows:

> "D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following, except that a person shall not be considered an unfit person for the sole reason that the

person has relinquished a child in accordance with the Abandoned Newborn Infant Protection Act:

* * *

(b) Failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2016).

¶ 33 A parent may be found unfit for failing to maintain interest, concern, *or* responsibility as to his or her child; the State need not prove all three. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 124-25 (2004). "[T]he parent's past conduct in the then-existing circumstances" is under scrutiny at this point in the proceeding. *In re Adoption of Syck*, 138 Ill. 2d 255, 276, 562 N.E.2d 174, 184 (1990).

"If personal visits with the child are somehow impractical, letters, telephone calls, and gifts to the child or those caring for the child may demonstrate a reasonable degree of concern, interest and responsibility, depending upon the content, tone, and frequency of those contacts under the circumstances. [Citations.] Also, mindful of the circumstances in each case, a court is to examine the parent's efforts to communicate with and show interest in the child, not the success of those efforts. [Citations.]" *Id.* at 279, 562 N.E.2d at 185.

In addition, "[n]oncompliance with an imposed service plan, *** [has] been held to be sufficient evidence warranting a finding of unfitness under subsection (b)." *Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 125.

¶ 34 " 'The State must prove parental unfitness by clear and convincing evidence, and

the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility.' " *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011) (quoting *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004)). We will not reverse a court's fitness finding unless it is contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record. *Id.*

¶ 35 2. *Respondent's Fitness Claim*

¶ 36 Respondent argues that the trial court's fitness determination was against the manifest weight of the evidence. We disagree.

¶ 37 The evidence presented demonstrated respondent exerted little to no effort toward being a parent to J.M. Respondent had not seen J.M. since she was under the age of two. He made no effort to be a part of her life when she was between the ages of two and four, when respondent was not incarcerated. While incarcerated, respondent did not exert any effort to contact or otherwise establish or maintain any semblance of a relationship with J.M. until these proceedings began. Even then, respondent's efforts were limited to maintaining contact with Brownlow, asking about visitation, sending four or five letters to J.M., and completing a noncompliant two-day parenting class. Further, respondent failed to complete *any* services required by the service plan.

¶ 38 In considering the aforementioned evidence, the trial court found respondent had not exerted any effort to show a reasonable degree of interest, concern, or responsibility as to the welfare of J.M., especially given the dearth of interest, concern, or responsibility exerted by respondent when J.M. was between the ages of two and eight (prior to the inception of these

proceedings). Given our standard of review, we conclude that the court's fitness finding was not against the manifest weight of the evidence.

¶ 39 B. The Trial Court's Best-Interest Determination

¶ 40 1. *The Applicable Statute and the Standard of Review*

¶ 41 At the best-interest stage of parental-termination proceedings, the State must prove by a preponderance of the evidence that termination of parental rights 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). At this stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005). Section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2016)) provides the following:

> "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."

¶ 42 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A decision is against the manifest weight of the evidence only if the facts clearly demonstrate that the opposite result should have been reached. *Id.*

¶ 43 2. *Respondent's Best-Interest Claim*

¶ 44 The evidence presented at the best-interest hearing demonstrated J.M. was placed with one of her sisters in her grandparents' care. J.M. has a loving, close bond with her grandparents and desires to remain with them. Her grandparents are willing to adopt J.M. and provide permanence for her and her sister. All of J.M.'s needs are met in this placement.

Conversely, J.M. does not wish to visit respondent, has virtually no relationship with him, and does not remember him. Respondent is incarcerated and is not scheduled to be released until 2024. The allegation that respondent may be released within the next two years is speculative, and the trial court was entitled to regard it as such.

¶ 45 Respondent concedes on appeal that he does not have a strong relationship with J.M. but complains that the agency did not do anything to foster that relationship. Respondent argues that "[p]arental rights are a fundamental right of an individual and should not be severed when the parent is attempting to develop a relationship with his child." Respondent appears to confuse the purpose of the best-interest hearing by focusing on his purported desire to establish a relationship with J.M. The focus of the hearing is on J.M., not respondent's desire to establish a relationship, which must yield to J.M.'s interest "in a stable, loving home life" (*T.A.*, 359 Ill. App. 3d at 959, 835 N.E.2d at 912).

¶ 46 Respondent points to no statutory factors favoring retention of his parental rights, and none were established at the best-interest hearing, excepting respondent's argument that he desired to establish a relationship with J.M. (see 705 ILCS 405/1-3(4.05)(j) (West 2016)). That factor is tenuous because respondent is not actually available to care for J.M. We thus conclude that the trial court's best-interest determination was not against the manifest weight of the evidence.

¶ 47 III. CONCLUSION

¶ 48 For the foregoing reasons, we affirm the trial court's judgment.

¶ 49 Affirmed.