2017 IL App (4th) 170378-U

NO. 4-17-0378

FILED
October 10, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: W.D., a Minor	)	Appeal from
	)	Champaign County
	)	Circuit Court
(The People of the State of Illinois,	)	No. 14JA57
Petitioner-Appellee,	)	
v.	)	Honorable
Willie B. Dorsey,	)	John R. Kennedy,
Respondent-Appellant).	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In May 2017, the trial court terminated the parental rights of respondent, Willie B. Dorsey, as to his minor child, W.D. (born March 15, 2009). On appeal, respondent argues the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We disagree and affirm.

I. BACKGROUND

¶ 3 W.D. was removed from his parents' care following several domestic violence incidents involving respondent and Latosha Palmer, W.D.'s mother. In the underlying proceedings, the parental rights of Palmer were also terminated; however, she is not a party to

this appeal. We only discuss the facts as they relate to respondent and W.D.

¶ 4 On August 20, 2014, the State filed a petition for adjudication of wardship, alleging W.D.'s environment was injurious to his welfare because he was exposed to (1) domestic violence (count I), and (2) a risk of physical harm (count II). On December 8, 2014, the trial court entered an adjudicatory order finding W.D. was abused or neglected. The court based this finding on "violent domestic events" that occurred in July and September 2014. During both disputes, respondent was under the influence of alcohol and became physically aggressive with Palmer. On December 23, 2014, the trial court entered a dispositional order adjudicating W.D. a dependent minor, making him a ward of the court, and placing custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 5 On June 28, 2016 the State filed a petition seeking a finding of unfitness and termination of both respondent's and Palmer's parental rights. It filed an amended petition on December 12, 2016. The State alleged both parents were unfit for failing to make reasonable progress toward the return of W.D. during any nine-month period following the adjudication of neglect or abuse. The State further alleged that termination of parental rights was in W.D.'s best interest.

¶ 6 In February and March 2017, the trial court conducted fitness hearings in the matter. The State presented the testimony of several police officers, including Officer Sarah Links, who were dispatched to respondent's and Palmer's residence on November 24, 2016. Links testified that respondent was standing outside the house talking on his phone when the officers arrived. Links stated that respondent's speech was slurred and he was "possibly intoxicated." When the officers approached respondent, he explained that he had an argument

with Palmer. Following the argument, Links testified that another male in the house struck respondent with a sawed-off shotgun. Links further explained that W.D. was sleeping in a back room at the time of the altercation. Respondent was arrested for domestic battery.

¶ 7 The State also presented the testimony of Kristin Kaufman. She testified that she worked for Children's Home and Aid and was assigned to W.D.'s case from March 2016 to November 2016. She stated that respondent participated in substance-abuse treatment. However, in April 2016, respondent reported a relapse and used cocaine again. Further, Kaufman explained, respondent did not have a stable source of income or housing in May 2016. Kaufman testified that respondent was "selling bootleg DVDs [(digital video discs)]" and "doing *** yard maintenance." Soon thereafter, respondent secured a legal means of employment and purchased a mobile home.

¶ 8 Kaufman further testified that respondent's visits with W.D. went well, and as a result, he was permitted to have unsupervised visits in October 2016. Kaufman also testified that respondent was not referred for parenting classes because of the "bond that [respondent] had with [W.D.] and how the visits were going."

¶ 9 Lindsey Headrick-Clark, a caseworker for Children's Home and Aid who regularly attended respondent's visitations, testified that W.D.'s bond with respondent was "amazing." During visitations, they went fishing, bowling, and played miniature golf. Headrick-Clark stated that respondent purchased W.D.'s clothes for school and emphasized the importance of schoolwork. She acknowledged that respondent regularly attended visitations or rescheduled ones that he could not attend. By June 2016, respondent's visitations with W.D. were increased from weekly to twice weekly.

¶ 10 Elizabeth Vallier testified that she worked for Children's Home and Aid and was assigned as W.D.'s caseworker in September 2016. She stated that respondent's visitations increased from four hours to six hours per week in September 2016. Further, Vallier testified that respondent was consistently attending substance-abuse counseling services and participating in random drug screens. Vallier acknowledged that there were "a couple" of missed counseling sessions.

¶ 11 Finally, Vallier testified that respondent was incarcerated in November 2016 for a domestic violence incident with Palmer. Vallier noted that respondent confirmed the accuracy of the police reports, which described respondent as intoxicated and physically aggressive toward Palmer. Vallier stated that respondent was released from jail in December 2016.

¶ 12 Following the parties' arguments, the trial court found respondent and Palmer unfit as alleged in the State's motion. In particular, the court noted respondent's overall lack of progress:

> "[I]t's remarkable how similar the evidence about November 24, 2016 is to that threshold [domestic violence] event occurring *** in September of 2014[.]
>
> * * *
>
> It's an instance where *** police arrived[.] [I]t's correct, [respondent] called. He had apparently been hit with the end of what I think was a sawed-off shotgun[.] *** [Repsondent] appeared confused, intoxicated, and *** what had precipitated it was an argument and then an

> episode of violence between [respondent] and [Palmer] similar to what we're doing two years beforehand.
>
> * * *
>
> So clearly by the time *** when this nine-month period ends, December 1st, 2016, [respondent] had not made the progress we had expected[.]"

¶ 13 On May 1, 2017, a best-interest report prepared by Vallier was filed. It showed that W.D. had been placed in four different relative foster homes during the pendency of the case. On April 6, 2017, he was placed in a foster home with respondent's daughter, Ms. Holman, who indicated that she was willing to provide W.D. with permanency. The report stated that Holman personally contacted the agency and advocated for W.D. to be placed in her home. It also stated that W.D. had a bond with Holman prior to his placement and he was "comfortable" in her home. The report noted concerns with respondent's failure to complete 27 out of 34 drug screens between December 2016 and April 2017. It stated that respondent failed to maintain a stable residence, noting that he was residing at an America's Best Inn. Respondent also reported that he had applied for various jobs in Champaign but he did not provide proof of employment at the time the best-interest report was prepared.

¶ 14 On May 8, 2017, the trial court conducted a best-interest hearing. Respondent testified on his own behalf. He described his work history, stating he was doing construction work that caused him to miss his random drug screens between February and March 2016. More recently, he had begun working at a Burger King located in Urbana, Illinois. He further testified that he attended scheduled visitations with W.D. He stated that he would take W.D out to eat,

supported W.D.'s academic efforts, and he spent $600 on clothing for W.D. He agreed he had problems with Palmer, and he acknowledged that he understood the need to keep his distance from her. Respondent further testified that he moved out of his daughter's home so that W.D. could reside with her during the pendency of the case. Additionally, respondent testified that he loves his son and he would "not ever give up on him."

¶ 15 In a letter admitted into evidence, W.D. stated that he wished to remain with his parents. The letter stated, in pertinent part, as follows:

> "I want to come see you and stay with you all day and dad [*sic*]. I want to stay with you for a long time and they'll never take me away from you and I can see you whenever I want. Mom and dad do you want me to come stay with you and see you for a long time? I want to stay with you every day and every night. If I can't see you for a really long time again I'll be sad. I'd like you to stay with me forever."

¶ 16 Based on the evidence presented, the trial court found it was in W.D.'s best interest that respondent's parental rights be terminated. The court stated as follows:

> "[W.D. is currently residing] with people he knows[.] [A]lthough they're recently in the role of caretaker, *** [W.D.] feels the love and attachment *** and a bond certainly is forming[.] *** [T]here certainly is a significant bond with respondent father. That's clear and *** you can't make this up. That's in [W.D.'s] letter *** and it's clear that he's got a desire to be back with his father. And it's the bond that's been there, and still exists, and hasn't *** been severed *** over

the passage of time. I'm not certain that that best interest factor favors either termination or *** the goal *** towards return to *** [respondent's] care.

Again, [as to] the child's sense of security[,] I don't know honestly what his sense of security would be. He seems to enjoy being with respondent father. I don't know how he could feel secure in *** a custodial relationship with [respondent] because there are regular disruptions [and] [respondent] is not an innocent party. And the evidence here is that [W.D.] feels comfortable in the home with people that, again, he's just learning to live with on a permanent basis[.] ***

As we talk about the next factor, familiarity, [W.D.'s] certainly familiar with *** [respondent]. He's becoming less familiar [with respondent] because of the passage of time and the court's orders that haven't allowed continuous care, but he *** appears *** to have *** an opportunity to feel comfortable at [his current foster] home. I think that factor favors the request for termination of parental rights.

* * *

No doubt that *** there's going to be a continuity of affection *** in his current home, a familiar foster home, but there's never going to be an end of affection between the child and [respondent], frankly, no matter what the court does. I don't believe that factor favors either termination or not.

The least disruptive placement alternative for the child[,] *** in the court's judgment, *** [is] the most convincing factor[.] *** [On] April 30th of

2017[,] *** [respondent] is involved in some *** altercation that is again influenced by alcohol. And we've heard that repeatedly. And, in fact, that's what led to [the] adjudication *** [in] December of 2014 *** [where there] was alcohol-induced conflict between the parents. [W]e heard in the most recent hearing on fitness *** about events of alcohol-induced conflict, much more recently than in 2014[.] *** And things change, but it does not appear that [respondent] has. And it would be, unfortunately, predictable that there [would] be another *** alcohol-induced conflict where Ms. Palmer is involved[.]

* * *

[I]f [W.D.] were there *** he would have to be removed and go back into some sort of nonpermanent situation. *** [I]t is true that *** this is [W.D.'s] fourth placement, so the path to permanency after removal hasn't been exactly smooth, but we have a placement with people who he knows, who he's comfortable with, who are comfortable with him, who want to be with him and, frankly, don't exhibit the type of problems that occur in [respondent's] home[.] *** And *** [based] on the evidence he's in a place where he has a *** very good chance for non-disruptive placement and permanency[.]

The child's wishes and long-term goals. I think the child wants to be with his parents. *** I think it's true he's comfortable in his home where he is. *** [He] says he is happy[.]

* * *

It's true that the community ties and relationships with other family members will not be disrupted by terminating parental rights and giving him the opportunity for his current placement.

* * *

And [as for] the preferences of persons available, clearly, he's in [a] place where people want to provide care. I think [respondent] certainly wants to provide care for this child. *** I don't know that that factor favors termination or denial of the request for termination. What I think is apparent is [respondent] cannot provide permanency for [W.D.] And *** these are the most significant factors.

* * *

This record is one of a father who I have no doubt wants to have his child with him, but hasn't made the significant changes that he needs to [make] in order to be able to have a non-disruptive household for his child on a permanent basis."

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, respondent argues the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We disagree.

¶ 20 A. Fitness

¶ 21 Parental rights may be involuntarily terminated when the trial court finds that a parent is unfit based on grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) and termination is in the child's best-interest. *In re J.L.*, 236 Ill. 2d 329, 337–38, 924 N.E.2d 961, 966 (2010). "A parent's rights may be terminated if even a single alleged

ground for unfitness is supported by clear and convincing evidence." *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). "A reviewing court will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 22 Here, the State alleged respondent was unfit because he failed to make reasonable progress toward W.D.'s return home for the nine-month period from March 1, 2016, to December 1, 2016. Respondent contends that he made progress by (1) improving his parenting skills, which led to an increase in visitation; (2) seeking substance-abuse treatment after he relapsed; and (3) improving his "understanding of his relationship with [Palmer] and of domestic violence."

¶ 23 We find the evidence presented at the fitness hearing was sufficient to support the trial court's determination that respondent was unfit based on his failure to make reasonable progress. In reaching its decision, the court relied on respondent's prior arrests for domestic violence. The court noted that the domestic violence incident in November 2016 was "remarkably similar" to the dispute that precipitated the initiation of these proceedings in 2014. During both incidents, the police were called in response to an altercation between respondent and Palmer when respondent was intoxicated, and which occurred in the presence of W.D. Further, the evidence indicates respondent failed to report for several drug screens during this period. We agree that this evidence supports the finding that respondent had not made progress with respect to substance abuse or domestic violence despite attempts at counseling. We thus conclude that the court's fitness finding was not against the manifest weight of the evidence.

¶ 24 B. Best Interest

¶ 25 Respondent next argues termination of his parental rights was not in W.D.'s best interest. Specifically, he points to W.D.'s express desire to remain in respondent's custody, the fact W.D.'s safety was not jeopardized during visitations, and his "prospects" of regaining suitable housing for W.D.

¶ 26 "Following a finding of unfitness * * * the focus shifts to the child. The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be terminated." (Emphases in original.) *In re D. T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.* At this stage of the proceedings, "the State bears the burden of proving 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).

¶ 27 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)).

¶ 28 In this case, sufficient evidence was presented at the best-interest hearings to support the trial court's determination that terminating respondent's parental rights was in W.D.'s best interest. Evidence showed W.D. was adjudicated a ward of the state after a domestic violence incident between Palmer and respondent in 2014. Further, respondent's most recent arrest in November 2016 involved a similar domestic violence incident with Palmer where respondent was intoxicated. The evidence also demonstrated W.D. was doing well in his foster home with respondent's daughter, Holman, who voiced a willingness to provide permanency. According to the trial court, respondent's inability to provide a stable environment was the most significant factor weighing in favor of termination.

¶ 29 Further, as the trial court noted, it was unlikely that W.D. could feel secure in a custodial relationship with respondent when there were regular disruptions and domestic violence. The court acknowledged that respondent and W.D. had a special bond; however, W.D.'s current foster placement with Holman provided a safe environment and potential permanency. The court stated that Holman could provide a home with "people who [W.D.]

knows, who he's comfortable with, who are comfortable with him, who want to be with him and, frankly, don't exhibit the type of problems that occur in [respondent's] home."

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

¶ 31 III. CONCLUSION

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

¶ 33 Affirmed.