2017 IL App (4th) 170453-U

NO. 4-17-0453

FILED
November 13, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re G.S., a Minor	)	Appeal from
	)	Vermilion County
	)	Circuit Court
(The People of the State of Illinois,	)	No. 15JA72
Petitioner-Appellee,	)	
v.	)	Honorable
Jared Michael Smith,	)	Craig H. DeArmond,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Knecht 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 June 2017, the trial court terminated the parental rights of respondent, Jared Michael Smith, as to his minor child, G.S. (born May 5, 2010). 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 Respondent and Tiffany Rouse are the parents of G.S. The record reflects that Rouse is also the mother of four other minors who were involved in the underlying proceedings but are not subjects of this appeal. We address the issues only as they relate to respondent and

G.S.

¶ 4 In July 2015, the State filed a petition for adjudication of wardship, alleging G.S. was a neglected minor because (1) she was not receiving proper or necessary support, education, or medical care (count I); (2) her environment was injurious to her welfare due to her mother's substance abuse (count II); and (3) her environment was injurious to her welfare because her mother left her with others without a care plan and failed to maintain contact as to her welfare (count III). On November 5, 2015, the trial court entered an adjudicatory order finding G.S. was neglected. On December 17, 2015, the trial court entered a dispositional order adjudicating G.S. a dependent minor, making her a ward of the court, and placing custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 5 On November 7, 2016, the State filed a petition seeking a finding of unfitness and termination of respondent's parental rights. The State alleged respondent was unfit because he (a) abandoned G.S. (750 ILCS 50/1(D)(a) (West 2016)); (b) failed to maintain a reasonable degree of interest, concern, or responsibility as to G.S.'s welfare (750 ILCS 50/1(D)(b) (West 2016)); (c) deserted G.S. for more than three months preceding the commencement of this action (750 ILCS 50/1(D)(m)(ii) (West 2016)); (d) failed to make reasonable progress toward the return of G.S. within nine months (February 15, 2016 through November 15, 2016) after the adjudication of neglect, abuse, or dependency (750 ILCS 50/1(D)(m)(ii) (West 2016)); (e) failed to make reasonable progress toward the return of G.S. during any nine-month period after the end of the initial nine-month period (750 ILCS 50/1(D)(m)(iii) (West 2016)); (f) was incarcerated as a result of a criminal conviction at the time the petition to terminate parental rights was filed, prior to incarceration the respondent had little or no contact with G.S. or

provided little or no support for the child, and the incarceration would prevent respondent from discharging his parental responsibilities with respect to G.S. for a period in excess of two years after the filing of the petition (750 ILCS 50/1(D)(r) (West 2016)); and (g) was incarcerated at the time the petition for termination of parental rights was filed, was repeatedly incarcerated as a result of criminal convictions, and the repeated incarceration had prevented respondent from discharging his parental responsibilities (750 ILCS 50/1(D)(s) (West 2016)). The State further alleged that termination of parental rights was in G.S.'s best interest. It filed an amended petition on April 24, 2017, containing the same allegations.

¶ 6 On June 14, 2017, the trial court conducted a fitness hearing. At the State's request, the court took judicial notice of its adjudicatory and dispositional orders in the case. The State also called Lauren Zitkus as a witness. Zitkus testified she was G.S.'s case manager at Children's Home and Aid from February 15, 2016, through December 15, 2016. She stated that respondent's service plan included the assigned tasks of maintaining employment and appropriate housing. She explained that respondent was unable to make any progress with his service plan because he was incarcerated prior to the birth of G.S. and he would not be released until 2023. Zitkus further stated that respondent did not ask her to arrange any communication between respondent and G.S. She explained that respondent did not inform her of his attempts to send G.S. birthday cards or letters.

¶ 7 Respondent testified on his own behalf. He stated he had been incarcerated since November 13, 2009. Respondent acknowledged that he had not participated in any services. He further acknowledged that he was never able to provide for G.S financially. Respondent stated that he saw G.S. on one occasion when her mother brought her to court. He explained that G.S.

was a "couple days old" at the time. He further testified that he communicated with G.S. by sending "cards, letters, [and] books where *** [he] read the book and record[ed] it[.]" He stated that he sent G.S.'s foster parent Mother's Day cards "to say thank you *** for taking care of my daughter."

¶ 8 At the conclusion of the hearing, the trial court found respondent unfit for failure to make reasonable progress because of his incarceration as alleged in the State's petition in subparagraphs 6(d), (e), (f), and (g). The court further found, however, that the State failed to show respondent did not maintain a reasonable degree of interest, concern, or responsibility.

¶ 9 Immediately following the hearing to determine parental fitness, the trial court conducted a best-interest hearing. The State called one witness, Atiyya Thompson. Thompson testified that she was a supervisor at Children's Home and Aid. She stated that G.S. and her siblings had been placed in a foster home with their maternal grandparents since 2015. Thompson further stated, "It is my understanding as reported by the caseworker and the foster parents that they are very well bonded and have a very well-structured system at home." Thompson stated that the foster parents had been involved in G.S.'s life prior to her foster care placement. Additionally, Thompson testified that the foster parents were willing to provide permanency through adoption.

¶ 10 Based on the evidence presented, the trial court found it was in G.S.'s best interest that respondent's parental rights be terminated.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, respondent argues the trial court's fitness and best-interest

determinations were against the manifest weight of the evidence. We disagree.

¶ 14 A. Fitness

¶ 15 To involuntarily terminate parental rights, the trial court must find 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 that 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).

¶ 16 We find the trial court's determination that respondent was unfit was not against the manifest weight of the evidence. Under section 1(D)(s) of the Adoption Act (750 ILCS 50/1(D)(s) (West 2016)), a person is "unfit" under the following circumstances:

> "The child is in the temporary custody or guardianship of the Department of Children and Family Services, the parent is incarcerated at the time the petition or motion for termination of parental rights is filed, the parent has been repeatedly incarcerated as a result of criminal convictions, and the parent's repeated incarceration has prevented the parent from discharging his or her parental responsibilities for the child." 750 ILCS 50/1(D)(s) (West 2016).

Courts are to consider "the overall impact that repeated incarceration may have on the parent's ability to discharge his or her parental responsibilities ***, such as the diminished capacity to

provide financial, physical, and emotional support for the child." (Internal citations omitted.) *Gwynne P.*, 215 Ill. 2d at 356, 830 N.E.2d at 517. Further, only one ground for a finding of unfitness is necessary to uphold the trial court's judgment. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004).

¶ 17 Here, the trial court's oral ruling indicated it determined respondent was unfit because he failed to make reasonable progress due to his incarceration. Respondent argues that, "had he known about the child, he might have changed his behavior so that incarceration would not have occurred." We find this argument unavailing. The evidence presented at the fitness hearing shows that respondent was incarcerated at the time the State filed its petition for termination of parental rights, he was incarcerated before G.S. was born in 2010, and he would not be eligible for release until 2023. In addition, respondent acknowledged that he was unable to provide financial support to G.S. because of his incarceration. Although respondent exhibited some interest and concern by sending G.S. cards and other materials, we agree with the trial court that respondent was unable to make reasonable progress because his incarceration prevented him from discharging his parental responsibilities. Based on this evidence, we conclude the court's fitness finding was not against the manifest weight of the evidence.

¶ 18 Because only one ground for a finding of unfitness is necessary to uphold the trial court's judgment, we need not review the other bases for the court's unfitness finding. *Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005) (A parent's rights may be terminated if even a single alleged ground for unfitness is supported by the evidence.)

¶ 19 B. Best Interest

¶ 20 Respondent next argues termination of his parental rights was not in G.S.'s best

interest. We disagree.

¶ 21 "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).

¶ 22 Under the Juvenile Court Act of 1987, there are several factors a court considers 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)).

¶ 23 In this case, sufficient evidence was presented at the best-interest hearing to support the trial court's determination that terminating respondent's parental rights was in G.S.'s best interest. Evidence showed G.S. and her siblings resided in a foster home with their maternal grandparents. G.S. was doing well in the home and she was well-bonded to her grandparents. The grandparents also indicated that they were willing to provide permanency through adoption. Conversely, as stated, respondent was incarcerated when G.S. was born and he would not be eligible for release until 2023. The record reflects that G.S. only met respondent on one occasion and respondent acknowledged that he was unable to provide for G.S. financially while he was incarcerated.

¶ 24 Based on this evidence, 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.