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2018 IL App (3d) 170587-U

Order filed January 26, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> T.D.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-17-0587
)	Circuit No. 13-JA-217
v.)	
)	
Taneca S.,)	Honorable
)	Katherine Gorman Hubler,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's decision to terminate mother's parental rights was against the manifest weight of the evidence.

¶ 2 Following mother's recent drug-related arrest, the State filed a petition to terminate mother's parental rights. The trial court granted the State's termination petition and terminated mother's parental rights. We reverse.

FACTS

¶ 3

¶ 4 On August 21, 2013, the State filed a juvenile petition (2013 neglect petition) alleging that Taneca S. (mother) neglected T.D. (the minor), born March 1, 2007, due to an injurious environment pursuant to section 2-3 of the Juvenile Court Act of 1987. 705 ILCS 405/2-3 (West 2012). Specifically, the petition alleged mother had several physical altercations with other adults in front of the minor.

¶ 5 On November 1, 2013, the trial court found that the State proved the allegations in the 2013 neglect petition and also found mother unfit. The court ordered mother to: execute all authorizations for releases of information requested by the Illinois Department of Children & Family Services (DCFS) or its designees, cooperate fully and completely with DCFS, submit to a psychological examination, participate and successfully complete counseling, participate and successfully complete a domestic violence course, obtain safe and stable housing, inform DCFS of any change in address or phone number, inform DCFS of any relationships mother develops, visit the minor as scheduled, demonstrate appropriate parenting conduct, complete an integrated assessment, and assist in delivering the minor to DCFS immediately.

¶ 6 Almost two years after the trial court found mother unfit, a permanency report dated August 10, 2015, was submitted to the court. The report indicated that mother was successfully discharged from counseling, completed a domestic violence program, a psychological evaluation, a parenting class, a psychiatric evaluation, that mother's drug drops were negative, and that mother attended all visitations. Accordingly, the trial court found mother fit, and the minor was returned to mother on August 17, 2015. At this time, mother lived with her godmother, Pamela Jackson.

¶ 7 On December 21, 2015, the State filed a pleading titled “motion for unfitness.” This motion alleged mother, again, had become unfit following her arrest for possession of synthetic marijuana, marijuana, and crack cocaine discovered during a traffic stop. A February 18, 2016, permanency report indicated that mother was arrested again on December 16, 2015, and charged with aggravated battery, resisting a peace officer, and unlawful possession of a controlled substance. The minor remained in the care of mother’s godmother pending a disposition on the 2015 motion for unfitness.

¶ 8 On April 29, 2016, the trial court held a hearing on the State’s motion for unfitness and conducted a permanency review. During the hearing, caseworker Sarah Horton revealed that mother had tested positive for synthetic marijuana on March 24, 2016, and April 18, 2016. At the conclusion of the hearing, the trial court granted the State’s motion for unfitness due to events that occurred during the traffic stop on December 16, 2015.

¶ 9 A permanency report filed on October 19, 2016, indicated that mother had been arrested on May 4, 2016, for DUI. Accordingly, on October 20, 2016, the State filed a petition to terminate mother’s parental rights pursuant to section 50/1(D)(m)(ii) of the Adoption Act, and alleged that mother was unfit for failing to make reasonable progress toward the return of the minor to the parent during any nine-month period following the adjudication of neglect, being November 10, 2015, to August 10, 2016. 750 ILCS 50/1(D)(m)(ii) (West 2016). On November 18, 2016, mother filed an answer to the State’s termination petition denying the allegations.

¶ 10 On February 24, 2017, termination proceedings began. The trial court received exhibits showing the results of mother’s drug tests, a certified copy of mother’s conviction for resisting a peace officer in Peoria County case No. 15-CF-860, and mother’s dates of incarceration. The

State presented the testimony of several Peoria police officers, including Officer Grayson, Officer Nicholson, Officer Janssen, and an Illinois State Trooper, Trooper Cibulskis. These witnesses testified about mother's December 16, 2015, and May 4, 2016 arrests. Generally, the law enforcement testimony revealed that on December 16, 2015, a traffic stop was conducted on mother's vehicle when officers detected the odor of marijuana. A subsequent search of the vehicle and mother's person revealed synthetic marijuana, marijuana, and cocaine. Further, during a pat down, mother began to resist officers.

¶ 11 The testimony also indicated that the officers were also called to the scene where defendant was reportedly slumped over in her vehicle on May 4, 2016. On that date, officers were handed a bag of synthetic marijuana and discovered another bag of synthetic marijuana in mother's vehicle. Mother admitted to officers that she had smoked synthetic marijuana that day to treat her ongoing seizures. Mother was transported to the hospital and subsequently charged with DUI.

¶ 12 On March 3, 2017, termination proceedings continued. The State called Sarah Horton to testify. Horton testified that mother successfully completed a psychological evaluation, a parenting class, a domestic violence program, and counseling in 2014 and 2015. Mother also participated in a drug and alcohol assessment. Horton opined that the minor did very well and thrived under mother's care during the time mother and the minor lived together with Jackson. The minor reported to Horton that she missed her mother when mother moved out of Jackson's home.

¶ 13 After the close of evidence, the trial court entered an order finding that the State's termination petition had been proven by clear and convincing evidence. The court also granted mother's request for a bonding assessment, and ordered a best interest hearing report.

¶ 14 On May 17, 2017, the State filed a disclosure informing the court that Horton was dishonest in her report dated April 21, 2017, regarding dates Horton claimed to have scheduled the bonding assessment between mother and the minor. Accordingly, Sarah Liebreich took over the minor's case due to Horton's dishonesty.

¶ 15 On August 4, 2017, Liebreich filed the best interest hearing report. The report began by indicating that the minor is a healthy, 10-year-old girl who recently finished fourth grade and exhibited average educational development. The report contained a history of the minor's DCFS placements, which again revealed that on January 17, 2016, the minor was placed with mother's godmother, Pamela Jackson. The minor remained in Jackson's home until July 25, 2017, when the minor was removed due to safety concerns pertaining to Jackson's conduct and placed in a traditional foster home.

¶ 16 At the time Liebreich wrote the best interest report, the minor had only been in her new foster home for six days, being July 25 through July 31, 2017. Liebreich was unsure if the current placement is willing to provide permanency for the minor, and it was too soon to assess if permanency from the current placement would be in the best interests of the minor.

¶ 17 The best interest report further indicated that on August 1, 2017, Liebreich oversaw a parent-child visit between mother and the minor and noted that mother exhibited appropriate parenting skills and was engaged with the minor throughout the visit. However, Liebreich noted that the minor was nervous to see mother that day because of the minor's wishes regarding continued foster placement.

¶ 18 Liebreich also reported that mother smelled of marijuana during the visit. Liebreich acknowledged that a clear parent-child bond existed between mother and the minor, however, "[mother] continues to deny any responsibility for her actions and behaviors throughout the case

and has continued to put blame for the direction the case is going on law enforcement officers, the juvenile court system, and caseworkers.” At the conclusion of the report, Liebreich recommended that it was in the best interest of the minor to terminate mother’s parental rights because mother had failed to correct the conditions that led to the minor’s removal, and because mother had failed to maintain a safe and appropriate environment for the minor.

¶ 19 The court-ordered bonding assessment that was completed on June 14, 2017, revealed that mother demonstrated adequacy in the areas of challenge structure, and engagement, but that mother showed weakness in nurturance. The bonding assessment opined that a parent-child bond existed between the minor and her mother, but that mother was ill-equipped to manage a challenging parenting situation in day-to-day life because of mother’s history of aggressive and non-compliant behavior.

¶ 20 On August 8, 2017, Liebreich filed an addendum to her August 4, 2017, best interest report. This addendum informed the court that the minor’s foster placement would be changed on August 9, 2017, and that the minor would be placed with Shalane Herrod.

¶ 21 On August 11, 2017, the trial court conducted a best interest hearing. Before receiving testimony, the trial court informed the parties that the court possessed and reviewed the best interest hearing report dated August 4, 2017, the best interest hearing report addendum, and the bonding assessment.

¶ 22 Mother testified that she was currently employed doing housework and had not used any illegal substance in more than a year. Mother testified that she loved the minor and would be able to support the minor.

¶ 23 Following mother’s testimony, the court terminated mother’s parental rights and changed the minor’s permanency goal to adoption. Mother filed a timely notice of appeal on August 29, 2017.

¶ 24 ANALYSIS

¶ 25 On appeal, mother argues that the trial court’s decision to terminate mother’s parental rights was against the manifest weight of the evidence. Conversely, the State argues that the trial court properly terminated mother’s parental rights.

¶ 26 It is well settled that once the court makes a finding of unfitness, all considerations must yield to the best interest of the child. *In the Interest of D.M., W.M., and L.L.*, 298 Ill. App. 3d 574, 581 (1998). When making a best interest determination, the trial court’s considerations should include: (1) the physical safety and welfare of the child, including food, shelter, clothing, and health; (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, including church, school, and friends; (7) the child’s need for permanence; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child, *inter alia*. 705 ILCS 405/1-3(4.05) (West 2016); *In re A.F.*, 2012 IL App (2d) 111079, ¶ 45. Additionally, the minor’s attachment to the foster family, wishes to stay with the foster family, and the commitment of the foster family to the minor, including the possibility of adoption, are relevant best interest considerations. See *In re Angela D.*, 2012 IL App (1st) 112887.

¶ 27 When child custody proceedings are brought under the Juvenile Court Act, the court’s “primary concern is the best interests of the child, and, to that end, the court is vested with wide

discretion.” *In re M.M.*, 337 Ill. App. 3d 764, 779 (2003). Thus, the trial court’s findings will not be disturbed on appeal unless they are against the manifest weight of the evidence. *Id.* A trial court’s determination is against the manifest weight of the evidence only when “the opposite conclusion is clearly evident” or where the determination is “unreasonable, arbitrary, or not based on the evidence presented.” *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 28 In this case, we agree that the factor pertaining to the minor’s physical safety and welfare favored termination at this time. However, nearly all the other considerations favored maintaining the parent-child relationship. Those considerations include the development of the minor’s identity, the minor’s familial, cultural, and religious ties, the minor’s attachment to her mother, the minor’s wishes and long-term goals, the uniqueness of this family, the risks attendant to entering and being in frequently shifting substitute care, and the preferences of the persons available to care for the child.

¶ 29 We acknowledge that the minor lacked strong community ties while residing with mother or her multiple placements after the minor was removed from mother’s care. We conclude that due to recent changes in her foster placement this factor involved a neutral consideration.

¶ 30 Next, we focus on the minor’s need for permanence. In this case, substitute care and foster placements changed frequently. These changes in placement were not the result of minor’s conduct. However, the history of changing residences did not facilitate any sense of permanency for the minor.

¶ 31 While her mother had many areas where her parenting could improve, mother’s affection for the minor and the minor’s bond with her mother remained a constant factor in the minor’s life. The trial court’s decision terminated the longest, loving, relationship this minor had known at a time when there did not appear to be a better relationship available to help the minor cope

with a termination of her mother's parental rights. While it would not be safe to return the minor to mother's care at the time of the termination proceeding, the ongoing relationship between mother and child was a stable factor in the child's life even though mother and the minor did not live in the same household.

¶ 32 It is troubling that at the time the trial court terminated mother's parental rights on August 11, 2017, the minor had been with her newest foster family for only two days. At that time, no evidence existed showing that the minor's current foster placement adequately provided for the minor's food, shelter, clothing, health, and emotional needs. We agree that the minor is desperate for permanency and deserves to have a permanent placement that nurtures her development. Yet, the trial court terminated mother's parental rights at a time when no clear path existed to establish the much needed permanence for the minor. No evidence exists in this record showing that the minor is acclimated in a foster family, wishes to stay with the family, or that the foster family is interested in adoption.

¶ 33 It is clear that mother has made serious missteps throughout the entirety of this case. However, it is also clear from this record that mother and the minor share a strong parent-child bond, that mother cares deeply for the minor, and that mother has previously proven her ability to regain fitness. For the above reasons, we conclude the trial court's decision was contrary to the manifest weight of the evidence in that the opposite conclusion should have been reached based on this record.

¶ 34 **CONCLUSION**

¶ 35 The judgment of the circuit court of Peoria County is reversed and the matter is remanded for further proceedings.

¶ 36 Reversed and remanded.