2017 IL App (4th) 170590-U

NO. 4-17-0590

FILED
November 21, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re Li. P. and Le. P., Minors	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	McLean County
Petitioner-Appellee,	)	No. 16JA38
v.	)	
Langston M. Pates,	)	Honorable
Respondent-Appellant).	)	Kevin P. Fitzgerald,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in terminating respondent's parental rights.

¶ 2 In June 2016, the State filed a petition for adjudication of wardship with respect to Li. P. and Le. P., the minor children of respondent, Langston M. Pates. In September 2016, the trial court made the minors wards of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS). In May 2017, the State filed a petition to terminate respondent's parental rights. In July 2017, the court found respondent unfit and determined it was in the minors' best interests that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in terminating his parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In June 2016, the State filed a petition for adjudication of wardship with respect to Li. P., born in November 2011, and Le. P., born in January 2011, the minor children of respondent and Bethany Vandegraft. The petition alleged the minors were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2016)) because they were living in an injurious environment (1) when in Vandegraft's care due to her unresolved issues of alcohol and/or substance abuse; (2) when in respondent's care due to his unresolved issues of alcohol and/or substance abuse; and (3) because respondent, despite his knowledge that Vandegraft was a heroin addict, allowed her to be the sole caretaker for the minors. Following a shelter-care hearing, the trial court entered an order granting temporary custody to DCFS.

¶ 6 In August 2016, the trial court found the minors were neglected based on an injurious environment. In its September 2016 dispositional order, the court found respondent unfit to care for, protect, train, educate, supervise, or discipline the minors and placement with him would be contrary to the health, safety, and best interests of the minors because he had not been in compliance with the treatment plan based on his ongoing drug use and excessive absences. Further, the court stated respondent needed to demonstrate long-term sobriety and a crime-free lifestyle. The court adjudged the minors neglected, made them wards of the court, and placed custody and guardianship with DCFS.

¶ 7 The State filed a petition to terminate respondent's parental rights in May 2017. The petition alleged respondent was unfit (1) because he failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) based on his habitual drunkenness or addiction to drugs, other than those prescribed by a physician, for at least one year immediately prior to the commencement of the unfitness

proceeding (750 ILCS 50/1(D)(k) (West 2016)); and (3) because he failed to make reasonable progress toward the return of the minors to him during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2016)). The State specified the applicable time period ran from August 10, 2016, through May 10, 2017. The State also made similar allegations of unfitness against Vandegraft.

¶ 8 In July 2017, the trial court conducted a hearing on the State's petition. Respondent admitted he was unfit due to habitual drunkenness or addiction to drugs. In its factual basis, the State indicated respondent had tested positive for cocaine and morphine in May 2017. Since December 2014, respondent had also tested positive nine times for various drugs, including cocaine, codeine, morphine, amphetamines, hydromorphone, marijuana, barbiturates, and hydrocodone. He also pleaded guilty to driving under the influence (DUI) in 2010. The court found respondent unfit.

¶ 9 At the best-interests hearing, Stacey Vandegraft, the minors' foster mother and maternal grandmother, testified the minors had been in her care since November 2016. She was 52 years old and employed at State Farm Mutual Automobile Insurance Company. Her husband, David, was 57 years old and employed at Canteen Vending. They had a single-family home, and the minors each had their own bedroom. Both Stacey and David were willing to provide a permanent home for the minors through adoption. Stacey testified two other daughters lived in the area, and the minors had contact with their extended family. Respondent had family in the area, and Stacey stated she intended to continue the minors' relationships with their extended families if they were adopted. As to continuing their relationship with respondent and Vandegraft, Stacy indicated it would depend on the parents' activities. When asked by the trial

court whether she and her husband, who would be in their sixties when the minors were teenagers, could care for them, Stacey said they were up to the challenge.

¶ 10 Robin Wilt, a caseworker at The Baby Fold, testified to her belief that the parents' parental rights should be terminated due to their inability to "stabilize with their drug usage and substance abuse." Respondent parents were required to call in every business day for drug screens, but they had done so only about a third of the time in the three months since March 2017. She stated respondent had entered an inpatient drug treatment program because his parole officer told him he needed to be in a residential program or he would go to federal prison. She stated it would take respondent "at least six months" to complete the services necessary to maintain sobriety and stability and to have unsupervised contact.

¶ 11 On cross-examination, Wilt testified respondent had completed parenting classes, was employed, and had a home for the children. The minors came into care in June 2016, and Wilt stated neither parent had a sustained period of sobriety. Wilt stated respondent had failed to complete outpatient treatment because of his lack of attendance and continued drug use. Respondent tested positive for drugs during and after his parenting classes. Wilt agreed the six-month period was "pretty optimistic," and respondent parents would have to demonstrate sobriety and stability for at least a year before they would be considered to have unsupervised contact with the minors.

¶ 12 Lori Hirst, a foster-care therapist with The Baby Fold, testified she has counseled the minors since the start of 2017. She opined permanency through adoption would be beneficial to the minors because "it would specifically help them to be able to cope and deal with their emotions more effectively." The minors have indicated they miss their parents, and Le. P. has stated his preference to stay with his grandparents.

¶ 13 The parties stipulated that respondent was arrested in November 2016 and charged with six felony counts involving unlawful use of a weapon, manufacture and delivery of cocaine, possession of a controlled substance, manufacture and delivery of cannabis, and possession of cannabis. The State also charged him with one misdemeanor count of cannabis possession.

¶ 14 Respondent testified he loves his children and they "have a really close bond." Prior to DCFS involvement in this case, respondent, Vandegraft, and the minors had moved to Florida because of his "legal issues" and for employment. After initially sending the minors back to McLean County after Vandegraft "went into a detox facility," the entire family returned. Respondent obtained employment with a moving company. At the time of the hearing, respondent had been sober for 56 days, and he was "very optimistic that [he was] going to stay clean." He also stated he understood that if he is under the influence of drugs, he would be unable "to provide those things that are going to help my children develop and grow the way that they need to." On cross-examination, respondent testified he had been in outpatient treatment "probably six times." He also admitted that on June 2, 2016, he testified he had not used drugs since being placed on federal probation, which was "definitely not true," as he tested positive for cocaine later that day.

¶ 15 The trial court found the minors were "much more secure now than they were in the year or two before coming into care," and that factor "slightly favor[ed] termination." The factor involving the least-disruptive placement alternative also favored termination. The court found permanency to be "one of the most important factors in this case" and noted respondent had been unsuccessful in dealing with his substance-abuse issues on a long-term basis and had yet to resolve his criminal case, which involved "some serious charges." The court did not

"have any confidence that [the parents] would successfully overcome their substance-abuse issues on a long-term basis," and thus the permanency factor favored termination. Thus, the court found it in the minors' best interests that the parental rights of respondent and Vandegraft be terminated. This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Respondent argues the trial court's decision to terminate his parental rights was against the manifest weight of the evidence. We disagree.

¶ 18 "Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). When considering whether termination of parental rights is in a child's best interests, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2016). These include the following:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the

> uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2016).

¶ 19 A trial court's finding that termination of parental rights is in a child's best interests will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 41, 43 N.E.3d 139. A trial court's decision will be found to be against the manifest weight of the evidence " 'where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence.' " *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24, 16 N.E.3d 930 (quoting *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008)).

¶ 20 In the case *sub judice*, the trial court considered the statutory factors and noted several were neutral toward the termination of parental rights. However, the court found the minors' sense of security "slightly favor[ed] termination" and the least-disruptive placement alternative favored termination. The court stated one of the most important factors was the minors' need for permanency, which the court found "strongly" favored termination. The court made this determination based on respondent's unsuccessful attempts to deal with his substance-abuse issues on a long-term basis. See *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005) (stating a parent's conduct may be considered at the best-interests stage). The court had no confidence that respondent would successfully overcome those issues, and the history of this case supports that conclusion.

¶ 21 By the time the children came into care in June 2016, respondent, who was already on probation for a federal conviction of conspiracy to manufacture and deliver 100 kilograms of marijuana, had uprooted the children, ages four and five, and moved to Florida with Vandegraft, an acknowledged heroin addict who was found to be injecting heroin in the presence of and with the assistance of five-year-old Le. P. Although he purported to have job offers in Florida, he acknowledged the move was, in part, to get away from his legal issues in Bloomington. Staying less than two months, respondent returned to Illinois. Based upon the information in the dispositional report, it is just as likely the return was precipitated by charges filed in Florida against Vandegraft for grand theft, dealing in stolen property, and providing false information to a pawnbroker.

¶ 22 Respondent had a prior felony cannabis conviction in McLean County in 2008, for which he received probation, along with a DUI conviction in 2010. He tested positive for cannabis, cocaine, and methamphetamines after being ordered to provide a drug drop at the conclusion of the shelter-care hearing in June 2016. This was after he assured the trial court he would be clean. He also informed the court at the shelter-care hearing that he was tested by his federal probation officer as recently as April 2016, and he had been clean and was testing negative during his probation.

¶ 23 Between December 2014 and May 2017, respondent tested positive a total of 13 times for various drugs, including cocaine, morphine, codeine, amphetamines, hydromorphone, hydrocodone, barbiturates, methamphetamines, and marijuana. Although required to call in daily for drug screens, by the time of the best-interests hearing, respondent had only done so approximately 20 times, or one-third of the times required, during the previous three months. He also failed to appear for drug drops when asked to do so.

¶ 24 Respondent was unsuccessfully discharged from intensive outpatient therapy in 2013. In September 2016, he was found to be making "minimal" progress in an outpatient drug-treatment facility. He only attended 7 out of 12 outpatient treatment sessions and failed to provide evidence of attendance at Alcoholics Anonymous/Narcotics Anonymous meetings. He tested positive for barbiturates and marijuana in July 2016 and for cocaine and marijuana in August 2016. Both tests were also positive for amphetamines, which respondent claimed was due to prescribed medication. He was also not in compliance with Level I of his outpatient treatment due to his "excessive absences," and he failed to provide drug screens when requested after his absences.

¶ 25 Respondent admitted failing to appear for a drug screen in November 2016 because he was using heroin. Initially, respondent claimed he provided a screen, but the counselor must have lost it. After further questioning, he admitted he did not appear because of his recent heroin use. Also in November 2016, the State charged respondent with six felony counts involving unlawful use of a weapon, manufacture and delivery of cocaine, possession of a controlled substance, manufacture and delivery of cannabis, and possession of cannabis. The State also charged him with one misdemeanor count of cannabis possession. The trial court found respondent's felony charges "throw[] in an uncertainty about his ability to care for these children now, and maybe for a substantial period of time."

¶ 26 Together with respondent's troubled history of drug addiction, it is also relevant to note the minors had multiple cavities and cracked teeth and Le. P. was overdue for his vaccinations. Further, it was reported both minors exposed themselves inappropriately to one another. Under these facts, it was reasonable for the trial court to consider the substance-abuse

issue and the concomitant problems it was creating in any effort to stabilize respondent's circumstances for a return of the minors.

¶ 27 The evidence indicates the minors are in a loving home, which provides them with the structure and stability they need and deserve in their young lives. Stacey actively works with the minors in therapy to learn techniques to help them with their behavioral issues, and she and her husband are willing to adopt the minors. In contrast, the evidence shows respondent has had a long history with drug addiction, and repeated attempts at outpatient treatment have been unsuccessful. He even continued to use drugs during and after his participation in treatment and services. Respondent's long-standing drug addiction and pending felony charges offer little more than a future clouded by uncertainty for the minors, which is not in their best interests. Considering the evidence and the best interests of the minors, we find the trial court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 28 III. CONCLUSION

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

¶ 30 Affirmed.