

NOTICE

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2018 IL App (4th) 180311-U

No. 4-18-0311

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 17, 2018

Carla Bender

4th District Appellate

Court, IL

<i>In re</i> L.B. and M.B., Minors)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	McLean County
Petitioner-Appellee,)	No. 17JA23
v.)	
Renard B.,)	Honorable
Respondent-Appellant).)	Kevin P. Fitzgerald,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s finding it was in the minors’ best interests to terminate respondent’s parental rights was not against the manifest weight of the evidence.

¶ 2 Respondent father, Renard B., appeals from the trial court’s order terminating his parental rights to L.B. (born July 5, 2015) and M.B. (born May 12, 2016). On appeal, respondent argues the court’s finding it was in the minors’ best interests to terminate his parental rights was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Petition to Terminate Parental Rights

¶ 5 In January 2018, the State filed a petition to terminate the parental rights of

respondent and Randi-Jo L., the minors' mother. Randi-Jo L. later entered a voluntary surrender of her parental rights to the Department of Children and Family Services (DCFS). The State alleged respondent was an unfit parent as he (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) failed to protect the minors from conditions within their environment injurious to their welfare (750 ILCS 50/1(D)(g) (West 2016)); (3) was deprived (750 ILCS 50/1(D)(i) (West 2016)); and (4) was incarcerated at the time the petition for termination of parental rights was filed, was repeatedly incarcerated as a result of criminal convictions, and the repeated incarceration had prevented him from discharging his parental responsibilities (750 ILCS 50/1(D)(s) (West 2016)). The State further alleged it was in the minors' best interests to terminate respondent's parental rights and appoint DCFS as guardian with the power to consent to adoption.

¶ 6

B. The Fitness Hearing

¶ 7

In March 2018, the trial court held a fitness hearing. Respondent admitted he was an unfit parent as he was incarcerated at the time the petition for termination of parental rights was filed, was repeatedly incarcerated as a result of criminal convictions, and the repeated incarceration had prevented him from discharging his parental responsibilities (750 ILCS 50/1(D)(s) (West 2016)). The court accepted respondent's admission, finding it to be knowingly and voluntarily made and supported by a factual basis.

¶ 8

C. The Best-Interest Hearing

¶ 9

In April 2018, the trial court held a best-interest hearing. Over no objection, the court took judicial notice of the entire court file, which included a best-interest report prepared

by a caseworker with Children's Home and Aid. The court heard testimony from the caseworker who prepared the best-interest report and respondent. The following is a summary of the relevant evidence before the court.

¶ 10 On April 9, 2017, the minors' mother reported respondent physically assaulted her in the minors' presence. The assault resulted in the minors' mother sustaining a black eye and scratches to her body. That same day, the minors were taken into protective custody and remained in care throughout these proceedings. On May 17, 2017, respondent was arrested and incarcerated. On June 14, 2017, respondent pleaded guilty to domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2016)) in McLean County case No. 17-CF-552 and was sentenced to probation. Respondent testified at the best-interest hearing he made a "mistake" when he "punched" the minors' mother.

¶ 11 On June 14, 2017, the minors' mother reported respondent physically assaulted her after he was released from the county jail on probation. The assault resulted in the minors' mother sustaining scratches on her left and right arm. On June 15, 2017, the minors' mother reported respondent again physically assaulted her. The assault resulted in the minors' mother sustaining additional scratches to her left and right arm. On June 16, 2017, respondent was arrested and incarcerated. On August 1, 2017, respondent, in McLean County case No. 17-CF-651, pleaded guilty to domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2016)) for his conduct on June 14, 2017, and was sentenced to three years' imprisonment. In exchange for respondent's guilty plea, the State, in part, (1) nol-prossed a charge of domestic battery for respondent's June 15, 2017, conduct; (2) nol-prossed a charge of resisting a peace officer for respondent's June 16, 2017, conduct during his arrest; and (3) moved to dismiss a petition to revoke respondent's

probation in case No. 17-CF-552. At the best-interest hearing, respondent testified he was in prison because he “grabbed” the arm of the minors’ mother and “she yanked away and had like abrasions on her arm.”

¶ 12 In addition to the convictions for domestic violence against the minors’ mother, respondent’s criminal history included the following. In 2010, he was convicted of burglary and sentenced to five years’ imprisonment. In 2009, he was convicted of domestic battery and sentenced to two years’ imprisonment. In 2004, he was convicted of aggravated stalking and sentenced to seven years’ imprisonment. In 2004, he was convicted of violating an order of protection and sentenced to one year imprisonment. In 2002, respondent was convicted of aggravated stalking and sentenced to four years’ imprisonment. In 2002, respondent was convicted of two counts of violating an order of protection and sentenced to two terms of three years’ imprisonment. At the best-interest hearing, respondent acknowledged his convictions for aggravated stalking and violating an order of protection concerned conduct directed at a former paramour and mother of one of his children.

¶ 13 A service plan was prepared for respondent. The service plan directed respondent to participate in individual counseling, complete substance-abuse and domestic-violence assessments, attend parenting classes, and obtain and maintain appropriate housing and a source of income. Respondent requested he be transferred to another prison to complete the services but that request was denied. Respondent then requested to be enrolled in programs at his current facility. He was placed on a wait-list for various programs. At the time of the best-interest hearing, respondent had not completed any of the services. Respondent also had not seen the minors since they were taken into care.

¶ 14 Respondent had a projected parole date of December 14, 2018. At the best-interest hearing, respondent testified he recently was accepted into a career technology class, allowing him the possibility of moving up his projected parole date by 15 days. The caseworker opined it would take in excess of one year for respondent to complete all services after he was released from prison. Respondent believed it would take six months to one year to complete the services after his release.

¶ 15 Respondent described his relationship with the minors prior to his May 2017 incarceration. At the time of his incarceration, M.B. was 10 months old and L.B. was 22 months old. Respondent testified he took the minors to the park, played with them, cooked for them, and tried to teach them right from wrong. He testified L.B. would follow along with his prayers when they attended church together. Respondent testified he portrayed and exhibited love, attachment, and a sense of value. He testified the minors would be waiting for him when he returned from work. Respondent testified he “always” provided the minors with a sense of security.

¶ 16 Respondent expressed his desire to be part of the minors’ lives. He planned to complete all the requirements of his service plan, and his former employer indicated he could return to work upon his release from prison. Respondent testified he would stay out of trouble upon his release. He believed it would not be in the minors’ best interests to terminate his parental rights.

¶ 17 Since being placed in care, the minors have resided with their maternal aunt and her husband. The minors were “thriving” in their foster home and formed a strong bond with their foster parents. They had a loving and appreciative relationship with their foster parents. The minors’ had developed a sense of trust with their foster parents. They looked to their foster

parents to address their needs. The foster parents addressed the minors' needs. The minors attended day care, where they made appropriate relationships. The minors were in good health and up-to-date on all medical and dental exams. L.B. was enrolled in early intervention therapy due to delays in communication, adaptive, cognitive, and social/emotional developments. M.B. was enrolled in developmental therapy due to delays in communication, physical, and social/emotional developments. The foster parents indicated they were not willing to adopt but would provide placement until the minors found a permanent home.

¶ 18 The foster parents were assisting in finding a permanent home for the minors. The caseworker testified a relative foster placement for purposes of adoption fell through the day of the best-interest hearing. For a nonrelative adoption, the minors would have to be placed with the nonrelative for at least six months before they would be eligible to be adopted. The goal was to keep the minors together and to have the minors maintain a relationship with their maternal aunt and her husband even after an adoption. The caseworker opined the agency would find an adoptive family relatively soon given the minors' ages.

¶ 19 The caseworker opined it would be in the minors' best interests to terminate respondent's parental rights. She testified, "I believe that it would be a long time before they actually got to go home with [respondent] and I don't think that the [minors] should be put through that." The caseworker also believed the minors had no recollection of a time prior to being in care. The caseworker testified terminating parental rights would promote permanency, security, and stability for the minors.

¶ 20 The State argued it would be in the minors' best interests to terminate respondent's parental rights. It highlighted respondent's history of violence and the minors' lack

of knowledge of life outside foster care. The State acknowledged the absence of an available adoptive placement initially gave it some pause; however, after reviewing *In re Shru. R.*, 2014 IL App (4th) 140275, 16 N.E.3d 930, and the cases cited therein, the State concluded the minors' need for permanency and a long-term, stable relationship outweighed their need for an immediate adoptive placement. The State asserted the minors would be required to wait an unreasonable amount of time for respondent to finish his prison sentence, complete services, and demonstrate he can maintain a crime-free lifestyle.

¶ 21 Respondent's attorney asserted it would be premature to terminate respondent's parental rights given the absence of an immediate adoptive placement. She noted it would take a minimum of six months for the minors to be eligible to be adopted by a nonrelative. She also highlighted respondent's attempts to engage in services and his testimony indicating he can live a crime-free lifestyle.

¶ 22 The guardian *ad litem* (GAL) agreed with the State, termination of respondent's parental rights would be in the minors' best interests. She acknowledged the absence of an adoptive placement but noted the foster parents were committed to the minors and would assist in the transition once an adoptive placement was found. The GAL acknowledged respondent's desire to maintain a crime-free lifestyle but noted his criminal history. She also highlighted the violent crime he committed against the minors' mother while in the minors' presence. The GAL believed the estimated year-and-a-half period before respondent could have custody of the minors was generous at best. She noted respondent had missed half of M.B.'s life and a third of L.B.'s life.

¶ 23 In rendering its decision, the trial court made clear its focus was on whether

termination of respondent's parental rights would be in the minors' best interests. The court considered the statutory best-interest factors found in section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2016)). The court found a significant factor in favor of termination was the minors' need for permanence. It questioned respondent's ability to live a crime-free lifestyle given his significant criminal history, especially given the crimes he committed against mothers of his children. The court found it would be at least a year and a half until respondent could complete his services and then it would take additional time for him to show he could maintain a crime-free lifestyle. The court acknowledged the absence of an immediate adoptive placement but found the minors could find permanency in a possible adoptive placement long before they could ever achieve it with respondent, especially given the minors' ages. The court also found the physical safety and welfare of the minors, as well as their sense of attachments, favored termination as respondent would be unable to provide or care for the minors in the foreseeable future. The court found the only factors that "slightly" favored nontermination related to the development of the minors' identities and the risks attendant in substitute care as it lacked information concerning an adoptive placement. The court found the remaining statutory factors to be either neutral or inapplicable. After considering the statutory best-interest factors, the court found it would be in the minors' best interests to terminate respondent's parental rights. The court entered an order terminating respondent's parental rights.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, respondent argues the trial court's finding it was in the minors' best interests to terminate his parental rights was against the manifest weight of the evidence.

Specifically, respondent contends “there [was] more than one option that could lead to permanency” and the minors were “too young to be aware of court proceedings and whether they will be adopted or whether their father will become fit.” Respondent suggests the court should have considered alternative options to terminating his parental rights in light of the absence of an immediate adoptive placement and the agency’s failure to take earlier steps to find an adoptive placement.

¶ 27 “The termination of parental rights is a two-step process under which the best interests of the child is considered only after a court finds the parent unfit.” *In re E.B.*, 231 Ill. 2d 459, 472, 899 N.E.2d 218, 226 (2008). At the best-interest stage, a “parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life.” *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). The State must prove by a preponderance of the evidence termination is in the child’s best interests. *Id.* at 367. When considering whether termination of parental rights would be in a child’s best interest, the trial court must consider a number of statutory factors within the context of the child’s age and developmental needs. 705 ILCS 405/1-3(4.05) (West 2016). The availability of an adoptive placement is but one factor the court should consider in determining whether termination of parental rights would be in a child’s best interests. *Shru. R.*, 2014 IL App (4th) 140275, ¶ 25.

¶ 28 This court will not reverse a trial court’s finding termination of parental rights is in a child’s best interests unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A finding is against the manifest weight of the evidence only if the facts clearly demonstrate the court should have reached the opposite conclusion. *Id.*

¶ 29 The minors' were brought into care after respondent physically assaulted their mother in their presence. After pleading guilty to domestic violence for his conduct and being released on probation, respondent committed another act of domestic violence against the minors' mother. Respondent was incarcerated and imprisoned for substantial portions of the minors' lives. The caseworker testified the minors likely did not recall life outside of foster care. It would be at least a year and a half until respondent could complete services, and then it would take additional time for him to show he could maintain a crime-free lifestyle. During this time, respondent would be unable to provide for the minors' needs. While no immediate adoptive placement was available, the minors' foster parents, with whom the minors had bonded, were willing to provide care for the minors until they found a permanent home. As the trial court concluded, the minors could find permanency in a possible adoptive placement long before they could ever achieve it with respondent, especially given the minors' ages. We reject respondent's suggestion the agency was not sufficiently pursuing an adoptive placement for the minors given the testimony indicating the agency discussed adoption with the minors' foster parents and obtained a relative adoptive placement, which happened to fall through the day of the best-interest hearing. Based on the evidence presented, we find the trial court's finding it was in the minors' best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 30 As a final matter, the State requested we strike or disregard portions of respondent's statement of facts as they contained improper argument and comment in violation of Illinois Supreme Court Rule 341(h)(6) (eff. Nov. 1, 2017). We have disregarded all improper argument and comment in reaching our decision.

¶ 31

III. CONCLUSION

¶ 32

We affirm the trial court's judgment.

¶ 33

Affirmed.