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2017 IL App (5th) 160487-U

NOS. 5-16-0487, 5-16-0488, 5-16-0489 cons.

NOTICE
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IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> N.W., No. V., and Na. V., Minors)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Saline County.
)	
Petitioner-Appellee,)	
)	
v.)	Nos. 13-JA-47, 13-JA-48, & 13-JA-49
)	
Salicia S.,)	Honorable
)	Todd D. Lambert,
Respondent-Appellant).)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Welch and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's finding that it was in the minors' best interests to terminate parental rights was not against the manifest weight of the evidence.

¶ 2 The respondent, Salicia S., appeals the circuit court's order granting the State's motion to terminate her parental rights. She challenges only the court's best interests finding. We affirm.

¶ 3

BACKGROUND

¶ 4 The respondent is the mother of N.W., born December 17, 2003; No. V., born January 25, 2010; and Na. V., born October 14, 2013. The father of N.W., Brandon W., and the father of No. V. and Na. V., Doug V., are not parties to this appeal.

¶ 5 On October 14, 2013, the respondent tested positive for controlled substances, including methamphetamine and amphetamine, while giving birth to Na. V. Subsequently, Na. V. had controlled substances in his urine. In response, a member of the hospital's medical staff made a hotline report to the Illinois Department of Children and Family Services (DCFS). Shortly thereafter, DCFS took protective custody, removed all three minor children from the respondent's care, and placed them together in a temporary shelter called Night's Shield.

¶ 6 On October 16, 2013, the State filed three juvenile petitions for adjudication of wardship and requested that the children be placed in the care of DCFS. These petitions alleged that the respondent's children were neglected on October 14, 2013, and their environment was injurious to their welfare. In the petition regarding Na. V., the State alleged that he was born with controlled substances in his urine. In the other two petitions, one regarding N.W. and the other No. V., the State alleged that their sibling, Na. V., had been born with controlled substances in his urine. In all three petitions, the State alleged that the respondent tested positive for controlled substances.

¶ 7 At the shelter care hearing on October 17, 2013, the respondent consented to the temporary custody order which gave custody of the children to the DCFS guardianship administrator. The circuit court set the case for an adjudicatory hearing and appointed a

guardian *ad litem* for the children. After the shelter care hearing, DCFS removed the children from temporary shelter at Night's Shield and placed them with a maternal aunt. However, prior to the adjudicatory hearing, the children's maternal aunt requested their removal from her care. Shortly thereafter, N.W. and No. V. were placed together with the respondent's brother, and Na. V. was placed in a traditional foster care home.

¶ 8 On December 3, 2013, the circuit court held an adjudicatory hearing where the respondent stipulated that she had previously tested positive for controlled substances. The State dismissed the other allegations. The court entered an adjudicatory order finding that the children were neglected and that their environment was injurious to their welfare in that the respondent had tested positive for methamphetamine and amphetamine.

¶ 9 On January 21, 2014, the circuit court held a dispositional hearing. In advance of the hearing, DCFS provided a dispositional report which indicated that the respondent visited the three minor children and had begun substance abuse treatment, but that she had progressed poorly. No witnesses testified and the respondent stipulated to the dispositional report. Based on that stipulation, the court entered a dispositional order which found that the respondent was unable to care for, protect, train, or discipline the children. The court determined that it was in the children's best interests to be removed from the custody of the respondent, placed in DCFS guardianship, and made wards of the court.

¶ 10 In July 2014, the circuit court held the first permanency hearing. DCFS noted in the dispositional report that the children had been in foster care for nine months and that the respondent had made insufficient progress toward the goal of returning the children

home within 12 months. The court informed the respondent that she had 90 days to make substantial progress or the State would request the termination of her parental rights.

¶ 11 In October 2014, DCFS submitted a permanency report which indicated that the respondent had attempted to provide a false urine sample by taping a "false device" under her clothes during a required drug screening. At the subsequent permanency hearing, the court determined that the respondent's progress was "minimal at best," so the State moved to change the goal to termination of parental rights. Over the respondent's objection, the court agreed with the State and changed the goal as requested.

¶ 12 On January 27, 2015, the State filed a petition to terminate the respondent's parental rights. The State alleged that the respondent was an unfit person for failure to: "(1) maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare; (2) protect the children from conditions injurious to the child's welfare; (3) make reasonable efforts to correct the conditions that were the basis for the removal of the children from the parent during any 9-month period following the adjudication of neglect; and (4) make reasonable progress toward the return of the children during any 9-month period following the adjudication of neglect."

¶ 13 In April 2015, DCFS submitted a permanency report which indicated that the respondent was homeless and had failed to participate in any recommended services contained in the service plan. The report also stated that N.W. and No. V. had been removed from the care of the respondent's brother and placed in the same foster home as Na. V. At the permanency hearing, the circuit court notified the respondent that a petition to terminate her parental rights had been filed and the matter set for hearing. The State's

petition to terminate parental rights was continued several times for various reasons, including that the respondent had shown progress towards her service plan. The State's petition to terminate was set for hearing in January 2016 but later continued.

¶ 14 In October 2015, DCFS submitted another permanency report which indicated that the respondent had successfully completed inpatient substance abuse treatment and had attended a follow-up outpatient program. The report also stated that the respondent was employed at a local Subway restaurant, had acquired appropriate housing, maintained attendance in mental health counseling, and regularly visited all three children. The report also documented that the respondent had recently given birth to a boy, N.S., and had identified Joe R., a person with a history of substance abuse, as the child's biological father. The respondent had failed to disclose this relationship to both her assigned DCFS caseworker and substance abuse counselor.

¶ 15 *Parental Fitness Hearing*

¶ 16 The first-stage parental fitness hearing occurred on May 10, 2016, and June 7, 2016. Following the hearing, the circuit court found that the respondent was an unfit person and that the State had proven three of the four bases alleged in the petition by clear and convincing evidence. Specifically, the court found that the State had proven that the respondent had failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare, make reasonable efforts to correct the conditions that were the basis for the removal of the children from the parent during any nine-month period following the adjudication of neglect, and make reasonable progress

toward the return of the children during any nine-month period following the adjudication of neglect. The second-stage best interests hearing was set for July 12, 2016.

¶ 17 *Best Interests Hearing*

¶ 18 The second-stage best interests hearing occurred on July 12, 2016, August 16, 2016, and October 11, 2016, in which the following testimony was elicited.

¶ 19 Jessica Horaz: Horaz, a DCFS caseworker, testified to the following. She was the first caseworker assigned to the respondent's case in October 2013 after the children were removed from the respondent's care and placed in temporary foster care. At that time, the children received specialized services. N.W. received personal counseling; Na. V. received speech therapy; and No. V. received intensive placement stabilization therapy, all through the Egyptian Public and Mental Health Department. N.W. and No. V. were originally placed with a relative, but eventually moved to the same foster home as Na. V. The children had adjusted well to their foster home, especially N.W., who had progressed from being very quiet and withdrawn to an outgoing child. N.W. enjoyed participating in sports and church activities. All three children had bonded well with their foster parents, and N.W., in particular, had expressed a desire to permanently stay in the foster home. Horaz confirmed that the foster parents desired to adopt the children and that she agreed with this goal.

¶ 20 In addition, Horaz expressed her concerns with the respondent's dishonesty. She believed that the respondent hid her relationship with Joe R., N.S.'s father, until after N.S. was born. She also explained that the respondent's continued relationship with Joe R. hindered the return of the children to the respondent's care because he was a safety risk to

the children and had refused to cooperate with DCFS services. Even though the respondent was aware that her relationship with Joe R. would hinder the return of the children to her care, she continued the relationship.

¶ 21 Meagan Pinkerton: Pinkerton, a DCFS caseworker, testified to the following. At the time of the hearing, Pinkerton was the children's current caseworker and had been since May 2016. She visited the children on a monthly basis and observed that they appeared happy, played well with other children in the home, and were thriving in their current placement. The children received necessary medical, developmental, and counseling services. She discussed the State's petition to terminate the respondent's parental rights with N.W., 12 years old at the time, because N.W. understood the proceedings. N.W. asked Pinkerton to inform the judge that she never wanted to go home with the respondent. The children were bonded with the foster parents' extended family members, including cousins, aunts, and uncles, and referred to their foster mother, Michelle, as "mom." Pinkerton believed that it was in the children's best interests for their foster parents to adopt them, given their need for permanency.

¶ 22 Pinkerton also expressed her concerns with the respondent's dishonesty. The respondent told her that she never left her youngest child, N.S., in the care of her father, a person on parole who had a history of substance abuse. However, during an unannounced visit to the respondent's home, she observed that N.S. had been left in his care. Pinkerton believed that the respondent's dishonesty raised safety concerns for the return of the children.

¶ 23 Michelle Douglas: Michelle, the children's foster mother, testified to the following. Na.V. was almost three years old at the time of the hearing and had been in her care since he was six weeks old. N.W. and No. V. resided in her care for approximately one year prior to the hearing. At first, N.W. was very reserved and quiet; however, since being placed in her care, N.W. had adjusted to her placement and was involved in age-appropriate activities, including organized sports and church-related functions. When first placed in her home, No. V. often showed signs of separation anxiety, such that he cried when he participated in sports with other children and threw tantrums. However, he was thriving in her care and had been for the past year. He now enjoyed participating in sports and attending vacation bible school. When the children were first placed in her home, she supported the circuit court's goal to return the children to the respondent and provided assistance to the respondent. In particular, she arranged to meet the respondent at a local park so that the respondent could have additional visitation with Na. V., but the respondent failed to show. Also, she invited the respondent to attend several of Na. V.'s specialized medical appointments; however, the respondent never attended. Also, while the respondent was at work, she babysat N.S. But as time progressed, she became very close with the children and wished to adopt them. When asked about the children's permanency goal, she provided the following response:

"[Na. V.] knows no other home but ours, and we don't have biological children and foster children. They're just our children. And [N.W.] and [No. V.] have come so far in the last year and to see all that undone, and they're just a part of our family. And I can't imagine them not being with us, and they're very close to the

rest of my family, and they refer to them as my children as their brothers and then my granddaughter as their niece."

¶ 24 Furthermore, she expressed concerns about the respondent's lack of honesty. Specifically, Michelle stated that she had observed the respondent and Joe R. together, even though the respondent claimed that she no longer had a relationship with him. She also had safety concerns for N.S. because she had observed Joe R. coming out of the respondent's home in June 2016.

¶ 25 Karina Gleason: Gleason, a DCFS caseworker, testified to the following. Gleason had been assigned to the respondent's case since early 2015. Her greatest concern was that the respondent was dishonest about her relationship with Joe R. Gleason explained that the respondent had made satisfactory progress on some tasks in her service plan; however, she was rated unsatisfactory because she had not engaged in mental health counseling until a few months before the October 2015 permanency report. Additionally, the respondent had taken too long to engage in substance abuse counseling and had failed to obtain suitable, stable housing for a sufficient amount of time. Gleason recommended that the respondent's parental rights be terminated.

¶ 26 Jennifer Feuquay: Feuquay, the respondent's mental health counselor, testified to the following. The respondent regularly attended her counseling sessions and would have been discharged but for the pending juvenile case. Even though Feuquay believed that the respondent had shown significant progress, the respondent did not disclose that Joe R. had a history of substance abuse, and she was not forthright about her current relationship with him.

¶ 27 Katie Martin: Martin, the respondent's substance abuse counselor, testified to the following. Since July 2015, the respondent had attended substance abuse counseling and was still attending a maintenance program at the time of the hearing. In her opinion, the respondent needed coping skills to deal with the stress of the court process. Although the respondent had completed domestic violence counseling, an area of lingering concern was with the respondent's personal relationships. The respondent had relapsed in early 2016 when she drank alcohol with Joe R. on his birthday. Martin believed that it would take some time for the children to be returned to the respondent's care, otherwise it would be too overwhelming for the respondent and the children to adjust. She believed that the return of the children would need to be a "slow process" and would require the court to first increase her visitation schedule.

¶ 28 The Respondent: The respondent testified to the following. She believed that Joe R. was an alcoholic and she eventually left him because he would not stop drinking. The respondent relapsed when she drank alcohol with him while celebrating his birthday, and she agreed with DCFS that Joe R. was a danger to the children. She admitted to her long history of substance abuse. However, in June 2015 after a near-death experience, where she "actually caught on fire" while using drugs, she voluntarily admitted herself into an inpatient substance abuse treatment program and refrained from using drugs since that time because her thoughts were solely on her children.

¶ 29 Moreover, she was employed as a shift manager at a local Subway restaurant, had a suitable home for the children to reside in, had obtained an EBT Link Card, and received medical coverage for the children through public aid. She indicated that all three

children had told her that they wanted to live with her, but that her previous DCFS caseworker would not increase her visitation because the goal had changed to termination of her parental rights. She indicated that the other children had bonded with her youngest child, N.S., who was eight months old at the time of the best interests hearing. Moreover, she believed that the visits were "wonderful" and that the children were excited to see her. The children always gave her hugs when they first arrived. She requested that the circuit court not terminate her parental rights, but give her another chance with her children, no matter how long it would take "to return them home in any kind of process."

¶ 30 Phyllis Floyd: Floyd, a family service specialist employed by a private healthcare agency, testified to the following. She supervised the visitation between the respondent and the children. The children generally did not enjoy the visits and often times desired to cut visitation short. N.W. had little interaction with the respondent. She estimated that during 90% of the visits the children were not excited to see the respondent, and the children never displayed sadness when visitation ended. She believed that the respondent was unable to care for four children at one time. The respondent was easily distracted and had relied on N.W. to help her with the baby while she was busy taking items to the car. She had safety concerns for N.S. because there were a few times "when he almost [had] fallen off the couch and it actually made [Floyd's] heart stop." She also observed that the respondent was inattentive to the children and remained seated on the couch during most of the visits.

¶ 31 Tammi Jackson: Jackson, the court-appointed guardian *ad litem*, testified to the following. She met with N.W. on at least two occasions, and during each meeting, N.W.

expressed concerns about returning home to the respondent. N.W. told her that she was fearful that the respondent would not care for the children, but make her do so instead. Jackson believed it was in the children's best interests to terminate the respondent's parental rights.

¶ 32 On October 12, 2016, the circuit court took judicial notice of the permanency reports, service plans, and orders admitted in the earlier proceedings and entered an order finding that the State had met its burden of proof, by a preponderance of the evidence, that it was in the children's best interests to terminate the respondent's parental rights. In support, the court made several findings, which included the following: (1) the case had been pending for three years, during which time the children had resided in the Douglasses' foster home; (2) the Douglasses' home was the only home that Na. V. had known; (3) the children were thriving, safe, and happy; (4) the children were more outgoing than when they were first placed in care; (5) the respondent had "done a good job" of attending visits, but had difficulty parenting the children during visitation, especially since the birth of her fourth child, N.S.; (6) the respondent's credibility was at issue, especially in regard to her relationship with Joe R., an individual with a known history of substance abuse; (7) the respondent's substance abuse issues were so extensive that she gave birth to a drug-exposed child and evidence existed that she had continued involvement in the "drug community"; (8) neither the birth of a drug-exposed child nor the removal of her other three children from her care was sufficient for the respondent to address her addiction until she had a near-death experience while using drugs; (9) the respondent missed Na. V.'s specialized doctor's appointments, even though she had been

notified; (10) although the respondent had been consistent with attending visitation, she declined opportunities offered by Michelle for additional visitation; (11) N.W. had expressed her concerns about returning to the respondent's care; and (12) the respondent failed to progress to a point in her services where unsupervised visitation was permitted.

¶ 33 In addition, the court expressly concluded that "[s]imply put, the children are safe, happy, adjusted, thriving and very loved in the home of the foster parents. Disrupting the children from that environment would not be in their best interests." The respondent filed a timely notice of appeal.

¶ 34

ANALYSIS

¶ 35 Section 2-29 of the Juvenile Court Act of 1987 (Act) sets forth the procedure for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2012). The circuit court must first make a determination, based upon clear and convincing evidence, as to whether the parent is an unfit person as defined in the Adoption Act. 750 ILCS 50/1 *et seq.* (West 2010). Second, once a finding of parental unfitness is made, the court must then determine whether the State has proven, by a preponderance of the evidence, that it is in the best interest of the child that the parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366 (2004) (court held that "the preponderance standard of proof adequately ensures the level of certainty about the court's factual conclusions necessary to satisfy due process").

¶ 36 Section 1-3 (4.05) of the Act provides that "[w]henver a 'best interest' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:

- (a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
- (b) the development of the child's identity;
- (c) the child's background and ties, including familial, cultural, and religious;
- (d) the child's sense of attachments, including:
 - (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);
 - (ii) the child's sense of security;
 - (iii) the child's sense of familiarity;
 - (iv) continuity of affection for the child;
 - (v) the least disruptive placement alternative for the child;
- (e) the child's wishes and long-term goals;
- (f) the child's community ties, including church, school, and friends;
- (g) 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;
- (h) the uniqueness of every family and child;
- (i) the risks attendant to entering and being in substitute care; and
- (j) the preferences of the persons available to care for the child." 705 ILCS

405/1-3(4.05)(a)(j) (West 2014).

¶ 37 Additionally, a court may consider the nature and length of the child's relationship with his present caretaker and the effect that a change in placement would have upon his emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871 (2011). A child's best interest is superior to all other factors, including the interests of the biological parents. *In re V.M.*, 352 Ill. App. 3d 391, 398 (2004). A circuit court's finding that termination of a parent's rights is in the child's best interest will not be reversed on review, unless it is against the manifest weight of the evidence. *In re Tiffany M.*, 353 Ill. App. 3d 883, 892 (2004). "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 (2004).

¶ 38 The respondent does not challenge the circuit court's finding of unfitness. Rather, the respondent claims that the court's order terminating her parental rights was not in the children's best interests. In particular, the respondent relies on *In re B.B.*, 386 Ill. App. 3d 686 (2008), and asserts that the court failed to consider all of the relevant factors and terminated the respondent's parental rights "as what seemed to be a punishment for [respondent's] transgressions in the beginning of the case." We disagree.

¶ 39 In *In re B.B.*, the appellate court found that only one factor, the child's need for stability, weighed in favor of termination, while all other factors were overlooked, neutrally assessed, or weighed in favor of postponing termination. *Id.* at 700. The court found that even though the children had been removed from their mother's care for over 2½ years, the mother lived in the children's foster parent's home for many months; thus, the children had been separated from their mother for only 10 months following placement with a second foster family. *Id.* at 702-03. During that 10-month period, the

mother was employed and completed recommended tasks in her service plan, but struggled to maintain a drug-free and alcohol-free lifestyle. *Id.* at 703. Additionally, in *In re B.B.*, the record established that the children's first foster placement was seriously flawed and unstable, and that the children had only been in a true protective foster placement for 10 months. *Id.* Moreover, the children displayed significant emotional responses when visitation ended with their mother. *Id.*

¶ 40 Here, unlike *In re B.B.*, the circuit court made findings that were consistent with the testimony, relevant to numerous best interests factors, and weighed in favor of termination. The court found that the children were safe, happy, and thriving in their current foster home, and had developed more outgoing personalities over the past three years while not in the respondent's care. Although the respondent had made some progress, the testimony demonstrated that the respondent presented a safety concern for the children regarding her continued involvement with individuals who had substance abuse problems. The court found that following her near-death experience, the respondent had been more successful in addressing her drug addiction. However, the court noted that "the evidence more than suggest[ed] that she continue[d] to be connected to the drug community through her 'sometimes' paramour Joe [R.]" Additionally, testimony demonstrated that returning the children to the respondent's care would be a "slow process," as it would disrupt the children's stable, secure, and loving environment they had known for years. Moreover, testimony confirmed that the children generally did not enjoy the visits with the respondent and often desired to end visitation early. Lastly,

the court found it significant that the respondent had never reached to a point where unsupervised visitation was appropriate.

¶ 41 The record before us shows that the children had been in a loving, protective, and nurturing foster placement for three years and were thriving in the care of their foster parents. The children were involved in organized sports and enjoyed church-related activities. Additionally, the children had bonded with their foster family, including extended family members. The respondent's youngest child in care, Na. V., had known no other home than with his foster parents and referred to his foster mother, Michelle, as "mom." No. V. no longer struggled with separation anxiety issues that he displayed when he first came into foster care. N.W. wished to live with her foster parents and had expressed concerns that if she returned to the respondent's care, she would be forced to parent the other children, as she had done prior to coming into foster care. The foster parents provided for the children's developmental, medical, and counseling needs, and all three children received specialized medical treatment, for which the respondent had failed to attend at times. In particular, N.W. received individualized counseling; Na. V. received speech therapy; and No. V. received counseling for separation anxiety issues.

¶ 42 The circuit court's conclusions that "the children are safe, happy, adjusted, thriving and very loved in the home of the foster parents" and "[d]isrupting the children from that environment would not be in their best interests" are well supported by the testimony and consistent with the recommendation of the guardian *ad litem*. Moreover, the record is clear that the foster parents wish to adopt the children to provide permanent stability for them in the future. In particular, we find Michelle's testimony poignant in regard to the

best interests of the children where she testified to the following regarding their permanency needs:

"[Na. V.] knows no other home but ours, and we don't have biological children and foster children. They're just our children. And [N.W.] and [No. V.] have come so far in the last year and to see all that undone, and they're just a part of our family. And I can't imagine them not being with us, and they're very close to the rest of my family, and they refer to them as my children as their brothers and then my granddaughter as their niece."

¶ 43 Thus, based on a review of the record, we conclude that the circuit court's finding that it was in the children's best interests to terminate the respondent's parental rights was not against the manifest weight of the evidence.

¶ 44 **CONCLUSION**

¶ 45 For the foregoing reasons, we affirm the order of the circuit court of Saline County terminating the respondent's parental rights.

¶ 46 Affirmed.