

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

**FILED**

November 20, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 170474-U

NO. 4-17-0474

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

<i>In re</i> K.P., a Minor	)	Appeal from
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	McLean County
Petitioner-Appellee,	)	No. 15JA41
v.	)	
JAMES BARRON,	)	Honorable
Respondent-Appellant).	)	Kevin P. Fitzgerald,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Justices Harris and DeArmond concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s best-interest finding was not against the manifest weight of the evidence.

¶ 2 Respondent father, James Barron, appeals from the trial court’s order terminating his parental rights to K.P. (born April 2, 2015). Respondent argues the court’s finding it was in K.P.’s best interest to terminate his parental rights was against the manifest weight of the evidence. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2015, K.P. was taken into protective care shortly after her birth based on a theory of anticipatory neglect. The trial court later found K.P. to be neglected, made her a ward of the court, and placed custody and guardianship with the Illinois Department of Children and

Family Services.

¶ 5 In January 2017, the State filed a petition to terminate the parental rights of respondent and K.P.'s mother, Elizabeth Potts-Crafton. K.P.'s mother later entered a voluntary surrender and consent to adoption to K.P.'s foster parents. In March 2017, the trial court entered an order finding respondent unfit based on his admission to failing to make reasonable progress toward the return of K.P. to his custody during the period from February 8, 2016, through November 8, 2016.

¶ 6 In May 2017, the trial court held a best-interest hearing. The court, over no objection, took judicial notice of the entire court file, which included a best-interest report. The court also heard testimony from (1) respondent's counselor, Todd Smith; (2) respondent's sister, Chelsey Vanhook; (3) respondent's mother and K.P.'s foster mother and grandmother, Melissa Doss; (4) respondent's stepfather and K.P.'s foster father and step-grandfather, Dennis Doss; (5) caseworker Linda Klump; (6) caseworker Iyasha Reeves; and (7) respondent. The following is a summary of the evidence presented.

¶ 7 Respondent initially made significant progress toward complying with his service plan. However, in August 2016, respondent was "arrested for a DUI" and lost his job. His loss of income impacted his ability to provide a stable living environment. His utilities were turned off, and he was served an eviction notice. In September 2016, due to his failure to satisfy three of his service plan requirements, which were maintaining a stable living arrangement, maintaining employment, and not drinking alcohol, respondent was found to be unfit.

¶ 8 In the months following the finding of unfitness, respondent was married, completed his "DUI-related counseling classes," and reportedly entered into a payment plan with

his landlord to pay off \$3,000 in overdue rent. Respondent testified, because of his wife's income and the income he received from side jobs, he owed only \$158.49 in overdue rent at the time of the best-interest hearing. Respondent also indicated both his neighbor and his wife's friend were willing to provide day-care services in the event K.P. was returned to his custody.

¶ 9 Respondent had an on-and-off relationship with his now-wife for several years, ending the relationship on two prior occasions due to miscommunication. Respondent and his wife last reunited in September 2016, when respondent's three-month relationship and engagement to another woman ended. As to that relationship, respondent testified, even though he told people he was engaged and he had the intentions of getting married, he was not in fact engaged because the woman's prior marriage had not been dissolved. Respondent also testified he ended that relationship because the woman convinced her husband to accuse him of abusing her children so he would lose his parental rights to K.P. After reuniting with his now-wife, respondent stated he was going to move slowly in the relationship to avoid potential conflicts. They began dating in October 2016, were engaged in January 2017, and were married in February 2017. Respondent reported he and his wife had been better at resolving conflicts and the marriage was going well. Respondent also indicated he was previously married in 2012 for three weeks. Respondent testified he and his ex-wife were married quickly because his ex-wife's parents "forced it upon [them]." Specifically, respondent indicated his ex-wife's parents did not allow him to sleep in the same room as their daughter unless they were married.

¶ 10 Respondent's employment history was inconsistent. He had at least six different employers over a two-year period. Respondent reported he was "fired" by three of those employers. In February 2017, respondent was terminated after only two weeks due to his

performance and attendance. Respondent remained positive and optimistic about finding employment. Respondent testified he was to start a new job the day after the best-interest hearing. He otherwise obtained income from side jobs.

¶ 11 Since July 2015, respondent attended counseling sessions approximately twice a month. At times, respondent had difficulty attending sessions on a regular basis. Respondent had approximately six “no-shows.” Respondent testified he believed he gained a lot from counseling. Specifically, respondent indicated he learned how to deal with stress and anger issues as well as properly talk to people and think before he speaks. Respondent’s counselor indicated respondent had difficulty focusing during counseling sessions and struggled with retaining the information discussed. Respondent testified he struggled with short-term memory loss caused from a head injury when he was a child. Respondent’s counselor testified respondent made below average progress during his counseling sessions. At the time of the best-interest hearing, respondent continued to attend counseling to discuss anger, stress management, and relationship issues. Respondent’s counselor determined respondent would require long-term counseling. Respondent indicated he would attend counseling as long as financial aid was available.

¶ 12 In November 2015, respondent was diagnosed with antisocial personality disorder. Respondent’s counselor observed respondent met the criteria for impulsivity, failure to plan ahead, consistent irresponsibility, irritability and aggressiveness, and prior incidents of physical assaults. Specifically, respondent’s counselor found respondent showed (1) impulsivity in his romantic relationships, (2) impulsivity with his prior decisions to relocate after stressful periods in his life, (3) difficulty with planning ahead as apparent by his failure to plan to have alternative living arrangements when he could no longer afford heat in his home, and (4) a

disregard for others and himself based on his DUI arrest. Respondent's counselor opined the prognosis for respondent to overcome his disorder was poor to fair.

¶ 13            Shortly after being taken into care, K.P. was placed with respondent's sister, Chelsey, and then transferred to respondent's mother, Melissa, and stepfather, Dennis. Since August 2015, K.P. resided with Melissa and Dennis. Melissa and Dennis, K.P.'s grandmother and step-grandfather, were married for almost 14 years. Melissa was 45 years old, and Dennis was 56 years old. Neither Melissa nor Dennis had any serious health concerns. They lived in a single-family, four-bedroom home, where K.P. had her own bedroom. The home was safe, secure, and filled with items geared for K.P., such as toys, a swing set, and a sand box. Melissa's 25-year-old son, 22-year-old niece, and niece's two minor children also lived in the home. Melissa's niece and her children were living in the home temporarily until they found a place of their own. The children all got along well. Melissa testified they were financially capable of caring for K.P. Melissa was employed and making \$1,800 a month. Dennis was self-employed, working on automobiles from their home, making between \$500 and \$1000 a month. Melissa also indicated her son and niece helped with paying the monthly bills. Melissa acknowledged owing \$14,000 in overdue taxes, which may be difficult to pay. Dennis indicated he would be willing to sell a valuable vehicle to pay the taxes. Melissa also indicated "an estate" was suing her, accusing her of theft.

¶ 14            K.P. adjusted well and appeared to be happy and thriving with Melissa and Dennis. Chelsey continued to be involved with K.P., providing daily childcare. K.P. had a strong attachment to Melissa, Dennis, and her extended family members. K.P. appeared to feel secure, valued, and loved. She appeared confident and comfortable, which was believed to be a result of

a routine and stable environment. K.P. showed strong verbal skills, which was reflective of the attention she received. Melissa and Dennis provided K.P. with a balance of discipline and love to help foster a family atmosphere. They provide her with encouragement in her development and her ability to express herself. Both Melissa and Dennis expressed a desire to adopt.

¶ 15 Throughout the proceedings below, respondent expressed interest in obtaining custody of K.P. It was undisputed a bond existed between respondent and K.P., and K.P. enjoyed interacting with respondent. When K.P. was an infant, however, respondent showed a lack of focus or attentiveness to K.P. On occasion, respondent showed carelessness and a degree of reliance on others to provide for K.P.'s needs during visitations. Respondent was reportedly drinking during a visit prior to his "DUI" arrest. Respondent's interactions with K.P. depended upon his mood at the time. If he was preoccupied, he could be seen on his phone or watching television. At times, respondent would cancel visits with short notice or because he had a headache. Respondent maintained, however, he would cancel a visit due to illness only if someone else was present to care for K.P. Respondent did not regularly call to discuss K.P.'s well-being. Respondent testified, however, Melissa refused to take his calls. He also indicated he told his caseworker about Melissa's refusal, but he was unsure whether the caseworker did anything about it. As K.P. aged, respondent began to interact more appropriately with her. Since April 2017, K.P. had supervised visits with respondent once a week for two hours in his home. During those visits, respondent engaged with K.P. in play and conversation and showed an appropriate interest in her. Melissa and Chelsey testified K.P. began to express confusion with the changes in visitations.

¶ 16 Chelsey testified her relationship with respondent deteriorated after K.P. was

taken into care. Melissa testified her relationship with respondent was nonexistent after the filing of the petition to terminate his parental rights. Chelsey stated respondent was against K.P. being placed with her or their mother. Chelsey testified respondent accused her of trying to take his daughter away. Chelsey and Melissa initially supported the goal of K.P.'s return to respondent. Both a caseworker and respondent's counselor suggested to respondent a joint counseling session with Melissa. Respondent indicated he was unwilling to participate.

¶ 17 Respondent testified he would move to Florida with K.P. if she was returned to his custody because he would have more employment opportunities and a better support system. Chelsey testified respondent stated on multiple occasions he would not allow his family to see K.P. if she was returned to him. Respondent testified he would allow his family to see K.P. if they visited Florida but only while in his presence.

¶ 18 Both Melissa and Dennis committed to maintaining contact between K.P. and respondent if respondent's parental rights were terminated. They also committed to maintaining contact between K.P. and her biological mother and her biological mother's family.

¶ 19 Chelsey believed respondent could not provide K.P. with a safe and stable environment due to his inability to maintain employment and his history of instability in relationships. Melissa believed respondent could not safely parent K.P. because of his anger issues and his inability to hold a job for an extended period of time.

¶ 20 Respondent's counselor expressed concern with respondent's ability to parent due to his diagnosis. Specifically, he was concerned with respondent's ability to (1) maintain consistent employment and housing, (2) plan ahead to assure K.P.'s welfare and safety needs were met, and (3) maintain a healthy romantic relationship. Respondent's counselor

acknowledged respondent's wife could provide respondent with a support system and financial assistance to provide some stability.

¶ 21 Caseworker Klump, who authored the best interest report, opined it was in K.P.'s best interest to terminate respondent's parental rights. Specifically, she concluded, although respondent was well-intentioned, he did not have a stable history of employment or romantic relationships, both which greatly impacted his ability to provide financial support, emotional support, and the stability required for K.P. to develop into a well-adjusted individual. Klump also found respondent lacked the necessary decision making skills to act in K.P.'s best interest, noting his failure to demonstrate consistent, sustained efforts to satisfy his service plan goals and his DUI arrest. Klump further found placing K.P. in substitute care would be harmful to her development and trust in adults, and the removal from her foster home would be very confusing and upsetting.

¶ 22 Caseworker Reeves agreed with the conclusions outlined by caseworker Klump in the best-interest report. She expressed concern with respondent's relationship and his ability to handle every day stresses when dealing with a toddler. At one point in her testimony, however, she suggested she was unsure of whether it was in K.P.'s best interest to terminate respondent's parental rights because she was unsure whether respondent would continue to be involved with K.P. if his parental rights were terminated. Reeves also noted concern with the foster parents' financial situation.

¶ 23 Respondent maintained he was capable of caring for K.P. Respondent noted he did not believe he needed services to properly care for K.P. He expressed concern with his mother telling K.P. about his past if she stayed with her.



¶ 24 The trial court noted it was tasked with a difficult decision given the undisputed evidence showing the bonds K.P. had with respondent and her foster parents. The court made clear its focus was on the best interest of K.P. The court considered the statutory best-interest factors found in section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2016)). The court found a significant factor in favor of termination was the continuity of affection for K.P. because if she stayed with her foster parents she would be given the opportunity to receive the continued affection from both her foster parents and her biological parents. Similarly, the court found, K.P.'s background and familial ties weighed in favor of termination given the testimony suggesting respondent would terminate K.P.'s relationship with her foster parents and extended family. The court found K.P.'s sense of security and familiarity favored termination as she had been with her foster parents since she was four months old. As to the least disruptive placement alternative, the court found this factor slightly favored termination given K.P.'s recognition of her foster parent's home as her home. The court also found the community-ties factor slightly favored termination given K.P.'s extended stay with her foster parents. As to the risk attendant to being in substitute care, the court found this factor favored termination given K.P.'s recent confusion with having dual homes available. The court found the preferences of the persons available slightly favored termination given K.P.'s mother signed a consent to adoption to K.P.'s foster parents. As to permanency, the court noted, while a "snapshot" of respondent's situation showed stability for a three-month period after he was married, the evidence showed a lack of stability over an extended period of time, citing the fact the relationship had been disrupted twice before, respondent's instability in previous relationships, respondent's failure to maintain employment, and respondent's diagnosis. As to

the physical safety and welfare of K.P., including her shelter and health, the court found this factor was “a little bit closer,” given its concerns with the foster parent’s financial situation. However, the court found the foster parents indicated they would continue to provide a safe shelter and home for K.P. by whatever means necessary. The court found the remaining statutory factors to be neutral or inapplicable under the circumstances.

¶ 25 After considering the statutory factors, the trial court found it was in K.P.’s best interest to terminate respondent’s parental rights. The court entered an order terminating respondent’s parental rights to K.P.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 “The termination of parental rights is a two-step process under which the best interests of the child is considered only after a court finds the parent unfit.” *In re E.B.*, 231 Ill. 2d 459, 472, 899 N.E.2d 218, 226 (2008). Respondent does not contest the trial court’s finding he was unfit for termination purposes. Instead, he only contests the court’s finding termination of his parental rights was in K.P.’s best interest, asserting that finding was against the manifest weight of the evidence. Specifically, respondent contends the court’s finding was designed to punish him for his lack of steady employment and failed to consider (1) the bond between him and K.P., (2) his failure to maintain employment was due in part to layoffs, (3) he met minimum parenting standards, and (4) the foster parents’ financial plight.

¶ 29 At the best-interest stage of termination proceedings, a “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). The State must prove

by a preponderance of the evidence termination is in the child's best interests. *Id.* at 367, 818 N.E.2d at 1228.

¶ 30 The trial court must consider the following factors, in the context of the minor's age and developmental needs, in determining whether termination is in the minor's best interest: the child's physical safety and welfare; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including continuity of affection for the child, the child's feelings of love, being valued, and security, and taking into account the least-disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; 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; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016).

¶ 31 On review, this court will not reverse a trial court's best-interest finding unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against the manifest weight of the evidence only if the facts clearly demonstrate the court should have reached the opposite conclusion. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 32 K.P. had been living with her relative foster parents for almost two years. K.P. was bonded with her foster parents and appeared secure and happy. Her foster parents provided her with love, discipline, and exposure to her extended family as well as a safe and secure home. They also intended to support a relationship between K.P. and her biological parents, allowing

