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2018 IL App (3d) 170707-U

Order filed March 13, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> Z.K.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Tazewell County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-17-0707
)	Circuit No. 15-JA-10
v.)	
)	
Michael R.,)	Honorable
)	Kirk Schoenbein,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Carter and Justice O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly determined that Z.K.'s best interest favored terminating the respondent's parental rights.
- ¶ 2 On March 23, 2017, the trial court found the respondent, Michael R., unfit to parent his child Z.K. (born January 2015). Following a best interest hearing, the court entered an order terminating the respondent's parental rights. The respondent appeals.

FACTS

¶ 3

¶ 4 On January 30, 2015, the State filed a shelter care petition, alleging that Z.K. was neglected because his natural mother (Amy W.) and legal father (Josh W.) were found unfit in an unrelated juvenile case and they did not complete services that would have restored them to fitness (705 ILCS 405/2-3(1)(b) (West 2014)). At the hearing on the petition, the trial court placed Z.K. in the temporary custody and guardianship of the Department of Children and Family Services (DCFS). It was later determined that neither the legal father (Josh W.) nor the suspected putative father (Larry J.) was the biological father of Z.K.

¶ 5 On July 23, 2015, the trial court found that the respondent was the biological father of Z.K. as a result of a paternity test. The respondent assumed the role of Z.K.'s legal father.

¶ 6 On August 21, 2015, the respondent admitted to the allegation contained in the State's January 2015 shelter care petition.

¶ 7 On September 17, 2015, the trial court adjudicated Z.K. neglected in that he was in an environment that was injurious to his welfare (705 ILCS 405/2-3(1)(b) (West 2014)). The court proceeded with the dispositional hearing and found Amy W. unfit. The court granted custody and guardianship to DCFS. The court reserved a finding of dispositional fitness as to the respondent and an integrated assessment recommended that he engage in services.

¶ 8 On March 18, 2016, the trial court held a permanency review hearing. The court found the respondent unfit and that he failed to make reasonable efforts and progress toward Z.K.'s return home. The court noted that the respondent tested positive for cocaine in December 2015 and his visits were inconsistent and sporadic.

¶ 9 On September 22, 2016, the trial court held another permanency review hearing. The court maintained that the respondent was unfit and failed to make reasonable efforts and progress

toward Z.K. returning home. At that time, the respondent was in prison serving a sentence of 3 ½ years' imprisonment for aggravated battery. The caseworker's report from September 2016 indicated that the respondent's visits were irregular, his drug drops were inconsistent, and he did not complete the substance abuse assessment.

¶ 10 On November 1, 2016, the State filed a petition to terminate the respondent's parental rights. The petition alleged that the respondent was depraved in that he was convicted of at least three felonies and at least one of those convictions occurred within five years (750 ILCS 50/1(D)(i) (West 2016)). The petition alleged that the respondent was convicted of (1) residential burglary in Kankakee County case No. 03-CF-412, (2) possession of a firearm by a felon in federal case No. 06-200, and (3) aggravated battery in Tazewell County case No. 16-CF-288.

¶ 11 On January 13, 2017, the respondent replied to the State's petition. He admitted to the allegations regarding the convictions but alleged that he was rehabilitated and completed services. Attached to his response were certificates of completion for various programs.

¶ 12 On January 25, 2017, the State filed a supplemental petition to terminate the respondent's parental rights. The petition alleged that the respondent was unfit for failure to make reasonable progress toward the return of Z.K. to his care within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2016)). The State specified the nine-month period being September 17, 2015, through June 17, 2016.

¶ 13 On February 2, 2017, the respondent filed a response to the State's January 2017 supplemental petition to terminate his parental rights and denied the allegation.

¶ 14 On February 23, 2017, the trial court held another permanency review hearing. The caseworker's report indicated that the respondent was engaged in programs while incarcerated and visited with Z.K. after the February 2, 2017, hearing. The court found the respondent unfit

but noted that he has made some reasonable efforts and progress toward the return of Z.K.

¶ 15 On March 23, 2017, the respondent filed an amended response to the State's January 2017 supplemental petition to terminate his parental rights. He stated that he neither admitted nor denied the allegations and denied that it was in Z.K.'s best interest to terminate his rights. That same day, the trial court held a hearing. Amy W. voluntarily surrendered her parental rights as to Z.K. The respondent stipulated to the allegation in the State's supplemental petition to terminate his parental rights, which stated that he failed to make reasonable progress from September 17, 2015, through June 17, 2016. In exchange, the State dismissed its original petition, which alleged that the respondent was deprived. The State offered the testimony of caseworker Lela Keyes as its factual basis. Keyes testified that the respondent missed drug drops, he was charged with driving under the influence, he tested positive for cocaine in December 2015, he visited Z.K. 23 times, and he missed 13 visits with Z.K. without offered excuses. The court found that the State proved the allegation of failure to make reasonable progress.

¶ 16 On September 8, 2017, the trial court held a best interest hearing. The court took judicial notice of best interest reports, permanency reviews, and the respondent's convictions. The following evidence was adduced from Keyes' testimony and her reports.

¶ 17 At the time of the hearing, Z.K. was two and a half years old. He had been living with his foster mother, his natural mother's sister, since January 2015. Z.K.'s foster mother had three children, between the ages of 3 and 15, who lived in a two-bedroom residence with her and Z.K. She provided for Z.K.'s basic needs of food, shelter, health, and clothing. Z.K. attended daycare and his foster mother was involved with his teacher regarding his progress. Z.K. referred to his foster mother as "mom" and he did not call the respondent "dad." Z.K. viewed the other children in his foster home as his siblings and he bonded with them.

¶ 18 Z.K. had a bonded relationship with his foster mother. He respected her and listened to her for most of the time. Z.K. and his foster mother showed each other affection with hugs and kisses, and she comforted him when he was hurt. Z.K. had been living with his foster mother for nearly his entire life, made new friends at daycare, and developed peer relationships in the community. Keyes expressed no concerns with Z.K.'s foster mother and stated that the foster mother was willing to adopt Z.K.

¶ 19 Z.K. had a minimal relationship with the respondent. Starting in September 2015, he attended most one-hour weekly visits but he began to attend sporadically in March 2016. Keyes believed that the respondent missed these visits for a variety of reasons: car repair, hair appointments, forgetfulness, his girlfriend had to work, or one of his other children was ill. After March 2016, he missed five visits without any explanation. In May 2016, the respondent was arrested for aggravated battery, and he did not visit Z.K. since his arrest and incarceration. Z.K. did not understand that the respondent was his father, and they did not have a close relationship. Keyes stated, that at the February 2017 hearing, Z.K. did not want the respondent to touch him. She believed that Z.K. was afraid because he did not know the respondent.

¶ 20 The respondent was still incarcerated, but he was in the third phase of a substance abuse treatment program and was consistent with his attendance. He also participated in other programs on his own initiative. However, he did not visit with Z.K. while he was in prison because the prison was more than two hours away and Z.K. did not like car rides. In July 2017, the respondent participated in a story time program, recorded a book for Z.K., and sent it to Z.K.'s foster mother. Also while incarcerated, the respondent called the foster mother twice, sent a birthday card, and sent letters inquiring about Z.K.

¶ 21 Keyes opined that it was in Z.K.'s best interest to terminate the respondent's parental

rights. Z.K.'s sense of attachment, security, stability, and familiarity was with his foster family. Additionally, it was the least disruptive placement.

¶ 22 Z.K.'s foster mother also testified. She testified that Z.K. had been in her care since he was four days old. She lived with her three children and Z.K., and Z.K. believed that her children were his siblings. Z.K. shared a room with his foster brother, his foster sisters shared a room, and his foster mother slept in the front room. Z.K.'s room was decorated, and he had his own bed. Z.K. showed affection with hugs and kisses and showed off his potty training successes. She took Z.K. to his medical appointments and daycare. She received two or three letters from the respondent inquiring into Z.K., a birthday card, and a book. She responded to a couple of letters and sent photographs, but testified that she did not have time to respond to all of them. Before the respondent's incarceration, she supervised visits in her home. At the beginning, the respondent attended visits weekly, but his attendance became sporadic in the three months prior to his incarceration. Z.K. did not ask for the respondent or his natural mother. Z.K.'s foster mother testified that she would like to adopt Z.K.

¶ 23 The respondent testified that he was Z.K.'s biological father and that he did not know that Z.K. was his son at the beginning of this case. He stated, that although he was incarcerated at the time of the hearing, he was scheduled for release on February 23, 2018. He started visiting Z.K. in September 2015 and admitted that he missed some visits. However, he believed that he attended more visits than he missed. He also believed that he bonded with Z.K. He stated, that in the beginning, he had visits in his own home, where he developed a bond changing Z.K.'s diapers, playing with him, and singing to him. Once Keyes was the caseworker, his visits were at the foster mother's home. He stated that Z.K. called him "dad." The respondent brought his 13-year-old daughter to visits, and she observed the bond and relationship. He asked the foster

mother what she needed for Z.K. and was frustrated when she said she already had what she needed.

¶ 24 In March or April 2016, he had other things going on his life and his visits were inconsistent. He grew frustrated when he showed up for visits at the foster mother's home and she was not there and Keyes did not answer his phone calls. Before his incarceration, he was a union roofer. He purchased things for his daughter and tried to do the same for Z.K. However, Z.K.'s foster mother made purchases without asking the respondent to buy things, like diapers. The respondent also stated that Z.K.'s foster mother rejected money he offered to care for Z.K. While incarcerated, he wrote letters to the foster mother and she initially responded, but then he stopped receiving responses. He admitted that Z.K.'s foster mother was a good candidate to care for Z.K., but as his father, he wanted to be in his son's life. He believed that if he had known about Z.K. in the beginning, they would not be at this stage. While incarcerated, he earned various certificates for services. He admitted that he had another foster care case pending with another of his six children.

¶ 25 In rebuttal, the foster mother denied that the respondent ever offered her money for Z.K.'s care. She stated that he offered to buy diapers, but she told him that she already had some. If the respondent had offered her money, she would have accepted it. She also stated that the respondent gave her some clothing from his other son, but the clothes were too small for Z.K. She also noted that the respondent mostly brought his 13-year-old daughter with him to visits, but Z.K. never asked about any of the respondent's other children.

¶ 26 The guardian *ad litem* (GAL) report indicated that the GAL observed the foster mother and Z.K. The GAL believed that the foster mother was a source of support for Z.K. and she provided updates about Z.K. The GAL did not have any concerns about the foster mother.

¶ 27 The trial court found that Z.K. was safe, taken care of, and developed an identity. Although Z.K. had sporadic attachment to the respondent early on, he only knew his foster mother as his caretaker. The court noted that Z.K. had essentially been in his foster mother's care since birth and developed a sense of attachment, where he felt loved, a sense of being valued, a sense of security, familiarity, continuity, and affection. All of which favored the termination of the respondent's parental rights. The court found, that since Z.K. could not verbally express his wishes and long-term goals, those were neutral factors. However, Z.K.'s community ties, including church, school, friends, daycare, and his neighborhood, are all with his foster mother. Z.K.'s need for permanence included his need for stability and continuity of relationships.

¶ 28 The trial court also discussed the respondent's 2016 conviction, which led to the consequence of being removed from Z.K.'s life and being handicapped by the lack of a growing bond. The court expressed concern with the number of convictions the respondent had from 1994 to 2016, but commended the respondent for his recent attempts to improve himself. Nonetheless, the court found that the State proved, by a preponderance of the evidence, that it was in Z.K.'s best interest to terminate the respondent's parental rights. The respondent appeals.

¶ 29 ANALYSIS

¶ 30 On appeal, the respondent argues that the trial court's decision to terminate his parental rights was against the manifest weight of the evidence because it gave too much weight to his criminal history, which is not a statutory factor. The State argues that the respondent forfeited this issue because he failed to cite any authority to support his contention that a trial court is limited to the best interest factors enumerated in the Juvenile Court Act (Act) (705 ILCS 405/1-3(4.05) (West 2016)). Alternatively, the State argues that the trial court's decision was proper because it must consider all matters that bear upon the welfare of the child, even if they are not

explicitly statutory factors.

¶ 31 First, we address the issue of forfeiture. We note that the respondent is represented by counsel on appeal. The respondent’s argument not only fails to cite any authority to support his contention, but it also fails to include citation to the record. Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017) states that an appellant’s argument “shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on.” Failure to comply with these requirements results in forfeiture. *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56. However, forfeiture is a limitation on the parties—not courts. *In re Joseph M.*, 405 Ill. App. 3d 1167, 1182 (2010). Therefore, despite the respondent’s forfeiture, we will address his argument due to the important nature of the interests involved. See *In re Amanda H.*, 2017 IL App (3d) 150164, ¶ 33.

¶ 32 The involuntary termination of parental rights is a two-step process. See 705 ILCS 405/2-29 (West 2016). First, the State must prove by clear and convincing evidence that the parent is “unfit” as defined in section 1(D) of the Adoption Act. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004); 750 ILCS 50/1(D) (West 2016). Second, if the trial court finds that a parent is “unfit” within the meaning of section 1(D) of the Adoption Act, the court must then determine whether the child’s best interest favors terminating parental rights. *In re J.L.*, 236 Ill. 2d 329, 337-38 (2010). When reviewing a trial court’s best interest determination, we must determine whether the court’s decision was against the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004). A finding is against the manifest weight of the evidence when an opposite conclusion is clearly evident. *In re A.W.*, 231 Ill. 2d 92, 102 (2008).

¶ 33 The parent’s interest in maintaining the parent-child relationship must yield to the child’s interest to live in a stable, permanent, loving home. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). In

making a best interest determination, the trial court must consider the following factors in the context of the child's age and developmental needs: the child's physical safety and welfare; development of the child's identity; the child's background; the child's attachments; the child's wishes and long-term goals; the child's community ties; the child's needs for permanence; the uniqueness of every family and child; the risks inherent to substitute care; and the preferences of the people available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016).

¶ 34 In this case, the trial court properly considered the respondent's criminal history. Two statutory factors that the court must consider when making a best interest determination is the child's (1) physical safety and welfare and (2) attachments, which includes the child's sense of security. *Id.* The respondent's criminal history and current incarceration are certainly facts that the court ought to consider when considering Z.K.'s interest to live in a stable, permanent, loving home. Additionally, at the time of the hearing, the respondent was incarcerated for aggravated battery. Z.K.'s physical safety and welfare would be in jeopardy with the respondent based on his prior acts of violence. See *In re I.B.*, 397 Ill. App. 3d 335, 340 (2009). Nonetheless, the court recognized that the respondent's criminal history was not consistent, as the earliest offense occurred in 1994 and the most recent being 2016. The court also commended him for receiving services while in prison.

¶ 35 Moreover, other statutory factors that the trial court considered also favored terminating the respondent's parental rights. The evidence demonstrated that Z.K. had a minimal relationship with the respondent. Although the respondent attended most of his visits toward the beginning, his attendance became inconsistent and the visits ended once he was incarcerated. Z.K. did not understand that the respondent was his father and they did not have a close relationship. Keyes testified, that at the February 2017 hearing, Z.K. did not want the respondent to touch him,

perhaps demonstrating that Z.K. did not recognize the respondent.

¶ 36 On the other hand, Z.K. developed a strong bond with his foster family and was in his foster mother's care since he was four days old. Z.K. showed affection to his foster mother with hugs and kisses and sought her comfort when he was hurt. His foster mother provided him with his basic needs of food, shelter, health, support, and clothing. Z.K. referred to his foster mother as "mom," and he viewed the other children in the home as his siblings. Since his foster mother was his maternal aunt, he could develop relationships with extended family. Z.K. had been in his foster mother's care since he was four days old, made friends at daycare, and developed peer relationships and ties to the community. Z.K.'s foster mother was willing to adopt him and the caseworker and GAL had no concerns about her.

¶ 37 Accordingly, we agree with the trial court that Z.K.'s best interest favored terminating the respondent's parental rights.

¶ 38 **CONCLUSION**

¶ 39 The judgment of the circuit court of Tazewell County is affirmed.

¶ 40 Affirmed.