2019 IL App (2d) 181000-U
No. 2-18-1000
Order filed April 10, 2019

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re K.A.E.,	)	Appeal from the Circuit Court
a Minor,	)	of Lake County.
	)	
	)	No. 17-JA-157
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee v. Latoya E.,	)	Christopher B. Morozin,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Birkett and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's determination that it was in the minor's best interest to have respondent's parental rights terminated was not against the manifest weight of the evidence. Affirmed.

¶ 2 The trial court found respondent, Latoya E., unfit to parent her child, K.A.E., under sections 50/1(D)(m)(ii) and (D)(s) of the Adoption Act (Act) (750 ILCS 50/1(D)(m)(ii), (D)(s) (West 2016)), and that it was in the best interest of the minor that respondent's parental rights be terminated. On appeal, respondent does not challenge the trial court's finding of her unfitness in the context of the termination proceedings. However, she claims that the trial court erred in

finding that the best interest of her child supported the termination of her parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 K.A.E. was born September 25, 2012, and came into care in 2014 based on allegations of physical abuse. K.A.E. was adjudicated a neglected minor. The court made K.A.E. a ward of the court and appointed the Department of Children and Family Services (DCFS) guardian.

¶ 5 The State filed a motion to terminate respondent's parental rights on December 26, 2017, alleging that she was unfit pursuant sections 50/1(D)(m)(ii) (failure by parent to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor) and 50/1(D)(s) (the parent's repeated incarceration has prevented the parent from discharging his or her parental responsibilities for the child). The nine-month period alleged under section 50/1(D)(m)(ii) ran from June 10, 2016, to March 10, 2017. The unfitness portion of the termination proceedings was held on June 19, 2018.

¶ 6 The following evidence was presented at the unfitness hearing. Respondent was incarcerated in the Lake County Jail from sometime in July of 2016 until on or about January 23, 2017, at which time she was transferred to the Illinois Department of Corrections (IDOC) to serve a 46 month prison sentence on a burglary conviction. On or about May 30, 2017, respondent was released from IDOC and turned over to the Wisconsin Department of Corrections to begin serving a seven-year sentence on an armed robbery conviction. Respondent's projected release date is on or about August 21, 2025.

¶ 7 Respondent was ordered to successfully complete anger management, psychological and psychiatric evaluation, parenting classes, domestic violence treatment, and mental health assessments. Respondent was to comply with medication management. She was also ordered to

seek and maintain adequate living arrangements for the minor and to seek and maintain employment on a part-time or full-time basis and provide proof to DCFS.

¶ 8 During the period of June 2016 to December 2016, the evidence established that respondent did not make reasonable progress toward return home or reunification of the minor. For much of the period, she was incarcerated in the Lake County Jail. The evidence established that respondent completed a parenting program in anger management and rehabilitation while in jail but did not provide proof of employment, income, housing, mental health assessment, or compliance with medication management. Prior to the time she became incarcerated, from January to July 2016, respondent was seeing K.A.E. Since incarceration, respondent had no visitation with the minor. The findings for this period showed that respondent had not made substantial progress toward return home of the minor. She received an overall rating of unsatisfactory for this period.

¶ 9 The permanency order entered for the period of December 2016 to June 2017 reflected that respondent had not made substantial progress towards return home, and the goal changed to substitute care pending termination of parental rights. During this entire review period, respondent was in the custody of the Lake County Jail or IDOC. During this review period, respondent did not provide proof of employment, income, housing, mental health assessments, and compliance with medication management, and she had no visits with the minor.

¶ 10 The trial court found that beginning in July 2016 and continuing throughout the remainder of the nine-month period, respondent was incarcerated in jail or prison and she had no visits or communication with K.A.E.; respondent did not send him any type of letters, cards, or gifts. The court found that respondent did not have appropriate housing for him or income to support him. The court further found that respondent failed to provide the caseworker with

evidence of compliance with medication management, mental health assessment, or treatment, as required. Accordingly, the trial court determined that the State had met its burden of proof by clear and convincing evidence that respondent failed to make reasonable progress towards the return of the minor during the initial nine-month period after adjudication. 750 ILCS 50/1(D)(m)(ii) (West 2016).

¶ 11 As to section (D)(s), the court noted that since respondent's convictions for burglary, she had not had a relationship with the minor—no visits, no calls, no communication, and no emotional or financial support. While the court realized there was an issue as to why DCFS was not facilitating visits, and the court did find that the caseworker's testimony could have been more helpful and enlightening in that regard, the court still found that respondent herself made no effort to do anything about that. The court found the criminal conviction entered and the incarcerations had prevented and will prevent respondent from discharging her parental responsibilities to her son, including emotional and financial support, stability, and housing—"all those things that go with a parent that is involved in a child's life." Therefore, the trial court found the State had met its burden of proof by clear and convincing evidence as to section (D)(s). Accordingly, the court found respondent unfit on both counts.

¶ 12 The best interest portion of the termination proceeding followed on November 13, 2018. Patty Schaefer, a Court Appointed Special Advocate (CASA), testified that she had been assigned to K.A.E. since January 2015. Schaefer visited K.A.E. at his foster home at least once a month since her assignment. K.A.E. had been placed at the foster home since the end of 2014 and he has remained in the same placement. K.A.E. resided in the foster home with his foster mother, her adult disabled daughter, and K.A.E.'s half sister. K.A.E. has his own bedroom. He has adequate food and clothing, and age-appropriate toys and books. K.A.E. attended

kindergarten, he loved school, and he was reading. His foster mother regularly took him to wellness checks. He has bonded to his foster mother, whom he called "Mom." K.A.E. is taken to all family events and "he's like one of the family." K.A.E. has "blossomed" into a "happy talkative child" during his placement. Moreover, his foster mother has expressed that she would love to adopt K.A.E. K.A.E. has not seen respondent for several years. The last time that respondent had a supervised visit with K.A.E. would have been in the beginning of 2016, but Schaefer was not certain.

¶ 13 On cross-examination, Schaefer testified that respondent had visited with K.A.E. from 2014 until respondent was taken into custody in 2016. Schaefer stated that during the visits she did witness some issues. On redirect, Schaefer explained that respondent had been "very rough" when fixing K.A.E.'s hair. During another visit, respondent did not engage with K.A.E. and she only interacted with K.A.E. when it came time to say goodbye. Schaefer testified that respondent showed no attachment toward K.A.E.

¶ 14 Respondent testified that she did pay attention to K.A.E. during visits. She tried to engage with both of her children. Respondent was concerned with K.A.E.'s hair because she wanted him to look well groomed. Respondent explained that she had made every potential visitation between December 2014 and 2016 when she had been taken into custody. Respondent brought food to the visits at One Hope United. Respondent stated it was her desire to have contact with her children when she was released from prison. Respondent also intended to send letters and make phone calls to K.A.E. Respondent had not seen K.A.E. since 2016.

¶ 15 In making its determination, the court noted that it was "keenly aware" that K.A.E. had been in care with his foster mother for "a month shy of four years." The court found that there had really been no physical or emotional support from respondent during K.A.E.'s life. K.A.E.

would be 13 years' old by the time respondent was released from prison. The court found that respondent's physical and emotional support "really [had not] existed to any extent in this young child's life when it comes to [respondent]." Additionally, while respondent has been incarcerated, there has been little to no contact with K.A.E.; respondent had sent nothing to K.A.E.

¶ 16 The court found K.A.E.'s current placement offered him the "familiarity" and "stability" of a home, that his needs are being met, that K.A.E. referred to his foster mother as "mom," and that he looked to her as a mother figure. K.A.E.'s sibling was now in the same placement, which provided another sense of familiarity for K.A.E., and the foster mother was willing to provide permanency.

¶ 17 After stating that it had reviewed all of the factors set forth in section 1-3(4.05) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-3(4.05) (West 2016)), the testimony, the best interest report, and the evidence from the unfitness phase, the trial court determined that the State had proved by a preponderance of the evidence that it was in the best interest of K.A.E. that the parental rights of respondent be terminated and that DCFS, as the guardian of K.A.E., be given the right to consent to his adoption. Respondent timely appeals.

¶ 18 II. ANALYSIS

¶ 19 The Juvenile Court Act provides a two-stage process for terminating parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2016). The State must first prove parental unfitness by clear and convincing evidence and then show that the child's best interests are served by severing parental rights. *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990). Respondent does not contest the trial court's finding of unfitness. Rather, she contests the trial court's finding that it was in K.A.E.'s best interest that respondent's parental rights be terminated.

¶ 20 After the trial court finds a parent unfit, the issue becomes "whether, in light of the child's needs, parental rights *should* be terminated." (Emphasis in original.) *In re D.T.*, 212 Ill. 2d 347, 364 (2004). A respondent's interest in maintaining the parent-child relationship must yield to the minor's interest in a stable, loving home life. *Id.* Under the Juvenile Court Act, the trial court must consider ten different factors in determining the best interests of a child: (a) the child's physical safety and welfare, 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 love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (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, including the need for stability and continuity of relationships with parental figures and siblings and other relatives; (h) the uniqueness of every family and child; (i) the risks related to substitute care; and, (j) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05)(a)-(j) (West 2016).

¶ 21 At the best interest portion of the termination proceeding, the State must prove by a preponderance of the evidence that it is in the minor's best interest to terminate parental rights and make the minor a ward of the court. *In re AL.P. v. Angel P.*, 2017 IL App (4th) 170435, ¶ ¶ 40-41. We will not reverse the trial court's best-interests determination unless it is against the manifest weight of the evidence. *In re Tiffany M.*, 353 Ill. App. 3d 883, 892 (2004). A decision is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *In re D.M.*, 336 Ill. App. 3d 766, 773 (2002). Cases involving an adjudication of neglect and wardship are *sui generis* and must be decided on the unique facts of the case. *In re Z.L.*, 379 Ill. App. 3d 353, 376 (2008).

¶ 22 Respondent contends the trial court's best-interest determination was against the manifest weight of the evidence. Respondent argues that the caseworker's testimony did not touch on many of the statutory factors of section 1-3(4.05), which must be considered by the court in making its determination regarding the minor's best interest.

¶ 23 Contrary to respondent's argument, the trial court stated that it considered all of the statutory factors, as well as the testimony presented at the best-interest hearing, the CASA best-interest report, and the evidence from the unfitness phase in considering whether the State had met its burden in proving that it was in K.A.E.'s best interest to terminate respondent's parental rights. We note that in determining the child's best interest, no one factor is dispositive. *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 48. Additionally, the court may examine the nature and length of the minor's relationship with his present caretaker and the effect that a change in placement would have upon the minor's emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871 (2011). In this case, the court found dispositive K.A.E.'s sense of familiarity and security with the foster family, that he referred to his foster mother as his mom, that he had formed a strong family bond with his foster family and extended family members, that the foster family was willing to provide permanency, and that the foster family is really the only one he has ever known. The court also considered K.A.E.'s need for permanence and stability opposed to the facts that respondent had no contact with K.A.E. since 2016 and would not be released from prison until K.A.E. was close to 13 years' old.

¶ 24 Respondent also contends that the trial court erred in permitting the State to improperly focus on what respondent did wrong during visitation. Respondent asserts that such testimony could not have had any bearing on the statutory factors to be considered, and "in reality, it reverted back to the fitness ground of reasonable progress." Respondent claims "this is no

different from conducting a single hearing on the issue of fitness and best interest, and she asserts that prejudice resulted from the intermingling of the two subject matters. We find no error.

¶ 25 During cross-examination, respondent's trial counsel asked the advocate, Schaefer, whether respondent's visits with K.A.E. prior to her incarceration were "appropriate" and whether Schaefer had witnessed "any issues" during the visits. Schaefer responded that she had seen issues during the visits. On redirect, the State asked her to explain what the issues were and Schaefer briefly did. Respondent's cross-examination of Schaefer simply opened the door to a response by the State.

¶ 26 In any event, at the best-interest stage, all evidence helpful in determining the questions before the court may be admitted and may be relied upon to the extent of its probative value, as the primary issue is what is in the child's best interest. See *In re Jay H.*, 395 Ill. App. 3d 1063, 1069-70 (2009). Here, the testimony regarding K.A.E.'s interactions with respondent certainly was relevant on the issues of K.A.E.'s sense of attachment to his mother, and his sense of security and familiarity with her. See 705 ILCS 405/1-3(4.05) (d) (West 2016).

¶ 27 Moreover, while respondent's conduct with her child during visitation merited some consideration, it paled in comparison to the fact that respondent had not seen or communicated with K.A.E. since she was arrested in 2016, and that respondent had sent no gifts, letters, or anything to him during that time. Although the court did not doubt that respondent loved K.A.E., it emphasized that he needed someone to be there to physically and emotionally support him and that did not exist "to any extent in this young child's life" with respondent. K.A.E. had been in the same foster care for about a month shy of four years and he was a few months past his sixth birthday at the time of the hearing. During that time, K.A.E. had stability and a chance

to flourish with his foster family. See *In re Nevaeh R.*, 2017 IL App (2d) 170229, ¶ 27 (the court may consider the nature and length of a child's relationship with his or her present caretaker and the effect that a change in placement would have on his or her emotional and psychological well-being). The foster mother has expressed a strong commitment to providing K.A.E. with a permanent home, thus ensuring permanency in his life. Further delay and lack of permanency and stability would not be in K.A.E.'s best interest. See *In re K.H.*, 346 Ill. App. 3d 443, 463 (2004) (permanency and stability is important for a child's welfare).

¶ 28 Respondent cites *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008), for the proposition that a finding of parental unfitness at the termination stage does not automatically trigger an end to the mother-child relationship and the court should not view termination as a foregone conclusion. In that case, the Appellate Court, Third District noted that the record suggested only one factor, the children's need for stability, weighed in favor of termination, while all other factors were overlooked, neutrally assessed, or, in the case of the children's bonds to their mother, weighed in favor of postponing termination. *Id.* at 700. After considering the legislative timeline that governed the fitness issue in the case, the unique facts, the undisputed strong mutual bonds between mother and children, and the minimal evidence presented by the State during the best-interest hearing, the court concluded that the trial court's best interest finding, while well-intended, was contrary to the manifest weight of the evidence. *Id.* at 703. In the present case, unlike in *B.B.*, there was no evidence of a strong relationship between respondent and K.A.E. Also, the State presented a considerable amount of evidence concerning K.A.E.'s attachment to his foster family and the progress he had made since his placement.

¶ 29 Accordingly, we conclude that the trial court's determination that it was in K.A.E.'s best interest that respondent's parental rights be terminated was not against the manifest weight of the evidence.

¶ 30 III. CONCLUSION

¶ 31 Based on the preceding, we affirm the judgment of the Circuit Court of Lake County.