2018 IL App (1st) 180867-U
No. 1-18-0867
Order filed November 6, 2018

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re J.P., a Minor	)	Appeal from the Circuit Court
	)	of Cook County.
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Petitioner-Appellee,	)	No. 15 JA 0455
	)	
v.	)	The Honorable
	)	Maxwell Griffin., Jr.,
TANISHA C.,	)	Judge, presiding.
	)	
Respondent-Appellant.)	)	

JUSTICE HYMAN delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Applying strict scrutiny to the question of unconstitutionality of section 2-28 of the Juvenile Court Act (705 ILCS 405/2-28 (West 2016)), we find no violation of due process rights as guaranteed by the Fourteenth Amendment of the U.S. Constitution and Article 1, Section 2 of the Illinois constitution.

¶ 2 The trial court terminated the parental rights of J.P.'s biological mother, respondent Tanisha C., and ordered adoption as the appropriate permanency goal. Tanisha argues one issue: whether section 2-28 of the Juvenile Court Act violates due process as guaranteed by the

Fourteenth Amendment of the U.S. Constitution and Article 1, Section 2 of the Illinois constitution. Section 2-28 provides for court review of proceedings involving abused, neglected, and dependent minors.

¶ 3 We affirm. Applying strict scrutiny to the question of unconstitutionality, we hold the statute does not violate Tanisha's due process rights.

¶ 4 Background

¶ 5 A hospital emergency room visit in April 2015 disclosed bruises on the back, arm, and leg of eight-month-old J.P. The bruises on her back appeared "consistent with finger marks." J.P. was referred to the Department of Children and Family Services. Her mother, Tanisha, admitted "abusing illegal substances." The medical records indicated that J.P. and her parents had been staying with an acquaintance they referred to as "grandmother" (Tanisha's father's ex-wife whom Tanisha did not know well). This acquaintance and her sister contacted the DCFS abuse hotline when they noticed J.P.'s bruises; the DCFS worker suggested the emergency room visit. The sister stated J.P.'s father had slapped her and caused the bruising, and that Tanisha had been watering down powdered formula to save money and feeding J.P. Hospital staff determined J.P to be underweight and had not received vaccinations nor had any well-child checkups. J.P. was discharged to "grandmother" as foster parent and with a DCFS safety plan in place.

¶ 6 Two weeks later, "grandmother" brought her to the emergency room with dehydration and a fever caused by a viral infection. The next month, a court found an urgent and immediate necessity existed and granted the State's petition for wardship and motion for temporary custody. 705 ILCS 405/2-3(1)(b); (2)(i); (2)(ii) (West 2012). After discharge from the hospital, J.P. lived in a foster home. Attempts at mediation failed.

¶ 7 In November, the trial court found J.P. was abused and neglected and the following May, the court adjudicated J.P. a ward of the court, appointing DCFS as guardian. The court changed the permanency goal to substitute care pending a determination on the termination of parental rights. Thereafter, the State filed a supplemental petition seeking a finding of unfitness and termination of Tanisha's parental rights.

¶ 8 At the fitness hearing, the court admitted into evidence the April 26 service plan prepared by Emma Gonzales, a DCFS adoption worker assigned to J.P. from February through April 2016. She determined that Tanisha needed parenting classes, individual therapy, and substance abuse assessment. When Gonzalez called Tanisha to involve her in a drug treatment program, Tanisha informed her that she had a new baby. Tanisha requested referrals for individual therapy and parenting classes. Previous referrals for therapy had expired and the referral agency had a waitlist. A new agency agreed to do home services.

¶ 9 In late March 2016, Tanisha missed an appointment to meet at home with Gonzales. The next day, while they met for a few minutes at the waiting area in the courthouse, they could not discuss services in any detail. Ten days later, Gonzales was unable to reach Tanisha by phone and left a message, to which Tanisha did not respond. Gonzales confirmed that Tanisha participated in a drug treatment program, but did not know whether she completed the program.

¶ 10 Amy Gordon, a DCFS child welfare specialist assigned to J.P.'s case in March 2017, stated that Tanisha had been in custody at the Cook County jail since January 2017 on pending charges of aggravated kidnapping, home invasion, residential burglary, aggravated battery, intimidation, aggravated unlawful restraint, and hate crime. Between January and October 2017, Tanisha had only one visit with J.P. Gordon did not discuss Tanisha's criminal charges with her,

nor did she discuss services because, as of December 2016, the goal had been termination of parental rights.

¶ 11 The court found clear and convincing evidence Tanisha was unfit, lacking a reasonable degree of interest, concern, or responsibility as to J.P.'s welfare. The court found Tanisha failed to maintain reasonable efforts to correct the conditions that were the basis for J.P.'s removal, and she "failed to make reasonable progress towards return of the child to her care within nine months of adjudication or any nine month period thereafter," including three specifically pled nine month periods.

¶ 12 Best Interest Hearing

¶ 13 The court took judicial notice of the fitness hearing evidence and exhibits, and of the testimony of J.P. foster mother since May 2015. The foster family included her husband, a son, a daughter, J.P., and a foster son. She felt it was important for J.P. to maintain a relationship with Tanisha and had set up a post office box for Tanisha to send cards and letters. J.P. called the foster mother "mom" and her husband "dad," and referred to Tanisha as "mommy T."

¶ 14 DCFS worker Amy Gordon testified that J.P., now three and a half years old, had been living with her foster parents since she was eight months old. Gordon visited the home once a month for about a year and described the relationship between the foster mother and J.P. as loving and bonded. J.P. was a "typical active and busy three-and-a-half year old" who looks to her foster parents for guidance, love, and structure. J.P. interacted with her foster siblings well, in a "very mundane and very typical" way.

¶ 15 J.P. completed early intervention services in September 2016, and was on target developmentally in a zero-to-three evaluation completed in 2017. She attended preschool in a

Chicago Public School. She had no medical conditions other than eczema and no special needs for services. To assure a smooth transition to adoption, J.P. and her foster parents participated in weekly play therapy sessions through an agency.

¶ 16 The court found the State met its burden of proof by a preponderance of the evidence that termination of Tanisha's parental rights was in J.P.'s best interests.

¶ 17 The trial court then conducted a permanency review hearing and set a permanency goal of adoption.

¶ 18 Jurisdiction

¶ 19 The Illinois Supreme Court Rule 307 (a)(6) (eff. Jan. 1, 1964) allows an appeal from an interlocutory order of court "terminating parental rights or granting, denying or revoking temporary commitment in adoption proceedings commenced pursuant to section 5 of the Adoption Act (750 ILCS 50/5)." On March 27, 2018, the court entered an order finding Tanisha unfit, terminating her parental rights, and appointing a guardian for the minors with the right to consent to adoption. Tanisha filed a notice of appeal on April 26, 2018.

¶ 20 This court has jurisdiction under Illinois Supreme Court Rule 307(a)(6) (eff. Nov. 1, 2017), allowing interlocutory appeals from orders terminating parental rights, and Rule 663 (eff. Oct. 1, 2001), authorizing an appeal from a court order appointing a guardian with power to consent to adoption.

¶ 21 Analysis

¶ 22 Tanisha does not challenge the trial court's finding of unfitness or the termination of her parental rights. Instead, Tanisha frames the issue presented in terms of "whether 705 ILCS 405/2-28, Court Review, violates substantive due process" under either the Fourteenth

Amendment of the U.S. Constitution and Article 1, Section 2 of the Illinois constitution. Citing *Mathews v. Eldridge*, 424 U.S. 319 (1976), Tanisha then asserts procedural due process constrains governmental decisions "depriving individuals of liberty or property interests within the meaning of the Fifth or Fourteenth Amendments."

¶ 23 Statutes are presumed constitutional; the party challenging the validity of a statute has the burden of clearly establishing that it is unconstitutional. *In re Curtis B.*, 203 Ill. 2d 53, 58 (2002). Whenever possible and reasonable, courts must construe a statute to uphold its constitutionality. *In re R.C.*, 195 Ill. 2d 291, 296 (2001). "Termination of parental rights is a serious matter" affecting responsibilities "of deep human importance." *In re J.P.*, 2016 IL App (1st) 161518, ¶ 8 (quoting *(In re Adoption of H.B.*, 2012 IL App (4th) 120459, ¶ 18); quoting *In re S.M.*, 314 Ill. App. 3d at 685)). Legislation concerning fundamental liberties, including the right to raise one's children, requires heightened judicial scrutiny, meaning that a law will be invalidated unless narrowly tailored to serve a significant government purpose. *In re Amanda D.*, 349 Ill. App. 3d 941, 946 (2004).

¶ 24 Section 2-28 of the Juvenile Court Act establishes the extensive procedures for court review of abused, neglected, or dependent minors. 705 ILCS 405/2-28 (West 2016). The trial court may require periodic reports from the legal custodian or guardian appointed under the Act. 705 ILCS 405/2-28 (West 2016). The trial court conducts the first permanency hearing which must be held within 12 months from the date temporary custody was ordered. 705 ILCS 405/2-28(2) (West 2016). Then, permanency hearings must be held at least every six months, more frequently if necessary, until the court determines that the plan and goal have been achieved. *Id*.

¶ 25 Once the plan and goal have been achieved, the case undergoes review at least every six months unless a "stable permanent placement" in the guardianship of "a suitable relative or other person" exists and the court determines further monitoring does not further the health, safety or best interest of the child. *Id*. Section 2-28 (A)-(E) mandates the setting of a permanency goal; possible goals include a return home by a specific date within five months; short-term care with a continued goal to return home within a specified time not exceeding one year; substitute care pending court determination on termination of parental rights; adoption (after parental rights have been terminated or relinquished); or permanent guardianship where the first four goals have been ruled out. 705 ILCS 405/2-28 (2)(A)-(E) (West 2016). The permanency goal must be in the best interest of the child, considering: (i) the child's age; (ii) available options; (iii) current placement; (iv) the child's emotional physical and mental status or condition; (v) the types of services previously offered and their success, and if not successful, reasons the services failed; (vi) the existence and availability of services currently needed; and (iv) the status of siblings. 705 ILCS 405/2-28 (West 2016).

¶ 26 Section 2-28 also establishes the following evidence as relevant and probative: (i) the permanency goal contained in the service plan; (ii) the appropriateness of the services in the plan and whether those services have been provided; (iii) whether reasonable efforts have been made by all parties to achieve the goal; and (iv) whether the plan and goal have been achieved. *Id*.

¶ 27 Additionally, section 2-28 requires the trial court to make findings as to whether the service plan's requirements are "reasonably related to remedy the conditions that gave rise to removal of the child from the home." *Id*. The trial court also makes findings that identify problems causing continued placement of the child away from the home and how to resolve

these problems. *Id*. If the court determines the services in the plan are not "reasonably calculated to facilitate achievement of the permanency goal," the Act requires the court to put in writing the factual basis and enter specific findings based on the evidence, and order DCFS to develop and implement a new service plan or make changes to the current service plan. *Id*. On the other hand, if after reviewing the evidence the court determines the current placement is not necessary or appropriate to achieve the permanency goal, the court must put in writing the factual basis and enter specific findings. *Id*.

¶ 28 Finally, the Act addresses the court's duties following a permanency hearing, including when return home has not been selected as the permanency goal and the State petitions for termination of parental rights. *Id*.

¶ 29 The "preferred result" of the Juvenile Court Act (705 ILCS 405/2-28 (West 2016)), maintains the child at home in the custody of his or her own parents. *Id*. at 308. Construing the Adoption Act and the Juvenile Court Act in concert, the termination of parental rights should not be the default option in proceedings under the Adoption Act where a parent challenges an unfitness allegation. *Id*. But, once a court has found by clear and convincing evidence that a parent is unfit under the Act, the State's interest in protecting the child becomes sufficiently compelling to allow the termination of parental rights. *Id*.

¶ 30 A balancing test established by the Illinois Supreme Court focuses on three factors in deciding a violation of procedural due process in parental rights termination proceedings: (i) the private interest affected by the official action; (ii) the risk of an erroneous deprivation of the interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (iii) the government's interest, including the function involved and

the fiscal and administrative burdens entailed in additional or substituted procedural requirements. *In re M.H.*, 196 Ill. 2d 356, 363 (2001) (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). The Due Process Clause of the U.S. Constitution protects "the sanctity of the family unit," safeguarding the interests of parents and well as the child. *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977) ("the Constitution protects the sanctity of the family"); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected.") Parents have long had a constitutionally protected interest in raising their children without state interference. See, e.g., *Parham v. J.R.*, 442 U.S. 584 (1979) (parents have right to make medical decisions for their children); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (parents have right to make educational decisions for their children).

¶ 31 Substantive due process includes the fundamental right of a parent to the care, custody, and control of his or her child and to raise the child as one sees fit. *Troxel v. Granville*, 530 U.S. 57, 66 (2000); *In re Andrea F.*, 208 Ill. 2d 148, 165 (2003). "[T]he fundamental nature of the rights inherent in the parent-child relationship compel the conclusion that the statute must instead withstand strict constitutional scrutiny." *R.C.*, 195 Ill. 2d at 298.

¶ 32 A parent's fundamental liberty interest regarding the "care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). And courts must never lightly disregard parental rights. *In re A.J.*, 269 Ill. App. 3d 824, 828 (1994). The State must give notice and a hearing before permanently terminating custody. "Parents are constitutionally entitled to a hearing on their fitness before their children are

removed from their custody." *Stanley*, 506 U.S. at 658. Due process requires notice to the parents and a showing of unfitness by "clear and convincing" evidence. See *In re D.H.*, 295 Ill. App. 3d 981, 985 (1998).

¶ 33 The purpose and policy of the Juvenile Court Act expresses the government interest as to "secure for each minor *** such care and guidance, preferably in his or her own home, as will serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community; to preserve and strengthen the minor's family ties whenever possible, removing him or her from the custody of his or her parents only when his or her safety or welfare or the protection of the public cannot be adequately safeguarded without removal ***." 705 ILCS 405/1-2 (1) (West 2016). *In re Robert H.*, 353 Ill. App. 3d 316, 319-20 (2004). The U.S. Supreme Court has recognized these government interests as legitimate, "well within the power of the State to implement." *Stanley*, 506 U.S. at 652.

¶ 34 The record demonstrates the trial judge did a meticulous and commendable job in ensuring compliance with every requirement of the Act, ultimately resulting in a determination of adoption into J.P.'s foster family as the appropriate permanency goal. Nothing indicates a deprivation of Tanisha's fundamental rights. For three years J.P.'s case followed the statutory procedures as it progressed through the court system. Throughout, the trial court assured Tanisha was present despite her incarcerations. The witnesses presented credible testimony from the assigned DCFS caseworker and DCFS child welfare specialist. J.P.'s foster mother testified at both the unfitness hearing and the best interest hearing. The record also includes extensive reports and narratives from the case's inception.

¶ 35 The procedures established by the Act provide for the involuntary termination of parental rights in a two-step process. See 705 ILCS 405/2-29 (West 2016). "First, there must be a showing, based on clear and convincing evidence, that the parent is 'unfit,' as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016))." *In re C.W.*, 199 Ill. 2d 198, 210 (2002). After finding the parent unfit, the court then considers whether it is in the best interests of the child to terminate parental rights. *Id*. A child's best interest is not part of an equation that is balanced against any other interest. *In re Ashley K.*, 212 Ill. App. 3d 849, 879 (1991). "In custody cases, a child's best interest is and must remain inviolate and impregnable from all other factors, including the interests of the biological parents." *Id.* The provisions of section 2-28, applied in concert with the other provisions of the Act, demonstrate the statute has been closely tailored to advance the government interest of protecting the child.

¶ 36 Affirmed.