2017 IL App (4th) 170575-U

NO. 4-17-0575

FILED
December 19, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re R.V., a Minor	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Vermilion County
Petitioner-Appellee,	)	No. 16JA16
v.	)	
Aaron Martin,	)	Honorable
Respondent-Appellant).	)	Craig H. DeArmond,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The trial court's termination of respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 Respondent, Aaron Martin, appeals the trial court's termination of his parental rights to his child, R.V. (born May 19, 2014). He argues the court erred both in finding him unfit and that termination of his parental rights was in R.V.'s best interests. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In February 2016, the State filed a petition for adjudication of wardship, alleging R.V. was a neglected minor in that her environment was injurious to her welfare due to her mother's substance abuse and mental health issues, and because her mother engaged in domestic violence in front of her. In June 2016, the trial court entered an adjudicatory order, finding the

State had proved that R.V. was a neglected minor as alleged in its petition and setting the matter for a dispositional hearing. In July 2016, the court entered its dispositional order, granting the State's petition, adjudicating R.V. a neglected minor, and placing her in the custody and guardianship of the Illinois Department of Children and Family Services.

¶ 5 In March 2017, the State filed a petition to terminate respondent's parental rights to R.V. It alleged he was an unfit parent in that he had (1) abandoned R.V. (750 ILCS 50/1(D)(a) (West 2016)); (2) failed to maintain a reasonable degree of interest, concern or responsibility as to R.V.'s welfare (750 ILCS 50/1(D)(b) (West 2016)); (3) deserted R.V. for more than three months before the commencement of termination proceedings (750 ILCS 50/1(D)(c) (West 2016)); (4) failed to make reasonable efforts to correct the conditions that were the basis for R.V.'s removal from his care within nine months after the neglect adjudication, specifically June 9, 2016, to March 9, 2017 (750 ILCS 50/1(D)(m)(i) (West 2016)); and (5) failed to make reasonable progress toward R.V.'s return to his care within nine months after the neglect adjudication, specifically June 9, 2016, to March 9, 2017 (750 ILCS 50/1(D)(m)(ii) (West 2016)). The State also alleged termination of respondent's parental rights was in R.V.'s best interests. (The record reflects the State also sought to terminate the parental rights of R.V.'s mother; however, she signed a final and irrevocable surrender of her parental rights to R.V. and is not a party to this appeal.)

¶ 6 In July 2017, the trial court conducted the fitness hearing. The State presented the testimony of Cassandra Carter, R.V.'s foster care caseworker. Carter stated she worked for the Center for Youth and Family Solutions (CYFS) and had been R.V.'s caseworker since the "opening" of R.V.'s case. She identified respondent as R.V.'s father but stated she was unable to con-

tact him at the outset of the case. Carter asserted she conducted "two diligent searches" for respondent, one in March 2016 and a second in September 2016. Carter described a diligent search as entering known information about a missing parent into a database to determine possible addresses for that individual and then mailing a letter to those addresses, stating the individual might be the possible parent of a child that is in care and should contact CYFS.

¶ 7 Carter testified she obtained two possible addresses for respondent from her search. One address was in Indiana and the other was respondent's "current address." Although Carter tried to contact respondent by mail, she had no interaction with him until late November or early December 2016. At that time, she learned respondent had contacted R.V.'s foster parents and the foster parents were able to provide her with a phone number for respondent. Carter testified she used that number to contact respondent and scheduled an appointment with him for December 19, 2016. On the day of their appointment, respondent called and asked to reschedule "due to the weather." The appointment was rescheduled for the following day, December 20, 2016, but respondent failed to attend. Approximately one week later, Carter contacted respondent to set up another appointment; however, she stated he refused to schedule a meeting or provide her with his address. According to Carter, respondent stated that "he didn't want to meet with [Carter] in person" and wanted everything "handled over the phone."

¶ 8 Carter further testified that she scheduled deoxyribonucleic acid (DNA) testing for respondent on February 28, 2017, to determine paternity. During the month of February, 2017, she called the number she had been using to reach respondent "once a week leading up to the date of the appointment." Carter stated she left voicemail messages for respondent, informing him of the date and time of the testing, and to contact her agency to get more information about

the appointment. Respondent, however, did not attend the appointment or respond to her messages. Carter stated she did not hear from respondent again until May 22, 2017. On that day, respondent came to her office while she was out and left a message that included his phone number. Carter called respondent the following day and he provided her with his address. The address respondent provided was the same one that she discovered during her previous search.

¶ 9 According to Carter, the only service recommended for respondent between June 9, 2016, and March 9, 2017, was that he complete DNA testing. She stated CYFS wanted to determine if respondent was R.V.'s father before referring him for any additional services. Carter agreed that, ultimately, respondent underwent DNA testing on June 26, 2017, and was confirmed to be R.V.'s father. On July 14, 2017, after receiving the results of respondent's DNA test, Carter met with respondent and referred him to the Prairie Center for an "initial assessment." She testified respondent did attend that assessment.

¶ 10 Carter agreed that respondent had not been residing with R.V.'s mother when R.V. was taken into care and that he "had nothing to do with the reason the case" was initiated. Also, respondent was not present at the initial adjudicatory or dispositional hearings. Further, respondent indicated to Carter that he had seen R.V. before, but Carter was unsure whether respondent and R.V.'s mother had ever resided together.

¶ 11 Finally, Carter testified respondent did not ask how R.V. was doing during any of their conversations. Also, she was not aware of any gifts or letters that he sent to R.V.

¶ 12 Following Carter's testimony, no further evidence was offered and the parties presented their arguments to the trial court. Ultimately, the court found respondent unfit based on each ground alleged by the State.

¶ 13 The matter then continued with the best-interest hearing. Carter testified R.V. was three years old and lived with her great-grandparents. She had been in that home approximately a year and a half, since February 2016. Both great-grandparents worked outside the home while R.V. attended day care, and R.V. referred to her great-grandparents as "grandma and grandpa."

¶ 14 Carter testified she visited R.V.'s foster home on several occasions and observed that R.V. was "very much" bonded to her great-grandparents. She stated R.V. appeared happy and was "always laughing and smiling and dancing" when she visited. Carter testified the great-grandparents "wouldn't want to see [R.V.] anywhere else but" in their home and were willing to provide permanency for her. Further, Carter stated the great-grandparents made sure that R.V. attended all necessary medical appointments and "started to put away money *** for her college fund."

¶ 15 On cross-examination, Carter acknowledged that R.V.'s great-grandparents were in their 60s. However, she testified both great-grandparents were in good health and committed to raising a three-year-old child.

¶ 16 Again, no further evidence was presented. Following the parties' arguments, the trial court found termination of respondent's parental rights to be in R.V.'s best interests.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, respondent first argues the trial court erred in finding he was an unfit parent. As support for his argument, respondent points out that R.V.'s caseworker "failed to locate him until many months had passed"; he contacted R.V.'s foster parents and expressed interest in being involved in the case; the DNA test results were returned only shortly before the fit-

ness and best-interest hearings; he did not intend to forgo his parental responsibilities or cut all ties to R.V.; and he was willing to participate in services but not given the time or opportunity to do so.

¶ 20 Pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-29(2) (West 2016)), a trial court may involuntarily terminate parental rights where it finds, by clear and convincing evidence, 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 minor's best interest. *In re M.I.*, 2016 IL 120232, ¶ 20, 77 N.E.3d 69. "Although section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be deemed 'unfit,' any one ground, properly proven, is sufficient to enter a finding of unfitness." *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). On review, the trial court's determination that a parent is unfit will not be disturbed unless it is against the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005). A court's decision "is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent." *Id*. at 354, 830 N.E.2d at 517.

¶ 21 Here, the trial court determined respondent was unfit based upon each of the five grounds alleged by the State. Specifically, it determined respondent (1) abandoned R.V. (750 ILCS 50/1(D)(a) (West 2016)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to R.V.'s welfare (750 ILCS 50/1(D)(b) (West 2016)); (3) deserted R.V. for more than three months before the commencement of termination proceedings (750 ILCS 50/1(D)(c) (West 2016)); (4) failed to make reasonable efforts to correct the conditions that were the basis for R.V.'s removal from his care between June 9, 2016, to March 9, 2017 (750 ILCS

50/1(D)(m)(i) (West 2016)); and (5) failed to make reasonable progress toward R.V.'s return to his care from June 9, 2016, to March 9, 2017 (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 22 Initially, we note that the argument section of respondent's brief fails to mention or address either the ground of abandonment or desertion as set forth in sections 1(D)(a) and 1(D)(c) of the of the Adoption Act, respectively. As a result, he has forfeited any claim that the trial court's fitness determination as to either of those grounds was against the manifest weight of the evidence. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2017) ("Points not argued [in an appellant's brief] are waived."). Additionally, as discussed, a trial court's finding of unfitness may be supported by only a single ground which is properly proved. Here, respondent effectively concedes that he was unfit by failing to present any reasoned argument as to either the ground of abandonment or desertion and we need not further address his challenge to the court's fitness determination. See *In re D.L.*, 326 Ill. App. 3d 262, 268, 760 N.E.2d 542, 547 (2001) (holding that the respondents' failure to challenge all of the grounds on which the trial court determined them unfit conceded that they were unfit based on the unchallenged ground and it was unnecessary to address the respondents' additional arguments).

¶ 23 However, even setting respondent's forfeiture aside, we would find the evidence otherwise amply demonstrated that he was unfit as to the grounds that he does challenge on appeal. In particular, the evidence overwhelmingly supports a determination that respondent was unfit for "failing to maintain a reasonable degree of interest, or concern, or responsibility as to [R.V.'s] welfare" pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2016)).

¶ 24 "Because the language of section 1(D)(b) is in the disjunctive, any of the three

elements may be considered on its own as a ground for unfitness." *In re T.A.*, 359 Ill. App. 3d 953, 961, 835 N.E.2d 908, 914 (2005). Further, in connection with section 1(D)(b), a court must focus on a parent's reasonable efforts, not his success, and "consider any circumstances that may have hindered his ability to visit, communicate with, or otherwise show interest in his child." *Id.* "However, *** a parent is not fit merely because she has demonstrated some interest or affection toward her child; rather, her interest, concern and responsibility must be reasonable." *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 125 (2004). "Noncompliance with an imposed service plan, a continued addiction to drugs, a repeated failure to obtain treatment for an addiction, and infrequent or irregular visitation with the child have all been held to be sufficient evidence warranting a finding of unfitness under [section 1(D)](b)." *Id.*

¶ 25 Here, the evidence showed respondent did very little to demonstrate any interest, concern, or responsibility as to R.V.'s welfare while the matter was pending below. Carter's testimony demonstrated respondent was sent notices at the outset of R.V.'s case, which indicated he might be the possible parent of a child that was in care and should contact CYFS. Although Carter's notices were sent to an address that respondent later confirmed was his, he did not respond. Further, once Carter established telephone contact with respondent in approximately December 2016, he missed an appointment to meet with her in person and refused to either set up another appointment or provide Carter with his address. In February 2017, respondent stopped responding to Carter's telephone calls and missed an appointment for DNA testing to establish his paternity to R.V. Further, according to Carter, respondent made no further effort to be involved in the case until May 2017, approximately two months after the petition to terminate his parental rights was filed. He also never inquired as to R.V.'s welfare, nor did he send her any

gifts or letters.

¶ 26 In this case, the evidence presented was more than sufficient to establish that respondent was unfit as alleged in the State's petition. While respondent contends he was willing to participate in services but was not given sufficient time or opportunity to do so, the record demonstrates otherwise. In fact, respondent did very little to demonstrate any interest or concern as to R.V.'s welfare and virtually nothing to demonstrate any responsibility toward his child. Here, an opposite conclusion from that reached by the trial court is not clearly apparent and its fitness determination was not against the manifest weight of the evidence.

¶ 27 On appeal, respondent next challenges the trial court's best-interest determination. Again, he asserts he should be given an opportunity to participate in services and to parent R.V. Respondent points out that he was not determined to be R.V.'s father through DNA testing until July 2017, and did not have visits with her until after that time. Further, while he acknowledges the existence of a bond between R.V. and her foster parents, he asserts that bond "cannot replace the relationship [he] could build and maintain with R.V. if he were given the chance to parent her."

¶ 28 Following a finding of parental unfitness, the trial court proceeds with the best-interest stage of termination proceedings where it "must give full and serious consideration to the child's best interest." *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290 (2009). During this second stage of proceedings, the State has the burden of proving that termination is in the minor's best interest by a preponderance of the evidence. *Id.* Further, the Juvenile Court Act sets forth various factors for a trial court to consider when making a best-interest determination. 705 ILCS 405/1-3(4.05) (West 2016). Those factors, which must be considered in the con-

text of the child's age and development needs, include (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; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks associated with substitute care; and (10) the preferences of the persons available to care for the child. *Id.*

¶ 29 On review, "a trial court's best-interest determination will not be reversed unless it is against the manifest weight of the evidence." *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 53, 74 N.E.3d 1185. "A decision is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result." *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291.

¶ 30 Here, evidence presented at the July 2017, best-interest hearing showed R.V. was three years old and, since February 2016, had lived with her great-grandparents. Carter's testimony established that R.V. was bonded with her great-grandparents, well cared for in her foster home, happy, and had the opportunity for permanency. Conversely, nothing in the record indicates respondent had any kind of relationship with R.V. or that he contributed in any way to her care and well-being. Under the circumstances presented, the record fails to clearly demonstrate that the trial court should have reached an opposite result and its finding that termination of respondent's parental rights was in R.V.'s best interest 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.