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2018 IL App (3d) 180048-U

Order filed May 3, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> M.K. and D.K.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors)	Tazewell County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal Nos. 3-18-0048
)	3-18-0049
v.)	Circuit Nos. 14-JA-88
)	14-JA-89
A.K.,)	
)	Honorable Kirk D. Schoenbein,
Respondent-Appellant).)	Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* The trial court's determination that the minors' best interests favored terminating their mother's parental rights was not against the manifest weight of the evidence.
- ¶ 2 Respondent mother, A.K., appeals the trial court's order terminating her parenting rights to her two minor sons, M.K. and D.K. During the trial court proceedings, respondent admitted that she remained unfit to parent her children; she does not challenge the court's fitness finding.

The court subsequently found that each best interest factor stated in the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-3(4.05) (West 2016)) favored terminating respondent's parental rights. Respondent disputes the court's best interest determination. We affirm the trial court's judgment.

¶ 3

BACKGROUND

¶ 4

The State filed M.K.'s and D.K.'s adjudication petitions in September 2014. The petitions listed respondent as both children's mother but listed a different father for each child. The trial court adjudicated the children as neglected and entered a dispositional order on February 5, 2015.

¶ 5

In August 2016, the State filed petitions (one for each child) to terminate respondent's parental rights. The petitions alleged that respondent failed to make reasonable progress toward regaining custody of her children during the nine-month period between November 5, 2015, and August 5, 2016. At the fitness hearing on September 22, 2017, respondent admitted that she remained unfit, but she denied that her children's best interests favored termination. Although the court accepted respondent's admission that she remained unfit, it found that the State proved her unfitness by a preponderance of the evidence.

¶ 6

The court held the best interest hearing on November 16, 2017. Prior to the hearing, the Department of Children and Family Services (DCFS) and Lutheran Social Services (LSS) filed reports with the court. The reports indicated that, originally, DCFS placed M.K. and D.K. with their maternal great-grandparents. M.K.'s father reestablished custody in 2017. He provided M.K. with a stable home environment, and they established a strong bond. DCFS approved M.K.'s placement with his father.

¶ 7 D.K. stayed with his maternal great-grandparents because his father remained unfit throughout the case. D.K.'s great-grandparents agreed to adopt him. Due to the great-grandparents' age, DCFS also approved alternative caregivers, including D.K.'s aunt with whom he shared a strong bond.

¶ 8 M.K. and D.K. both resided in Pekin, where they lived their whole life and developed ties to the community. The agencies knew that respondent lived in Peoria, but they were uncertain with whom respondent lived.

¶ 9 At the hearing, Allison Park testified that she started working as respondent's caseworker in November 2016. Park described respondent's visits with M.K. and D.K. as "rough." Respondent failed to enforce the rules and encouraged out-of-control behavior. Park compared respondent to an older sister, rather than a mother, because she used her phone during visits, encouraged M.K. to tease D.K., and sometimes teased D.K. herself. However, respondent's visits improved somewhat over time. Park noted that both children referred to respondent as "mom" and became excited to see her before scheduled visits.

¶ 10 Park also testified that respondent became "volatile" during interactions with her caseworkers. Respondent frequently swore at Park. On one occasion, respondent vowed to become a caseworker so that she could take Park's future children into foster care. Respondent made up complaints, including allegations that the children's great-grandparents physically abused them. Park never found any evidence to support respondent's allegations. Respondent also threatened to "take" her children. She told Park several times that she knew where M.K. lived and would see him whenever she wanted. Respondent showed up at D.K.'s foster home without authority on at least one occasion, which concerned the foster parents.

¶ 11 Park also noted that respondent failed to complete the courses required by her service plan. She testified that DCFS, as a policy, stopped paying for courses after the State files a termination petition.

¶ 12 Bethany Makl testified that she worked as respondent's caseworker from April 2016 until November 2016. Makl described respondent's visits with her children as "very chaotic." Respondent failed to provide her children with structure or discipline when she attended the visits. Between May 13 and August 4, 2016, respondent attended only 7 out of 13 scheduled visits.

¶ 13 During one visit, Makl confronted respondent about using her cell phone instead of engaging with her children; respondent became very angry in front of the children. Makl interrupted the visit and took respondent into another room to discuss the issue. Respondent ran to the visit room, grabbed D.K., and attempted to leave with him. When Makl blocked her exit, respondent swore at Makl and attempted to shove her out of the way while holding D.K. Makl's supervisors intervened to defuse the situation.

¶ 14 On another occasion, Makl rescheduled a visit because respondent was more than 15 minutes late. Respondent threatened to take M.K. and D.K. from their foster home. Respondent then told Makl that she was "just going to sign her rights over" because she was "done with court" and with the agencies. She claimed that she would "just have more kids" because she was "done with this bullshit."

¶ 15 Due to respondent's erratic behavior, DCFS required her to perform drug tests starting in June 2016. One test in July 2016 returned positive for synthetic cannabis known as "spice." When Makl confronted respondent about her positive test, respondent denied the result and

became confrontational. Makl stated during cross-examination that DCFS stopped providing respondent's services, pursuant to its policy, after the State filed the termination petitions.

¶ 16 James Budds testified that he was respondent's caseworker from the beginning of the case (December 2014) until March 2016. He recalled that respondent often looked at her phone or watched the children play during visits; she rarely engaged with them directly. She inconsistently attended visits. On cross-examination, Budds testified that respondent had trouble maintaining her parental role, but her behavior was "usually pretty good" when she engaged with M.K. and D.K. Both children referred to her as "mom."

¶ 17 The court continued the best interests hearing until December 17, 2017. Respondent failed to appear at the continued hearing. Respondent's counsel notified the court that he spoke with respondent, but he did not provide an excuse for her absence.

¶ 18 The State recalled Park to testify at the continued hearing. She stated that respondent missed several drug tests without explanation and missed a scheduled visit between the hearings. Respondent told Park that she forgot about the visit. Respondent claimed that the house with all of her records caught on fire, so she lost her visitation schedule.

¶ 19 Park also testified that she previously "misspoke" regarding DCFS's policy to stop providing services after the State filed a termination petition. DCFS's actual policy is to discontinue home services once the court changes the permanency goal from returning the children home to determining parental rights. Park met with respondent in January 2017 to explain which services she needed to complete and where she could complete them. She also informed respondent that the agency would pay for the services, either at LSS or another facility that offered them. However, respondent indicated that she did not want to do the services at LSS

and never contacted Park about scheduling services elsewhere. In July 2017, Park informed respondent that LSS could no longer offer her services.

¶ 20 The State also recalled Makl to clarify her previous testimony regarding respondent's services. Makl corroborated Park's testimony regarding DCFS's actual policy. She further corrected her previous testimony that DCFS stopped providing respondent's services after the State filed the termination petitions. Because the court's permanency goal remained to return M.K. and D.K. home, respondent maintained access to services through the agencies.

¶ 21 M.K. and D.K.'s guardian *ad litem* (GAL) reported that M.K. thrived in his current living situation. He loved living with his father, liked school, liked his father's girlfriend, and felt secure. However, M.K. expressed that he missed his brother and respondent.

¶ 22 The GAL reported that D.K. missed his brother. D.K. referred to his foster parents as his "mom and dad." He developed a clear bond with them. D.K. knew respondent, but he was not interested in talking about her. He preferred to talk about his dog and cat.

¶ 23 At the conclusion of the evidence and testimony, the State and the GAL recommended that the court terminate respondent's parental rights. M.K. and D.K. flourished in their current homes, and respondent lacked the ability to provide them with a safe and stable home. Respondent's counsel argued that the State failed to meet its evidentiary burden to terminate respondent's parental rights. He claimed that the agency unfairly affected respondent's ability to succeed when caseworkers informed her that the agency terminated her services. He also argued that the court could simply close M.K.'s case without terminating respondent's rights because his father regained custody; counsel admitted that D.K.'s case was more problematic for respondent. The trial court continued the hearing until December 21, 2017.

¶ 24 Respondent again failed to appear at the December 21 hearing. The trial court addressed each best interest factor under the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2016)) and determined that each factor favored terminating respondent’s parental rights. The court filed final dispositional orders terminating respondent’s parental rights in M.K. and D.K.’s cases on January 3, 2018. This appeal followed.

¶ 25 ANALYSIS

¶ 26 If a court deems a parent unfit in an involuntary termination proceeding, the next step requires the court to determine whether the child’s best interest favors termination. The State must prove by a preponderance of the evidence that termination is in the child’s best interest. See *In re D.T.*, 212 Ill. 2d 347, 366 (2004). The court’s determination lies within its discretion, especially when it considers the credibility of witness testimony presented at the best interest hearing. *In re Joshua K.*, 405 Ill. App. 3d 569, 582-83 (2010). We must affirm this determination unless it is against the manifest weight of the evidence or the court abused its discretion. *Id.* at 583. The determination is against the manifest weight of the evidence if it is unreasonable, arbitrary, not based on the evidence, or if the opposite conclusion is clearly evident. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 27 The trial court must balance the factors codified in section 1-3(4.05) of the Juvenile Court Act to make its best interest determination; the court need not render a finding or address each individual factor. *In re Jaron Z.*, 348 Ill. App. 3d 239, 263 (2004). These factors include:

- “(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;
- (j) the preferences of the persons available to care for the child." (705 ILCS 405/1-3(4.05) (West 2016)).

¶ 28 Respondent argues that the trial court failed to consider or accord proper weight to certain evidence relevant to two of these factors. First, she cites Budds’s testimony that respondent’s behavior during scheduled visits with her children was usually “pretty good.” Respondent contends that this testimony demonstrates her ability to provide a stable relationship with a parent figure under factor (g). She believes that Budds’s testimony was more credible than Park’s or Makl’s because they admitted misstating DCFS’s policy. Respondent also claims that factor (d) did not favor termination. She argues that M.K. and D.K.’s statements to the GAL, excitement to see her before visits, and reference to her as “mom” demonstrated their “sense of attachment, love, sense of being valued, and familiarity.”

¶ 29 We reject respondent’s position because, even if we accorded respondent’s suggested weight to the cited testimony, the record still supports the court’s decision to terminate her parental rights. The vast majority of the best interest factors and evidence favor termination, even through respondent’s lens. The snippets of favorable testimony that she cites on appeal fall well short of rendering the court’s determination unreasonable, arbitrary, or clearly wrong. See *In re D.F.*, 201 Ill. 2d at 498.

¶ 30 Respondent’s lack of cooperation with the agencies and confrontational behavior toward her caseworkers demonstrates her inability to provide M.K. and D.K. with a stable environment. On several occasions, respondent engaged in heated verbal disputes with her caseworkers. She visited her children without permission, threatened to “take” her children, denied responsibility for her positive drug test, ridiculed D.K. during visits, swore at her caseworkers, and, on one occasion, suggested that she could “just have more kids” instead of complying with DCFS’s requirements to regain custody of M.K. and D.K. Respondent also failed to attend either of the

continued best interests hearings; she clearly received notice of the hearings and nonetheless neglected to provide the court or her counsel with an excuse for her absence. The record indicated that respondent exhibited this sort of impulsive and irresponsible behavior throughout this case.

¶ 31 The trial court had no reason to believe that respondent's behavior would improve. She admitted her unfitness after three years under the agencies' supervision. In fact, even after the State filed the termination petition, respondent refused to complete the courses remaining in her service plan.

¶ 32 Meanwhile, M.K. and D.K. flourished in stable living situations with biological family members. M.K. developed strong bonds with his father, and D.K. bonded with his maternal great-grandparents and aunt. Both children live in the same community, one in which they have lived since birth. M.K. and D.K. deserve the opportunity to move forward with their lives in a stable living environment, which respondent cannot provide.

¶ 33 The record in this case supports the trial court's best interests determination. We affirm the court's termination order as to both children.

¶ 34 **CONCLUSION**

¶ 35 For the foregoing reasons, we affirm the judgment of the circuit court of Tazewell County.

¶ 36 Affirmed.