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2018 IL App (3d) 170723-U

Order filed February 28, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> Interest of V.F.K.,)	Appeal from the Circuit Court
)	Of the 12 th Judicial Circuit,
a Minor)	Will County, Illinois
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-17-0723
)	Circuit No. 15-JA145
v.)	
)	
Christina F.,)	Honorable
)	Paula A. Gomora,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Carter and Justice Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not err in terminating respondent mother's parental rights based on the best interest of the child.
- ¶ 2 The State filed a petition to terminate the parental rights of respondent Christina F. to her son, V.F.K. The trial court found that Christina was unfit and that it was in the child's best interest to terminate her parental rights. We affirm.

FACTS

¶ 3

¶ 4 The State filed a neglect petition in October 2015, alleging that respondent Christina F.'s son, V.F.K., was in an environment injurious to his health. Following a hearing, V.F.K. was found to be neglected and placed with his maternal aunt. Christina was ordered to complete various service tasks, including participation in individual counseling, a psychiatric evaluation, and visitation; maintaining employment; completing a parenting class and a substance abuse program; and complying with random drug testing. She failed to comply with the service tasks as reflected in September 25, 2016 and March 17, 2017, service plan reports prepared by the family's Department of Children and Family Services (DCFS) caseworker.

¶ 5 The State filed a petition to terminate her parental rights in June 2017. The petition alleged that Christina failed to maintain a reasonable degree of interest, concern and responsibility as to V.F.K.'s welfare; failed to make reasonable efforts to correct the conditions which were the basis for V.F.K.'s removal from the home, during the nine-month period between July 5, 2016, and April 5, 2017; and failed to make reasonable progress towards V.F.K.'s return during the time period of July 5, 2016, and April 5, 2017.

¶ 6 A bifurcated hearing took place on the petition in October 2017. During the portion of the hearing to determine fitness, the DCFS caseworker assigned to the family testified that she prepared a service plan and six-month progress review reports. The State marked the six-month review dated September 25, 2016, as exhibit 3 and sought to admit it into evidence. Christina objected to the admission into evidence of exhibit 3, arguing in part that it contained hearsay regarding drug drops. The trial court reserved ruling on the objection. Christina also objected to the admission of exhibit 4, her service plan dated March 17, 2017, arguing that portions of the document contained hearsay, specifically information from another agency. The trial court

sustained the objection in part, reserved ruling in part, and struck part of the exhibit. The caseworker also discussed exhibit 5, which was a list of the drug drop dates required of Christina between May 2016 and April 2017, and whether she attended. The caseworker testified the document was kept in the ordinary course of the agency business and the State moved to enter it into evidence. Christina again objected, arguing the document was not kept in the course of agency business but was kept in the course of another agency's business. The court rejected Christina's argument and exhibit 5 was entered into evidence.

¶ 7 According to the caseworker, Christina only completed one drug drop between July 2016 and April 2017. Christina also failed to provide proof of employment, regularly attend parenting classes, participate in a psychiatric evaluation, engage in individual therapy, or maintain regular visitation with her son. Christina was arrested several times between July 2016 and January 2017. She was unsuccessfully discharged from outpatient treatment in April 2016, and did not show up for another substance abuse assessment until February 2017, at which time she participated in and completed inpatient drug treatment. However, she again failed to follow through with outpatient care. She also missed several drug drops almost immediately upon her release from treatment. She lacked a stable home, and was chronically late for visitation. The caseworker observed V.F.K. become angry at his mother when she failed to arrive on time for their weekly visits and heard him tell his mother he was upset. Christina gave numerous excuses for being late to visitation, including that her work schedule made it impossible to get to visitation on time. The caseworker changed the visitation to accommodate Christina and she was still late for almost every scheduled visitation, showing up 30 to 90 minutes late to the two-hour visits. Christina's lateness had a very negative impact on V.F.K., as witnessed by the caseworker. V.F.K. would cry and would say he was not leaving the visitation location until he saw his

mother. Christina had positive interactions with V.F.K. at the visits but also acted inappropriately in telling him he would be going home soon. She fed V.F.K. unhealthy snacks at the visits, such as candy and pop despite V.F.K. being previously diagnosed as obese. Finally, the caseworker stated that Christina had returned to an abusive relationship with the father of her other son.

¶ 8 On cross-examination, the caseworker explained the interrelationship between her agency and the agency that was charged with administering the drug drops. She ordered the specific dates for the drops to occur, the other agency conducted the drops and entered attendance data along with the results of the drug tests into its system. The caseworker could access the information through her agency computers using a hyperlink. She did not know how the information was transferred between the agencies.

¶ 9 Christina did not present any witnesses. At the close of evidence, the trial court addressed the evidentiary issues on which it had reserved ruling. It struck portions of exhibits 3 and 4 concerning the results of the drug drops but allowed the portions establishing whether Christina showed up to perform the tests. Following closing arguments, the trial court found that Christina was unfit in that she failed to maintain a reasonable degree of interest, concern or responsibility for her son and failed to demonstrate reasonable efforts to correct the conditions that lead to V.F.K.'s removal or progress toward his return home. The court noted Christina's sporadic visitation, that she suffered from drug addiction, failed to engage in services, and did not complete parenting class, individual counseling or obtain a psychiatric evaluation.

¶ 10 A best interest hearing took place immediately following the unfitness hearing. V.F.K.'s foster mother is his maternal aunt. She testified that V.F.K. resides with her, as well as her two daughters and her fiancé. One of the daughters is the same age as V.F.K. and the other daughter is 19. They live in a four-bedroom house where V.F.K. has his own bedroom. V.F.K. and his

younger cousin enjoy a brother-sister relationship and he also enjoys a positive relationship with his older cousin. V.F.K. is in second grade and doing well in school. He is enrolled in Boy Scouts, takes swim lessons and was planning to try out for the swim team. He has made friends both at school and in the neighborhood. The foster mother was not interested in adopting V.F.K., based on conversations with her parents and concern about replacing V.F.K.'s mother. She was willing to maintain a long-term guardianship and was committed to keeping V.F.K. with her until he turned 18. The trial court found it was in V.F.K.'s best interest that Christina's parental rights be terminated. Christina appealed.

¶ 11

ANALYSIS

¶ 12

On appeal, Christina challenges the termination of her parental rights, a decision she claims was not supported by the evidence. She acknowledges her drug addiction as the underlying source of her inability to parent but maintains she is working to tackle the issue and could do so in the future. She argues the trial court improperly considered at the best interest phase what she maintains was hearsay regarding her drug drops and that the court based its termination decision on the improper evidence.

¶ 13

Termination of parental rights involves a two-step process: the court must first find the parent unfit and then determine it is in the child's best interest to terminate the parent's rights. 705 ILCS 405/2-29(2) (West 2016); *In re D.T.*, 2017 IL App (3d) 170120, ¶ 16. A parent may be found unfit for failing to maintain a reasonable degree of interest, concern or responsibility as to a child's welfare, failure to make reasonable efforts to correct the conditions that lead to the child's removal, or failure to make reasonable progress to the child's return. 750 ILCS 50/1(D)(b), (m)(i), (ii) (West 2016).

¶ 14 Once the trial court makes a finding that a parent is unfit, all considerations yield to the child's best interests. *In re D.M.*, 298 IL App 3d 574, 581 (1998). When making a best interest determination, the court considers the following factors, in the context of the child's age and developmental needs: (1) the child's physical safety and welfare, including food, shelter, health and clothing; (2) development of the child's identity; (3) the child's background and ties; (4) the child's sense of attachment, including where he or she feels love, attachment, a sense of value, security, familiarity, and affection; (5) community ties of the child; (6) the child's need for permanence, including stability and continuity of relationships; (7) every family and child's uniqueness; (8) risks attendant to entering and staying in substitute care; and (9) the preferences of people available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016). It is not in the child's best interest to remain in limbo for extended periods of time. *In re D.L.*, 191 Ill. 2d 1, 13 (2000). A relaxed standard regarding the admission of evidence applies to best interest hearings and all helpful evidence to decide a child's best interest is admissible. *In re Jay H.*, 395 Ill. App. 3d 1063, 1070 (2009). We will not reverse a trial court's best interest determination unless it was against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005).

¶ 15 The notice of appeal includes both the trial court's unfitness and best interest findings as contested rulings. However, in her appellate briefs, Christina concedes that the trial court had a basis for its unfitness finding. Nevertheless, she argues on appeal that the court erred when it allowed the exhibits regarding her drug drop attendance to be entered into evidence. Because she conceded that the trial court had a basis to find her unfit, we will not address the unfitness portion of the court's finding. We will consider her arguments regarding the court's best interest finding, including that the trial court's consideration of what Christina submits were improperly admitted exhibits unfairly affected its best interest determination.

¶ 16 Christina also challenges the termination of her parental grounds on the basis that V.F.K.'s foster parent was not willing to adopt him. She submits that her sister could maintain the *status quo* of caring for V.F.K. without the termination of her parental rights. Under that scenario, Christina argues, she would be able to return to her role as V.F.K.'s parent and caregiver once her fitness was restored. The decision to terminate a parent's rights to her child is one in which the trial court has a great deal of discretion and we do not lightly overturn the decision. *In re D.M.*, 298 Ill. App. 3d 574, 581 (1998) (trial court's termination decision afforded great deference on review). The lack of an adoptive placement is but one of the factors for the trial court to consider in determining the child's best interest. *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 48 (no best interest factor is dispositive). It does not preclude a finding that termination would better serve the child. *In re F.P.*, 2014 IL App (4th) 140360, ¶ 92 (quoting *In re D.T.*, 212 Ill. 2d 347, 363-64 (2004) (“ ‘[T]he child[ren's] interest in a loving, stable[,] and safe home environment’ might best be served by ‘freeing [them] for adoption,’ even if no one had offered, as of yet, to adopt them.”))

¶ 17 At the best interest stage, the court must look at whether the child's future is improved by a termination of parental rights. Under the instant circumstances, termination of Christina's rights afforded V.F.K. the opportunity for permanence in the foster home, where his aunt was able to provide him with stability and security. The court properly focused on what was in V.F.K.'s best interest, not on whether Christina was perhaps going to regain fitness at some point in the future. V.F.K.'s foster mother remained committed to providing a permanent home for him, even though she did not wish to adopt him. The evidence supported the court's termination of Christina's parental rights despite the lack of an adoptive placement for V.F.K.

¶ 18 Testimony at the best interest hearing established that the other best interest factors supported the court's termination decision. V.F.K. was living with his aunt and cousins in a four-bedroom home, where he had his own room. His food, shelter, health and clothing needs were met. V.F.K. was working with a nutritionist to address his obesity issues, exercising, and had lost a significant amount of weight. He was part of the foster family, enjoying a sibling-like relationship with his younger cousin and positive interactions with his older cousin, who occasionally babysat him. His aunt was committed to preserving his relationships with both his half-brother and his mother, if she became able to participate in family activities. Placement with his aunt allows V.F.K.'s background and ties to be strengthened as he remained with his biological relatives. V.F.K.'s aunt described him as a happy, well-adjusted child who was doing well in school and participating in extracurricular activities. He was involved in swim lessons and the Boy Scouts. He had friends at school and in the neighborhood. His maternal grandparents were concerned with his well-being and also involved in his life. V.F.K.'s aunt was committed to raising him to adulthood, although she preferred guardianship over adoption.

¶ 19 Christina urges this court to reverse the best interest finding and allow her time to become and remain sober and to mature into parenthood. She submits that her unfitness status is not a permanent condition and that she has been making progress in overcoming her drug addiction. Christina points to her sister and parents' conclusion that guardianship was the best alternative for V.F.K., as support that her parental rights should not be permanently severed. While we applaud Christina's desire and efforts to become and remain clean and sober, her child should not have to continually wait for her to reach her goal. Her inability to put her child first had negative ramifications for him. The caseworker testified to the negative effects that Christina's conduct regarding visitation had on V.F.K. Christina consistently arrived late at the

limited weekly visits. She continued to do so when V.F.K. told his mother that her late arrivals upset him and when the caseworker changed the time and day to accommodate Christina. Her refusal to prioritize visitation distressed V.F.K. and her child's distress was not impetus enough for her to arrive at visitation on time.

¶ 20 Similarly, her refusal to attend mandated drug drops also reflects on V.F.K.'s best interests. Christina argues that evidence regarding her attendance failures was improperly admitted at the fitness hearing and swayed the trial court to find against her at the best interest hearing. We disagree. All evidence helpful to decide a child's best interest is admissible at the best interest hearing. *In re Jay H.*, 395 Ill. App. 3d 1063, 1070 (2009). Such information may include written and oral reports to the extent they are probative of the child's best interest. 705 ILCS 405/2-22(1) (West 2016). Probative evidence may be considered even when inadmissible in the adjudicatory hearing. *In re J.H.*, 212 Ill. App. 3d 22, 28 (1991).

¶ 21 Here, the court admitted the attendance records from the drug drops but did not allow the results of the drops into evidence. The caseworker testified she set up the required dates for Christina's drug tests and accessed the information regarding Christina's attendance from her agency's computer system. The State laid a proper foundation for admission of the evidence at the unfitness hearing and the court did not err in using it at the best interest hearing. We consider the drug drop attendance information to be relevant and helpful to decide V.F.K.'s best interest. Christina admits that her inability to parent stemmed largely from her drug addiction. The mandated drug drops were a means to gauge her progress toward sobriety as well as her willingness and ability to comply with the service task. Like her inability to arrive at visitation on time, her failure to attend drug drops indicated that sobriety and V.F.K. were not her

priorities, despite her claims to the contrary. Her promises to overcome her drug addiction so that she could someday parent V.F.K. do not accord any weight under the circumstances.

¶ 22 The State filed the juvenile petition in October 2015. At the time of the best interest hearing in October 2017, Christina had not made any sustained progress to achieving sobriety. V.F.K. should not be required to remain in limbo awaiting his mother's efforts to be able to parent. V.F.K.'s best interests include the stability and security of a parent who keeps her commitments to her child. We find the trial court did not err in determining the best interests of V.F.K. require termination of Christina's parental rights.

¶ 23 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 24 Affirmed.