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2018 IL App (3d) 180320-U

Order filed October 9, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

<i>In re</i> B.T., N.G., D.B., and N.J.-T.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois,
	)	
	)	Appeal Nos. 3-18-0320
(The People of the State of Illinois,	)	3-18-0321
	)	3-18-0322
	)	3-18-0323
Petitioner-Appellee,	)	Circuit Nos. 14-JA-158
	)	14-JA-159
v.	)	14-JA-160
	)	14-JA-161
B'Anca N.T.,	)	
	)	Honorable
	)	David A. Brown,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices McDade and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court properly determined that B.T.'s best interest favored terminating the respondent's parental rights.

¶ 2 In May 2018, the trial court found that B.T., N.G., D.B., and N.J.-T.'s best interest favored terminating the parental rights of the respondent, B'Anca N.T. The respondent appeals.

FACTS

¶ 3

¶ 4

At the outset, we note that the respondent motioned this court to consolidate the appeals for all four minors, which this court granted. However, the respondent's brief on appeal only pertains to the termination of her parental rights with respect to B.T. and fails to raise any argument in relation to the other minors. Thus, we will only discuss this case as it relates to B.T.

¶ 5

On July 14, 2014, the State filed a petition alleging that B.T. was neglected by living in an environment injurious to his welfare. The petition set forth a number of bases to support its allegation. First, N.J.-T., who was one years old at the time, was burned by a lighter 10 to 15 times by D.B. while the minors were being watched by the respondent's boyfriend. The respondent was aware of N.J.-T.'s burns, but did not take N.J.-T. to the hospital because she was concerned that the Department of Children and Family Services (DCFS) would remove the minors. Second, when DCFS became involved, the respondent failed to cooperate and remain in contact with the agency. Third, the respondent had a history of being involved with men that engaged in domestic violence, and there were at least nine reported incidents of domestic violence between the respondent and her boyfriends between 2007 and 2014. Fourth, the respondent did not obtain an order of protection against her boyfriend as directed by DCFS after a May 2014 incident where her boyfriend became abusive and she cut him with a knife. Fifth, the respondent had a criminal history that included retail theft in 2005, possession of cannabis in 2010, and theft in 2014. Last, the respondent's prior boyfriends had their own criminal history, which included convictions for resisting police, unlawful possession of a firearm by a felon, possession of a controlled substance, aggravated unlawful use of a weapon, manufacture/delivery of cannabis near a school, domestic battery, and possession of a stolen vehicle.

¶ 6

On January 28, 2015, the trial court found B.T. to be neglected based on the respondent's

stipulation to the neglect petition.

¶ 7 On February 25, 2015, the trial court entered a dispositional order finding the respondent unfit to have custody of B.T. based on the contents of the neglect petition, including that she did not obtain medical treatment for N.J.-T.'s burns, she failed to cooperate with DCFS, and she had a history of being in abusive and unhealthy relationships.

¶ 8 On October 13, 2017, the State filed a petition to terminate the respondent's parental rights. The petition alleged that the respondent failed to make reasonable progress toward the return of B.T. during the nine-month period between October 1, 2016, and July 1, 2017.

¶ 9 On April 4, 2018, the trial court held a fitness hearing. The State detailed the tasks the respondent was required to comply with after the court entered a dispositional order finding her unfit to have custody. These tasks included cooperating with DCFS; completing a drug and alcohol assessment and following recommendations; submitting to a drug test two times a month; undergoing a psychological evaluation and following recommendations; completing individual counseling; completing a parenting class; completing a domestic violence class; obtaining stable housing; providing any change of address, phone, or household members within three days; providing the name, date of birth, and social security number of persons residing in her home; visiting the minors as scheduled; and obtaining and maintaining employment.

¶ 10 Officer Matthew Mocilan testified, that in May 2017, he encountered the respondent and a man identified as Vestee Brown. The respondent stated that Brown started choking her during an argument. The respondent had an order of protection against Brown at that time, but it had yet to be served. During this altercation, the respondent grabbed a hammer and struck Brown in the midsection. The respondent told Officer Mocilan that Brown stays with her "sometimes." Officer Justin Mitchell testified, that in June 2017, the respondent and Brown went back to their

apartment to find that it had been rented to someone else. The respondent and Brown indicated that they had lived in that apartment together since October 2016.

¶ 11 The State moved to admit certified copies of Brown’s convictions, which included residential burglary in 2010, residential burglary in 2012, resisting a peace officer in 2015, and a domestic battery conviction involving the respondent in 2015. The trial court admitted these copies over the respondent’s objection.

¶ 12 Liz Barnhart, the caseworker in this case, testified that between October 1, 2016, and July 1, 2017, the respondent was referred to two places to complete her individual counseling requirement, but she failed to go to either of them. The respondent also never underwent a drug and alcohol assessment, despite Barnhart’s recommendation. Barnhart testified that the respondent did not provide drug tests or begin domestic violence classes during the nine months. Barnhart noted that the respondent attended 9 of the 15 planned visits in the nine-month period.

¶ 13 The respondent testified that she completed a parenting class. However, she did not continue with mental health counseling because the State was seeking to terminate her parental rights and “it really didn’t matter what [she] did.” The respondent also stopped scheduling drug tests. She claimed that Brown was not living with her at the time she was kicked out of her apartment and explained that he was with her during the May 2017 incident because she was trying to be nice to him, even though she had an order of protection against him. Additionally, the respondent acknowledged that she did not notify her caseworker of her St. Louis address.

¶ 14 The State moved to admit the respondent’s mental health assessment and her drug and alcohol assessment to demonstrate that they occurred after July 1, 2017. The record shows that the respondent petitioned for an order of protection against Brown in April 2017 because he was “scary” when he would drink and that he previously attacked her, in turn violating his parole.

The petition also showed that the respondent listed Brown's address the same as her own address. The petition was dismissed in May 2017 for want of prosecution because the respondent failed to attend the hearing scheduled for the order of protection.

¶ 15 The trial court found that the respondent failed to make reasonable progress toward B.T.'s return home between October 1, 2016, and July 1, 2017. The court found that the respondent completed a parenting class, but failed to complete nearly every other task. The respondent missed numerous visits with B.T., failed to complete a domestic violence course, and continued to have a relationship with Brown, whom she reported as abusive. The court also noted that the respondent's testimony was not credible and that she continued to blame the caseworker for her failed actions in this case. Thus, the court found the respondent unfit.

¶ 16 On May 2, 2018, the trial court conducted a best interest hearing. Barnhart testified that B.T. had been with his foster placement for about 10 months. B.T. had been in four different placements and this was the second time he was placed with his current foster family, as they were also his original placement. Barnhart stated that B.T. was originally removed from his current foster family because the respondent identified a relative replacement, but B.T. was removed from that home after a founded DCFS investigation.

¶ 17 The best interest report indicated that B.T. was born in September 2004 and had been in foster placement for 30 months and at his current placement for the last 10 months. B.T. referred to his foster parents as "mom and dad" and also called the respondent "mom." B.T. had a strong relationship with his foster family, especially because this was the second time he lived with them. The foster parents provided B.T. with food, shelter, health, and clothing. The foster family's home where B.T. resides was rated adequate by DCFS. B.T.'s foster parents ensured that his medical needs were met when they would arise. B.T.'s foster mother loved him and saw

him as if he were her own biological child. B.T. had a very positive relationship with his foster father. The foster parents loved B.T. and believed that they would support and encourage B.T. to pursue his education and career goals. The foster family took in B.T. as if he was part of the family. B.T.'s foster family expressed a desire and willingness to adopt him. The report also indicated that B.T. was doing well in school and his foster mother remained in contact with the school to monitor his progress. B.T. was involved in a school club, a church youth group, and attended activities at the YMCA. B.T. developed friendships at his school and outside activities. The report also indicated that B.T. wanted to become a permanent member of his foster family. B.T. was developing normally and had a strong and outgoing temperament.

¶ 18 The trial court stated that it considered the statutory best interest factors and only found one factor weighed against terminating the respondent's parental rights with respect to B.T.—his background and ties. Nonetheless, the court found that the vast majority of the other factors outweighed that factor and that B.T.'s best interest favored terminating the respondent's parental rights. The respondent appeals.

¶ 19 ANALYSIS

¶ 20 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). Second, if the 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). Here, the respondent only argues that the trial court erred in the second step of this process. Specifically, the respondent contends that the court's determination that B.T.'s best interest favored terminating her parental

rights was against the manifest weight of the evidence.

¶ 21 A reviewing court reviews a trial court's best interest determination under the manifest weight of the evidence standard. *In re D.T.*, 212 Ill. 2d 347, 357 (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). A reviewing court will not overturn a trial court's findings merely because it would have reached a different result. *In re K.B.*, 2012 IL App (3d) 110655, ¶ 23.

¶ 22 Once the trial court finds the parents unfit, all further considerations must yield to the child's best interest. *In re D.M.*, 298 Ill. App. 3d 574, 581 (1998). 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). It is not in any child's best interest to remain without a permanent home for an extended period of time. *In re D.L.*, 191 Ill. 2d 1, 13 (2000).

¶ 23 The record clearly demonstrates that B.T. has a strong bond with his foster family. His foster family accepted him as if he was their own child and provided him with his basic needs. B.T.'s foster family expressed their desire to encourage and support B.T. in reaching his educational and career goals. B.T. had a strong, loving bond with his foster mother and a very positive relationship with his foster father. B.T. was doing well in school, involved with school and community activities, and developed friendships. B.T.'s foster parents indicated that they wished to adopt him. At the time of the best interest report, B.T. had been in foster care for 30 months with four placements. B.T.'s current placement was the second time he was placed with

this foster family, as it was his original placement. However, he was removed from this placement when the respondent arranged for him to live with a relative, which was unsuccessful due to a founded DCFS investigation.

¶ 24 While B.T. was in foster care, the respondent failed to complete all of the services required, resulting in the trial court entering a dispositional order finding that the respondent was unfit for custody. During the relevant nine-month period, the evidence demonstrated that she was living with Brown, who she previously had a number of altercations with, including an incident in May 2017 when she struck him with a hammer to end an argument. The record is also replete with the respondent's poor decision-making with respect to companions that are around her children. This weighs heavily against her ability to provide for B.T.'s physical safety and welfare. Considering the evidence in this case and the best interest statutory factors, we agree with the trial court that B.T.'s best interest favored terminating the respondent's parental rights.

¶ 25 The respondent also argues that B.T. should have been questioned regarding his preference for termination or guardianship. However, the best interest report indicates that B.T. wanted to become a permanent part of his foster family. The respondent failed to object to this portion of the report or provide any contrary evidence. Thus, the respondent has forfeited this contention and cannot now argue that B.T.'s wishes were insufficiently explored. See *In re Marriage of Baecker*, 2012 IL App (3d) 110660, ¶ 20.

¶ 26 Last, we also affirm the trial court's judgment with respect to N.G., D.B., and N.J.-T. because the respondent failed to raise any argument relating to them. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (points not argued in the appellant's brief are forfeited); see also *People v. Schlott*, 2015 IL App (3d) 130725, ¶ 31 (the Appellate Court is not obligated to act as an advocate or seek error in the record on behalf of the parties).



¶ 27

CONCLUSION

¶ 28

The judgment of the circuit court of Peoria County is affirmed.

¶ 29

Affirmed.