2019 IL App (2d) 180812-U
No. 2-18-0812
Order filed February 21, 2019



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| *In re* J.C., a Minor. | ) | Appeal from the Circuit Court |
| | ) | of Winnebago County. |
| | ) | |
| | ) | No. 14-JA-185 |
| | ) | |
| (The People of the State of Illinois, Petitioner-Appellee v. Kyante J.-W., Respondent-Appellant). | ) | Honorable |
| | ) | Francis Martinez, |
| | ) | Judge, Presiding. |

PRESIDING JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held*: The court allowed respondent's counsel's motion for leave to withdraw pursuant to *Anders v.* California, 386 U.S. 738 (1967), and affirmed the trial court's order terminating respondent's parental rights.

¶ 2 Respondent, Kyante J.-W., appeals the trial court's orders finding him to be an unfit parent and terminating his parental rights. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The is the second time respondent has filed a direct appeal of the trial court's orders finding him to be an unfit parent and terminating his parental rights. On September 11, 2017, this court reversed the trial court's orders when we found that it erred in finding: (1) respondent

was an unfit parent for failing to make reasonable progress when that decision was based on the fact that he was incarcerated; and (2) respondent also failed to make reasonable progress when he did not take parenting classes when those classes were not available in the prison where he was housed. The record also reflected that respondent substantially complied with the requirements in his service plan. *In re J.C.*, 2017 IL App (2d) 170349-U.

¶ 5 On remand, a status hearing was set for December 27, 2017. At that hearing the trial court noted that respondent was no longer incarcerated. The court changed the goal to return home within twelve months, ordered that a service plan be created for respondent, and set another hearing for April 11, 2018. That date was later struck and a permanency hearing was set for April 24, 2018. In the interim a Guardian Ad Litem (GAL) was appointed.

¶ 6 On April 24, 2018, the Children's Home and Aid Society (CHASI) filed a report with the court. No live testimony was presented other than a response to a question from the court that respondent had not visited with J.C. and was not engaged in services. Otherwise, the court ruled on the basis of the CHASI report, which was prepared on April 12, 2018.

¶ 7 In her report Alexandra Spain, the CHASI case worker, noted that respondent had a history of neglecting his other children. Specifically, he was involved with the Department of Children and Family Services (DCFS) intact services in Champaign, Illinois. Since the last hearing on December 27, 2017, respondent had not been actively involved with CHASI. The previous worker, Holly Babcock, contacted respondent and told him that consent forms were being sent to him that he needed to sign so that CHASI and his parole officer could discuss setting up services for him. Babcock also told respondent that she was going to be leaving CHASI soon and that Spain would be taking over.

¶ 8 Spain contacted respondent on January 16, 2018, to set up dates for an Integrated Assessment (IA). Respondent told Spain that he would only need a few days in order to make arrangements with his boss and he could then take the IA. Spain called respondent on January 19, 2018, and left him a voice mail stating that an IA would be scheduled for February 2, 2018. She did not hear back from respondent, so she called him again on January 26, 2018. Respondent told her that he was "unsure" if he received her voicemail. Spain told him that the IA was scheduled for February 2, 2018, and a parent-child visit was also scheduled that day. Respondent agreed to the date and location. On February 2, 2018, she received a voice mail from respondent, who said that he could not attend the meeting because his car did not have heat. Spain told respondent that CHASI could potentially provide him with a bus ticket for his next appointment if he could not travel in his car.

¶ 9 On February 6, 2018, Spain left respondent a voice mail informing him that the IA and parent-child visitation was scheduled for February 14, 2018. On February 7, 2018, Spain referred respondent for a drug drop in Champaign. Respondent said that he could not complete the drug drop because he did not have any form of identification. The drug drop was not completed.

¶ 10 Respondent did not attend the meeting scheduled for February 14, 2018, and he did not call Spain to cancel it. She sent a certified letter to respondent on that day, informing him that he should contact her immediately to discuss scheduling another IA date. She attached a copy of respondent's service plan and a copy of the consent forms that Babcock had earlier sent to him. On March 1, 2018, Spain received a notification that the certified letter was being returned to sender. The notification informed Spain that the addressee was not known at the delivery address noted on the package. She used the address that respondent had given to Babcock.

¶ 11 On March 6, 2018, Spain called respondent again and left him a voice mail. As of the date of the report she had not received any communication from him. On March 19, 2018, Spain attempted to locate respondent by conducting a diligent search and learned that respondent did not live at the address that he provided to Babcock. Spain then provided information to the court about respondent's DCFS involvement in Champaign with regard to his other children. Finally, she provided her opinion that it did not appear that respondent was interested in maintaining contact with J.C.

¶ 12 The court found that respondent had waived his right to be present at the hearing. It asked if the State, the foster mother's attorney and the GAL were in agreement that respondent had not made reasonable efforts or progress in that reporting period. The GAL answered in the affirmative and the State asked that the goal be changed to substitute care pending determination of termination of parental rights. The State believed it had a basis to change the goal based upon respondent's failure to maintain a reasonable degree of care, concern or responsibility for J.C. The court agreed with the State's opinion. It then changed the goal over respondent's counsel's objection to substitute care pending a determination of termination of parental rights. The court asked respondent's counsel whether he had respondent's most recent address for purposes of serving him, and counsel said he had the address.

¶ 13 On May 15, 2018, the State filed a second petition for the termination of respondent's parental rights to J.C., alleging that he failed to maintain a reasonable degree of interest, concern or responsibility as to J.C.'s welfare. 750 ILCS 50/1(b) (West 2018). That same day the case was called for an arraignment on the second petition and an unfitness hearing was set for June 20, 2018. Respondent was present for the arraignment.

¶ 14 At the unfitness hearing Spain testified that she had been a caseworker at CHASI for over three years and had been J.C.'s caseworker since January 2018. Respondent had completed a small IA in 2014 but a new one needed to be established. She then testified about her numerous attempts to contact respondent that were consistent with the information provided in her April 12, 2018 report. According to her file, the last time respondent had visited J.C. was in January of 2017. He did not request to see J.C. until May of 2018. On cross-examination, Spain was asked why the IA could not have been completed in Champaign. Spain said that respondent never requested that the IA be completed in Champaign, and the third time she tried to set up an IA with respondent she attempted to meet him half way between Rockford and Champaign, in Bloomington, but respondent could not be located. She also noted that after respondent was released from prison in November 2016 he visited with J.C. three times at the most. Her case notes also indicated that DCFS had offered him services with regard to his intact case in Champaign with his three other children, but respondent declined those services.

¶ 15 Respondent testified that he had only spoken to Spain about three times. He said that he did not have a car or a driver's license. His aunt drove him to court from Champaign. He did not know that CHASI would provide him with a bus ticket to get from Champaign to Rockford and he did not request one. According to respondent, his previous caseworker had both addresses in Champaign where he lived. On cross-examination respondent admitted that since he had been released from prison he had only visited with J.C. one time.

¶ 16 After the parties had made their arguments the trial court found that the State had proven by clear and convincing evidence that respondent failed to show a reasonable degree of interest, concern or responsibility for J.C.'s welfare. Specifically, it reiterated the fact that respondent missed his first IA appointment because of car trouble, but he was a no-call, no-show for the

second IA appointment. It referred to the mail Spain sent to respondent that was returned undeliverable, which indicated that respondent had not maintained a current address on file with CHASI as he was required to do. Respondent also failed to complete any drug drops. He did not support J.C. in any way, and his contact with CHASI was sporadic at best. The court also noted that it took into account Spain's testimony that respondent had three other children in Champaign in an intact DCFS case and that respondent had declined services in that case. The court said it only used that information for credibility purposes because some parts of Spain's testimony contradicted respondent's testimony. It found Spain to be more credible than respondent and it did not penalize respondent for not participating in the Champaign case. For all those reasons the court found respondent to be an unfit parent.

¶ 17 On September 26, 2018, a best interest hearing was held. Spain filed her report with the court on June 20, 2018 and the court took judicial notice of it at the hearing. In her report Spain noted that J.C. had been in foster care with the Catalani family for four years, the entire duration of this case. The Catalani family had been able to provide J.C. with a safe and stable environment, while respondent had not been able to do so. The foster family were able to meet all of J.C.'s needs and they wished to adopt him. J.C. was very attached to his foster parents and called them "mom" and "dad." J.C. was also very close to the other children living in the house, including his younger half-brother, who already had been adopted by the Catalanis. Separating the brothers would be very detrimental to J.C. J.C. was enrolled in preschool where the foster family lived and had gone on several vacations with them.

¶ 18 Spain then noted that the respondent's relationship and attachment to J.C. had been inconsistent and unstable throughout J.C.'s life. J.C. had not asked about respondent, even though he has had a few visits with him. Respondent had not made any real effort to visit J.C.

since his release from prison. Respondent's last visit with J.C. was in January 2017 and he has not maintained any contact with J.C. since that time.

¶ 19 Cheryl Catalani testified that she was J.C.'s foster mother and she had taken care of him since he was five months old. J.C. was currently four-and-a-half years old. J.C. was a happy, funny little boy who craved attention, was smart and wanted to learn about everything. J.C. lived in the Catalani home with Cheryl and her husband, J.C.'s half-brother Martin, and their children. The family went camping on vacations several times, and J.C. had friends at the camping ground. Finally, Cheryl testified that she would like to adopt J.C.

¶ 20 Respondent testified on his own behalf. He said that he lived in Champaign, which was about three and a half hours away from Rockford. He did not have his own transportation and his aunt drove him to Rockford for court appearances. He never had any visits with J.C. in Champaign. Respondent said that he bought toys for J.C. when he visited him, and J.C. called him "dad." He could not say how many times he had visited with J.C. since he had gotten out of prison in November 2016. He had three other children in Champaign, who live with their mother. J.C. had never met the other children. Finally, respondent testified that he loved J.C. and wanted to be involved in his life.

¶ 21 After hearing arguments from the parties the trial court found that the evidence clearly indicated that J.C. was fully integrated into the Catalani family. It also found that although it was always difficult to terminate a parent's parental rights, if it did not find it was in J.C.'s best interests to stay with the Catalani family, J.C. would be traumatized by the removal and it would cause him much damage. Therefore, the court found by a preponderance of the evidence that it was in J.C.'s best interest to terminate respondent's parental rights.

¶ 22 The trial court appointed counsel to represent respondent on appeal. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), respondent's counsel moved to withdraw. Counsel averred that he had read the record thoroughly but he was unable to identify any non-frivolous issues that would warrant relief on appeal. Counsel also averred that he had served respondent with a copy of his motion and memorandum via regular and certified mail. The clerk of the court also notified respondent of the motion and informed him that he would be afforded an opportunity to present, within 30 days, any additional matters to this court. The time has elapsed, and respondent has not presented anything to this court.

¶ 23 II. ANALYSIS

¶ 24 The Juvenile Court Act of 1987 (Act) provides a bifurcated procedure for the involuntary termination of parental rights. 705 ILCS 405/2–29(2) (West 2018). Under this procedure, the State must make a threshold showing of parental unfitness. *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990). If a court finds a parent unfit, the State must then show that termination of parental rights would serve the minor's best interest.

¶ 25 In his memorandum, appellate counsel argues that the trial court did not err in finding respondent to be an unfit parent or in terminating respondent's parental rights. Counsel discussed the evidence in the record and explained why he believed these issues lack merit. We will review both the unfitness finding and the order terminating respondent's parental rights.

¶ 26 A. Unfitness

¶ 27 With regard to the finding of unfitness, counsel argues that the trial court's finding that respondent failed to maintain a reasonable degree of interest, concern or responsibility as to J.C.'s welfare was not against the manifest weight of the evidence. 750 ILCS 50/1(b) (West 2018). Specifically, counsel points out that J.C. was born when respondent was in prison,

and other than the visits at the prison and, at most, three visits in Rockford which occurred in conjunction with court hearings, respondent and J.C. have never been in the same room with each other. In fact, after being released on parole in November 2016 there was very little evidence that respondent showed any interest in J.C. or made any effort to form a relationship with him.

¶ 28 Section 1(D) of the Adoption Act lists various grounds under which a parent may be found unfit. 750 ILCS 50/1(D) (West 2018); *In re Antwan L.*, 368 Ill. App. 3d 1119, 1123. As the grounds for finding unfitness are independent, evidence supporting any one of the alleged statutory grounds is sufficient to uphold a finding of unfitness. *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 30. The State has the burden of proving a parent's unfitness by clear and convincing evidence. *Id.* ¶ 29. A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *Id.* Therefore, a trial court's determination of a parent's unfitness will not be reversed unless it is against the manifest weight of the evidence. *Id.* A decision is against the manifest weight of the evidence if a review of the record demonstrates that the proper result is the opposite the one that was reached by the trial court. *In re Brianna B.*, 334 Ill. App. 3d 651, 656 (2002).

¶ 29 Here, the trial court's decision to find respondent to be an unfit parent was not against the manifest weight of the evidence. We agree with counsel that from the time respondent was released on parole in November 2016 he showed almost no interest at all in his son J.C. He visited the child once a few months after being paroled, and never again. He did not even request visitation with his son until right before the unfitness hearing began. Although he testified that he bought toys for his son, in her report Spain specifically noted that respondent never bought any gifts for J.C. It is clear that the trial court found respondent's testimony to be

less than credible, and it was in its power to do so. We agree with the trial court that from the date of the status hearing on December 27, 2017, to the permanency hearing on April 24, 2018, there was clear and convincing evidence that respondent failed to maintain a reasonable degree of interest, concern or responsibility as to J.C.'s welfare.

¶ 30 B. Best Interests

¶ 31 Counsel also argues that the trial court did not err in terminating respondent's parental rights to J.C. He points out that respondent never lived with J.C., and the Catalani family had been the only home that J.C. ever knew. The foster parents wanted to adopt J.C., and his half-brother had already been adopted by them. J.C. was fully socialized into the Catalani family and, as the trial court found, it would be traumatic for J.C. to be removed from that home.

¶ 32 As our supreme court has noted, at the best interests phase, "[t]he 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 (2004). Section 1–3(4.05) of the Act sets forth various factors for the trial court to consider in assessing a child's best interest. These considerations include: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background; (4) the child's sense of attachment; (5) the child's wishes and long-term goals; (6) the child's ties to the community; (7) the child's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child. 705 ILCS 405/1–3(4.05) (West 2018). The State bears the burden of proving by a preponderance of the evidence that termination is in the best interest of a minor. *D.T.*, 212 Ill. 2d at 366; *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). Like the unfitness determination, we

review the trial court's best interests finding under the manifest weight of the evidence standard. *B'yata I.*, 2014 IL App (2d) 130558–B, ¶ 41.

¶ 33 We also agree with counsel that no argument can be made that the trial court's decision to terminate respondent's parental rights was against the manifest weight of the evidence. Reviewing all the statutory factors for a trial court to consider at a best interests hearing, a majority of those factors weigh in favor of termination. J.C. has been with the Catalani family since he was five months old; he knows no other family. His half-brother has already been adopted by the Catalina family, and J.C. enjoys the other children in the house. He is enrolled in preschool in the Catalani's school district, and he takes vacations with the Catalanis. It is clear that J.C. is safe and loved in that family, and we agree with the trial court that if J.C. were removed from that environment it would greatly traumatize him. For all these reasons, we affirm the trial court's finding that it was in J.C.'s best interests to terminate the respondent's parental rights.

¶ 34 III. CONCLUSION

¶ 35 After carefully examining the record, the motion to withdraw, and the memorandum in support of the motion, we agree with appellate counsel that no meritorious issues exist that would warrant relief on appeal. Therefore, we allow counsel's motion to withdraw from this appeal, and we affirm the judgment of the circuit court of Winnebago County finding respondent to be an unfit parent and terminating his parental rights to J.C.

¶ 36 Affirmed.