2019 IL App (2d) 180885-U
No. 2-18-0885
Order filed March 20, 2019



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| *In re* K.H. and K.H., Minors | ) | Appeal from the Circuit Court |
| | ) | of Winnebago County. |
| | ) | |
| | ) | Nos. 15-JA-400 |
| | ) | 16-JA-222 |
| | ) | |
| (People of the State of Illinois, | ) | Honorable |
| Petitioner-Appellee, v. Danyelle F., | ) | Francis M. Martinez, |
| Respondent-Appellant). | ) | Judge, Presiding. |

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Birkett and Justice Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court's finding of mother's parental unfitness, on ground that she failed to protect the children from conditions within their environment injurious to their welfare, was not against the manifest weight of the evidence; trial court's finding that it was in the best interests of children that mother's parental rights be terminated was not against the manifest weight of the evidence. Affirmed.

¶ 2 Respondent, Danyell F., appeals from an order of the trial court finding her unfit as a parent as defined in sections (D)(g) and (D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(g), (D)(m)(ii) (West 2018)) and terminating her parental rights to her minor children, K.H. and K.H. For the reasons that follow, we affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 Hereinafter, the minors will be identified by their individual case numbers: "K.H. (15-JA-400)" and "K.H. (16-JA-222)." K.H. (15-JA-400) is a male child, born on November 23, 2012; K.H. (16-JA-222), a female child, was born on May 10, 2016. The minors' father, Kamel H., has filed a separate appeal following the termination of his parental rights.

¶ 5 On September 22, 2015, the Illinois Department of Children and Family Services (DCFS) received a child protection investigative report of a missing two-year old boy, K.K., who, although unrelated to respondent and Kamel H., was last known to be in their care. According to the report, K.K.'s mother left him with respondent and Kamel H. while she moved and started new employment. Although K.K. had been missing since at least August 8, 2015, a missing person report was not filed until September 17, 2015, and police were investigating as to whether K.K. was a child whose dismembered body had been found in a Chicago park lagoon. The report alleged a substantial risk of physical injury and an environment injurious to the health and welfare of K.H. (15-JA-400), due to neglect by respondent and Kamel H.

¶ 6 On the day it received the report, DCFS placed K.H. (15-JA-400) and respondent's other children, who are not the subject of this appeal, in the home of a safety monitor. Respondent did not cooperate with DCFS and violated the safety plan by attempting to take K.H. (15-JA-400) out of the safety plan monitor's home. On October 26, 2015, DCFS took protective custody of K.H. (15-JA-400).

¶ 7 Prior to K.H. (16-JA-222)'s birth on May 10, 2016, respondent executed a "temporary guardianship" agreement, placing her care with one of Kamel H.'s older daughters. Following K.H. (16-JA-222)'s birth, respondent did not cooperate with efforts by DCFS and the court to locate her and assess her safety. The second minor was taken into protective custody on July 6, 2016.

¶ 8 On November 16, 2015, Kamel H. was charged with first-degree murder, concealment of a homicidal death, and dismemberment of a human body. He is currently incarcerated in Cook County, awaiting trial.

¶ 9 The State filed neglect petitions in the interests of K.H. (15-JA-400) and K.H. (16-JA-222) on October 28, 2015, and June 20, 2016 respectively. Count 2 of both petitions alleged that the minors were neglected and their environment was injurious to their welfare because their mother "has a substance abuse problem that prevents her from properly parenting, thereby placing the minor[s] at risk of harm, pursuant to 705 ILCS 405/2-3(1)(b)." Following parental stipulations to count 2 of the petitions, the minors were adjudicated neglected. In each case, the trial court dismissed counts 1 and 3-5 of the petitions. However, the court acknowledged that dismissal was "*pursuant to the agreement that parents complete services based on all counts* [of the neglect petitions]." (Emphasis added.) *Inter alia*, count 5 of the neglect petitions alleged that the minors were neglected in that:

> "[Their] environment is injurious to [their] welfare in that an unrelated minor was allowed to stay in the home of the parents, the unrelated minor went missing from the parents' home, the unrelated minor was not reported missing for several weeks, and the unrelated minor's body parts were found in a park, thereby placing the minor[s] at risk of harm, pursuant to 705 ILCS 405/2-3(1)(b)."

Pursuant to the neglect adjudications, DCFS was granted legal custody and guardianship, with the discretion to place the minors with a responsible relative or in traditional foster care.

¶ 10 Following various permanency review hearings, the trial court found that respondent had made reasonable efforts but not reasonable progress toward the return of the minors and that Kamel H. had not made reasonable efforts or progress toward their return. The court changed

the goal to substitute care pending the court's determination on termination of parental rights. The State then filed motions asking the court to terminate the parental rights of both parents. With respect to respondent, count 1 of the motion alleged that she was an unfit parent in that she failed to protect the children from conditions within their environment injurious to their welfare. See 750 ILCS 50/1(D)(g) (West 2018).

¶ 11 Unfitness Hearings

¶ 12 The unfitness hearing began on June 6, 2018, and continued periodically until its conclusion on September 14, 2018. With respect to count 1 of the State's termination motion, the following evidence was presented.

¶ 13 Called by the State as an adverse witness, respondent testified that K.K. came to live with them in the summer of 2015. She did not know K.K.'s relationship to anyone in the household and did not know why he was there, stating, "You would have to ask [Kamel H.]." She did not know the approximate length of time he stayed. As for caring for K.K., she cooked and made "sippy cups," changed diapers, and gave baths. She would also watch out for him when she was there. However, she considered Kamel H. to be the primary caretaker.

¶ 14 Respondent could not recall when she last saw K.K. alive, who reported K.K. missing, or when he was reported missing. When she determined K.K. was no longer in the home, she "maybe" asked Kamel H. where he was. Kamel H. told her some people K.K. knew came and picked him up. She did not inquire as to how K.K. knew these people, what their names were, or whether K.K.'s mother knew these people. She never spoke with K.K.'s mother or asked her whether she knew that K.K. was with these people.

¶ 15 While K.K. was in their home, Kamel H. was also responsible for taking care of K.H. (15-JA-400), particularly when respondent went to school for four or five hours per day. She had no concerns about his being the caregiver for any children.

¶ 16 As a result of the investigation into K.K.'s murder, respondent and Kamel H. were prohibited from having unsupervised contact with any child. When K.H. (16-JA-222) was born on May 10, 2016, respondent did not inform DCFS. Between K.H. (16-JA-222)'s birth and July 6, 2016, when she was taken into protective custody, respondent thwarted attempts by DCFS, the trial court, and the police to locate K.H. (16-JA-222) and to assess her safety. During that time period, respondent and Kamel H. were also observed with an unknown child and a stroller.

¶ 17 Respondent testified that because she had executed a "temporary guardianship" agreement prior to K.H. (16-JA-222)'s birth, placing her care with one of Kamel H.'s older daughters, she was "not a parent" to K.H. (16-JA-)222). Having executed the "temporary guardianship" agreement, she was not required to know with whom or where the minor was, and it was not her responsibility to inform DCFS of the minor's whereabouts. Although she knew the police were looking for K.H. (16-JA-222), she did not know where the minor was living and was not concerned. At one point, she was jailed on an obstructing justice charge related to the whereabouts of the minor.

¶ 18 On September 14, 2018, the trial court determined that the State had proven by clear and convincing evidence that respondent was unfit to be the minors' parent pursuant to both counts of the termination motions.

¶ 19 Best Interests Hearing

¶ 20 On October 4, 2018, a best interests hearing was held. Karen Christianson, a CASA volunteer, testified that the minors are her "CASA children." She has known K.H. (15-JA-400)

since October 2015 and K.H. (16-JA-222) since July 2016. The minors currently live with their mother's aunt, who is their foster mother. K.H. (15-JA-400) and K.H. (16-JA-222) have lived in the foster home since the spring of 2016 and July 2016, respectively. Ms. Christianson found the home to be safe and appropriate and agreed that the foster parent provides for the minors' basic necessities. K.H. (15-JA-400), who previously struggled in and out of school due to a lack of self confidence and the ability to express himself, has particularly benefited from the consistency and security of the foster home. K.H. (16-JA-222), who has been in this home since she was two months old, has developed normally and "maybe more quickly" than others her age. The minors attend church regularly with the foster parent and go to the recreation center for swimming and gym time.

¶ 21 Both minors appear to have loving relationships with the foster mother. They also have a "really good sibling relationship," as well as relationships with the extended family. Ms. Christianson testified that the foster parent was willing to adopt the minors and would continue to allow contact between them and their mother if the parents' rights were terminated. She opined that it was in the best interests of the minors to terminate their parents' rights.

¶ 22 DCFS also filed a report detailing the minors' life in the foster home and recommending that the parents' rights be terminated.

¶ 23 Following the presentation of evidence and arguments at the best interests hearing, the trial court determined that the State had proven by a preponderance of the evidence that it was in the best interests of the minors to terminate respondent's parental rights. This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 To support a judgment of termination of a mother's or father's parental rights, there must first be a showing of parental unfitness based upon clear and convincing evidence, and a

subsequent showing that the best interests of the child are served by severing parental rights based upon a preponderance of the evidence. *In re C. W.*, 199 Ill. 2d 198, 210 (2002); *In re A.F.*, 2012 IL App (2d) 111079, ¶¶ 40, 45.

¶ 26 A. Unfitness

¶ 27 Although section 1(D) of the Adoption Act sets forth numerous, discrete grounds under which a parent may be deemed "unfit," "any one ground, properly proven, is sufficient to enter a finding of unfitness and support a subsequent termination of parental rights." (Internal quotation marks omitted.) *In re C.W.*, 199 Ill. 2d at 217); see 750 ILCS 50/1(D) (West 2018) (providing that the "grounds of unfitness are any one or more of the following" enumerated grounds). "We defer to the trial court for factual findings and credibility assessments because it is in the best position to make such findings and we will not reweigh evidence or reassess witness credibility on appeal." (Internal quotation marks omitted.) *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40. For this reason, the trial court's finding of unfitness is entitled to great deference, and we will not disturb its finding unless it is against the manifest weight of the evidence. *In re D.F.*, 332 Ill. App. 3d 112, 124 (2002). The trial court's finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident. *In re D.L.*, 326 Ill. App. 3d 262, 270 (2001).

¶ 28 Here, the trial court determined the State had proven respondent's unfitness by clear and convincing evidence on two statutory grounds. Count 1 of the State's termination motion alleged that respondent was unfit for failing to protect the children from conditions within their environment injurious to their welfare. See 750 ILCS 50/1(D)(g) (West 2018). We agree with the trial court that this ground was proven by clear and convincing evidence.

¶ 29 Section 1(D)(g) of the Adoption Act provides that unfitness may be based on the "[f]ailure to protect the child from conditions within his environment injurious to the child's

welfare." 750 ILCS 50/1(D)(g) (West 2018). "[U]nder the plain language of section 1(D)(g), evidence in support of this ground of unfitness must focus on the child's environment and the parent's failure to protect before removal of the child from the injurious home environment." *C.W.*, 199 Ill. 2d at 214–15. "[A] parent may be found unfit under section 1(D)(g) based on evidence of the parent's conduct which also led to the removal of the child." *Id.* at 219.

¶ 30 Respondent's conduct leading to the removal of both minors supports a finding of unfitness. With respect to K.H. (15-JA-400)'s removal from her care, respondent's testimony reveals her denial of the conditions within his environment injurious to his welfare, as well as her inability, or unwillingness, to provide protection from those conditions. Respondent testified that K.K. came to stay with them when K.H. (15-JA-400) was two years old. Respondent did not know K.K.'s relationship to anyone in the household, why he was there, or the approximate length of time he stayed. Respondent fed, changed, bathed, and watched out for K.H. (15-JA-400) when she was there, but she did not consider herself to be his caretaker. She could not recall when she last saw K.K. alive, who reported K.K. missing, or when he was reported missing. Moreover, when she determined K.K. was no longer in their home, she showed little interest in where he was, who had picked him up, or how K.K. knew the people who picked him up. She did not ask whether K.K.'s mother knew these people, nor did she speak with K.K.'s mother about K.K.'s disappearance. Although Kamel H. was also responsible for taking care of K.H. (15-JA-400), respondent had no concerns about his being the caregiver for either child.

¶ 31 With respect to K.H. (16-JA-222)'s removal from respondent's care, the following pertinent evidence was presented. Although respondent and Kamel H. were prohibited from having unsupervised contact with any child during the investigation of K.K.'s murder, respondent did not inform DCFS of K.H. (16-JA-222)'s birth on May 10, 2016. Between K.H.

(16-JA-222)'s birth and July 6, 2016, when she was taken into protective custody, respondent thwarted attempts by DCFS, the trial court, and the police to locate K.H. (16-JA-222) and to assess her safety. During that time period, respondent and Kamel H. were also observed with an unknown child and a stroller.

¶ 32 Respondent believed that her execution of a "temporary guardianship" agreement placing K.H. (16-JA-222)'s care with one of Kamel H.'s older daughters relieved her of all parental responsibility. Because she was no longer "a parent" to K.H. (16-JA-)222), she was not required to know with whom or where the minor was, and it was not her responsibility to inform DCFS of the minor's whereabouts. Although she knew the police were looking for K.H. (16-JA-222), and despite being jailed on an obstructing justice charge related to the minor's whereabouts, she did not know where K.H. (16-JA-222) was living and, most significantly, was not concerned about that fact.

¶ 33 Respondent argues that the court based its finding of unfitness under section 1(D)(g) on its dissatisfaction with respondent's answers with regard to what she knew of K.K.'s disappearance and apparent murder. Respondent ignores the evidence cited above showing her indifference to the fate of a child placed in her care, the potential danger to her son associated with the disappearance of that child from her home, and the whereabouts of her two-month old daughter.

¶ 34 We conclude that the trial court did not err in determining that respondent was unfit to be either child's parent under section 1(D)(g) because she neither acknowledged the problems nor made progress with regard to count 5 of the neglect petitions.

¶ 35 B. Best Interests

¶ 36 The focus shifts to the child after a finding of parental unfitness. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The issue is no longer whether parental rights can be terminated; the issue is whether, in light of the child's needs, parental rights should be terminated. *Id*.

¶ 37 In making a best interests determination, section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1–3(4.05) (West 2018)) requires a trial court to consider certain factors within "the context of the child's age and developmental needs"; these include: (1) the physical safety and welfare of the child, including food, shelter, health and clothing; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including where the child actually feels love, attachment, and a sense of being valued ***; the child's sense of security and familiarity; continuity of affection for the child; and the least disruptive placement alternative for the child; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) 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; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. *In re D.T.*, 212 Ill. 2d 347, 354 (2004) (proceeding for termination of parental rights). The court may also consider the nature and length of the relationship that the child has with his or her present caregiver and the effect a change in placement would have on the child's emotional and psychological well-being. *In re Nevaeh R.*, 2017 IL App (2d) 170229, ¶ 27.

¶ 38 The trial court's finding with respect to best interests lies within its sound discretion, especially when it considers the credibility of testimony presented at the best interests hearing, and its determination will not be disturbed on appeal unless it is against the manifest weight of

the evidence or the court has abused its discretion. *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Id.* (citing *In re Arthur H.*, 212 Ill.2d 441, 464 (2004)). A court abuses its discretion where its findings are arbitrary or fanciful (*Blum v. Koster*, 235 Ill. 2d 21, 36 (2009)), or where no reasonable person would agree with its position (*In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005)).

¶ 39 In determining that the State had shown by a preponderance of the evidence that it was in the minors' best interest to terminate respondent's parental rights, the trial court found the minors to be well integrated into the foster home. Their foster mother, who is a relative, provides for them "very well." The minors and the foster mother are bonded, and the minors regard her as a mother figure. Permanency is available.

¶ 40 Respondent asserts that the State did not meet its burden, citing respondent's positive relationship with her children. The trial court acknowledged this factor but made the additional finding that the safety issues that led to the removal of the children remained "uncured." See *In re C.W.*, 199 Ill. 2d 198, 217 (2002) (at the best interests stage, "the full range of the parent's conduct can be considered"). We defer to this finding. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40 (the trial court is in the best position to make factual findings and credibility assessments). It is apparent that respondent's "interest in maintaining the parent-child relationship must yield to [the minors'] interest in a stable, loving home life." *In re D.*, 212 Ill. 2d 347, 364 (2004).

¶ 41 Considering the evidence and the minors' best interests, the trial court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 44 Affirmed.