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2019 IL App (3d) 180603-U

Order filed February 20, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

<i>In re</i> R.K., D.K., D.K., D.K. Jr.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors,	)	Peoria County, Illinois,
)	
(The People of the State of Illinois,	)	Appeal Nos. 3-18-0603, 3-18-0604,
	)	3-18-0605 and 3-18-0606
	)	(Consolidated).
Petitioner-Appellee,)	
	)	Circuit Nos. 16-JA-01, 15-JA-158, 15-
v.	)	JA-157 and 15-JA-156
	)	(Consolidated).
)	
Dante K.,	)	Honorable
	)	David A. Brown,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Schmidt and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that it was in the best interest of the minors to terminate father's parental rights was not against the manifest weight of the evidence.

¶ 2 On July 26, 2018, the trial court terminated father’s parental rights to four minor children in consolidated proceedings. Father filed a notice of appeal in all four cases and now challenges the trial court’s decision to terminate his parental rights.

¶ 3 I. BACKGROUND

¶ 4 On June 16, 2015, the State filed three separate juvenile petitions alleging D.T.K. (D.O.B. 7/28/14), D.K. (D.O.B. 4/13/13), and D.A.K. (D.O.B. 6/6/12), were neglected pursuant to section 2-3 of the Juvenile Court Act of 1987 (the Act) because each minor’s environment was injurious to their welfare. 705 ILCS 405/2-3 (West 2014). Specifically, the juvenile petitions alleged that after a confrontation with a security officer during the commission of a retail theft at Walmart on May 6, 2015, father left the minors in a shopping cart and fled the scene in a vehicle. The juvenile petitions alleged five separate acts of domestic violence committed by father upon mother. Additionally, the juvenile petitions listed father’s criminal history, which included multiple adjudications of delinquency and convictions for theft, domestic battery, battery, “resisting police,” and a pending retail theft case.

¶ 5 On January 5, 2016, the State filed a separate juvenile petition pertaining to a fourth child, R.K. (D.O.B. 1/1/16), alleging the minor was neglected pursuant to section 2-3 of the Act because the minor’s environment was injurious to her welfare. 705 ILCS 405/2-3 (West 2016). Specifically, the juvenile petition alleged the minor’s siblings, D.T.K, D.K., and D.A.K. were currently involved in juvenile cases in Peoria County, and that mother violated an order of protection concerning R.K.’s siblings. The juvenile petition referenced the incident of theft at Walmart, the incidents of domestic violence, and father’s criminal history.

¶ 6 On May 12, 2016, the trial court adjudicated all four minors neglected. On June 2, 2016, the trial court entered dispositional orders finding father to be an unfit parent with regard to the

four minors based on the contents of the juvenile petitions, *inter alia*. The trial court ordered father to cooperate with DCFS, obtain a drug and alcohol assessment, perform random drug tests, participate in and complete counseling, participate in and complete a parenting course, participate in and complete a domestic violence course, maintain and obtain stable housing, and attend scheduled visits with the minors, *inter alia*.

¶ 7 On February 8, 2018, the State filed petitions to terminate father's parental rights in each juvenile case. Count II of each separate petition alleged father was an unfit parent pursuant to section 1(D)(m)(ii) of the Adoption Act for failing to make progress toward the return of the minors during the nine-month period from November 1, 2016, to August 1, 2017. 750 ILCS 50/1(D)(m)(ii) (West 2018). The trial court conducted an adjudicatory hearing on May 31, 2018. After the adjudicatory hearing, the trial court found all four petitions for termination had been proven by clear and convincing evidence. The case was continued for best interest proceedings.

¶ 8 Best interest hearing reports for all four minors were filed on July 16, 2018. D.A.K.'s report indicated D.A.K. was then six years old and had been in his current foster home for two years and three months. D.A.K. lived with one of his siblings. D.A.K.'s foster family is willing and able to adopt D.A.K. D.A.K.'s basic needs of food, shelter, health and clothing are met by his foster family. D.A.K. recently completed kindergarten at Peoria Heights Grade School. Despite being developmentally delayed, D.A.K. did well in school. D.A.K was able to grasp all concepts presented to him, but would become frustrated with difficult tasks. D.A.K. exhibited appropriate behaviors in school and negative behaviors were properly contained. D.A.K. is progressing through developmental milestones. With regard to his father, D.A.K. does have a basic understanding of the "situation." D.A.K. asked his foster mother if he could change his name upon adoption because he did not want to be named after his father. D.A.K. has developed

a strong relationship with his foster family and refers to his foster mother as “mommy.” D.A.K. has not seen his father since December 2016, does not ask for his father, and has no bond with his father. D.A.K. stated that he wants to live with his foster mother forever. There are other children in D.A.K.’s neighborhood for D.A.K. to play with. D.A.K. is involved in the community and enjoys the children’s museum, movies, going out to eat, and area parks. D.A.K. wants to be a police officer some day. At the conclusion of the report, the caseworker concluded it was in D.A.K.’s best interest to terminate father’s parental rights.

¶ 9 D.K.’s report indicated D.K. was then five years old. D.K. had been in his current foster placement for two years and three months. D.K.’s foster family is willing and able to adopt him. D.K.’s basic needs of food, shelter, health, and clothing are met by his foster family. D.K. completed his preschool program through “Bright Futures.” D.K. did well in his preschool program, though it was only a half day program. D.K. also attended a half day daycare program where he had a difficult time attributable to the fact that he was placed with younger children. D.K. has a strong temperament but is very loving. D.K. has a basic understanding of the “situation” with his father. D.K. calls his foster mother “mom” and has not seen his father since December 2016. D.K. has no recollection of his father and is instead attached to his foster family. D.K. tells his foster mother that he loves her and wants to live with her forever. D.K.’s foster mother loves him very much. There are other children in D.K.’s neighborhood for D.K. to play with. D.K. is involved in the community and enjoys going to the children’s museum, movies, out to eat, and area parks. At the conclusion of the report, the caseworker concluded it was in D.K.’s best interest to terminate father’s parental rights.

¶ 10 D.T.K.’s report indicated D.T.K. was then three years old. D.T.K. had been in his current foster placement for two years and three months. D.T.K. was placed with one of his siblings.

D.T.K.'s foster family is willing and able to adopt him. D.T.K.'s basic needs of food, shelter, health, and clothing are being met by his foster family. D.T.K.'s foster home is in a good state of repair and D.T.K. is in good health. D.T.K. currently attends a preschool program at "Jacob's Ladder" where his social skills are improving. D.T.K. refers to his foster parents as "mommy" and "daddy." D.T.K. has no recollection of his biological father. D.T.K.'s sense of belonging lies with his foster family. D.T.K. has not seen his father since December 2016 and does not ask for his father. D.T.K. has lived in the same quiet neighborhood since his placement and enjoys community events like tumble bus, local parades, and other festivities held in the area. D.T.K. stated that he wants to live with his foster family forever. At the conclusion of the report, the caseworker concluded it was in D.T.K.'s best interest to terminate father's parental rights.

¶ 11 R.K.'s report indicated R.K. was then two years old. R.K. had been in her current foster placement for two years and six months, since R.K. was just three days old. R.K. was placed with one of her siblings. R.K.'s current foster family was willing to adopt R.K. R.K.'s basic needs of food, shelter, health, and clothing are met by R.K.'s current foster family. The report indicated R.K. also attended a daycare program at "Jacob's Ladder" and was meeting her developmental milestones. R.K. has no recollection of her biological father and has not seen him since December 2016. R.K. does not ask for her father. R.K. is very attached to her foster mother. R.K.'s foster mother loves R.K. very much. R.K. also loves her foster father. R.K. has lived in the same neighborhood for her entire life, but is still too young to be involved in the community. R.K. enjoys interacting with other children at daycare. At the conclusion of the report, the caseworker concluded it was in R.K.'s best interest to terminate father's parental rights.

¶ 12 The trial court conducted a best interest hearing on July 26, 2018, and indicated that the court received the best interest hearing reports for each child. Counsel for father briefly questioned caseworker Melissa Shaw concerning her knowledge of father's current incarceration before turning questioning over to the State.

¶ 13 The State briefly questioned Shaw concerning whether the foster parents were supportive of helping the minors keep their cultural identity. Shaw responded that the foster parents were supportive, and that the minors were in contact with friends and family in the community, including their grandmother. Shaw informed the court that R.K. and D.T.K. were placed with one foster family while D.K. and D.A.K. were placed with another.

¶ 14 Father testified he was currently incarcerated at a facility in Pinckneyville where he had remained since July 23, 2017. Father had enrolled in classes or services while incarcerated but he was put on a waiting list. Father stated that he was interested in having contact with the children but had not had much contact because of a lack of addresses and phone numbers, though father indicated he knew where to get the contact information but had failed to do so. Father stated that maybe the two oldest children still know who he is. Father expected to be released in July 2019 barring any setbacks. Father testified he missed and loved the children and did not want to give up on them. Father wanted a second chance to "step up to the plate." Father opined it was in the childrens' best interest that he remain their father figure because he was a good father who could be there for them.

¶ 15 During argument, the State maintained that it was in the best interest of the minors to terminate father's parental rights based on the testimony and the best interest reports. Father's attorney argued that while "all the buttons have been pushed as far as the statutory things we look at in best interest," it is not always in the best interest to terminate, "even if you can."

Father's attorney argued because father would likely be released within a year, did not wish to disrupt placement, and only wished to be in the childrens' lives, father's rights should not be terminated.

¶ 16 After considering the best interest reports, the evidence presented at the hearing, the pleadings, and the statutory factors, the trial court found the State met its burden of demonstrating by a preponderance of the evidence it was in the minors' best interest to terminate father's parental rights. The court found the statutory factors weighed heavily in favor of termination, aside from the wishes and long-term goals factor, because of the minors' tender ages. The trial court entered written orders in all four cases terminating father's parental rights.

¶ 17 II. ANALYSIS

¶ 18 On appeal, father assigns error to the trial court's finding that it was in the minors' best interests to terminate father's parental rights. Specifically, father contends the State failed to prove by a preponderance of the evidence that termination of father's parental rights was in the minor's best interests. The State argues the record supports the trial court's decision.

¶ 19 In order to terminate parental rights, the Act first requires the State to demonstrate by clear and convincing evidence that the parent is unfit based on one or more grounds set forth in section (1)(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). 705 ILCS 405/2-29(2) (West 2016); *In re D.F.*, 208 Ill. 2d 223, 228 (2003). Here, the trial court found father unfit pursuant to section 1(D)(m)(ii) of the Adoption Act. 750 ILCS 50/1(D)(m)(ii) (West 2016). Father does not contest this finding on appeal. Once the court makes a finding of unfitness, all considerations yield to the best interests of the child. *In the Interest of D.M., W.M., and L.L.*, 298 Ill. App. 3d 574, 581 (1998). During best interest proceedings, the State must prove by a

preponderance of the evidence that termination of parental rights is in the best interests of the minor. *In re S.R.*, 2014 IL App (3d) 140565, ¶ 29.

¶ 20 Where a challenge to the sufficiency of the evidence at the termination hearing is brought before a reviewing court our method of review is the manifest weight standard. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072 (2006). A finding is said to be against the manifest weight of the evidence where the opposite conclusion is clearly evident, or where the court's determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 21 When making a best interest determination, the trial court's considerations should include: (1) the physical safety and welfare of the child, including food, shelter, clothing, and health, (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, (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, (8) the uniqueness of every family and child, (9) the risks attendant to entering and being in substitute care, and (10) the preference of the persons available to care for the child, *inter alia*. 705 ILCS 405/1-3(4.05) (West 2016); *In re A.F.*, 2012 IL App (2d) 111079, ¶ 45.

¶ 22 Our review of the record on appeal reveals that the statutory factors heavily favored termination of father's parental rights. The minors' current foster families adequately provided for the physical safety and welfare of the minors, including food, shelter, clothing, and health. The minors' identities are closely entwined with their foster families, whom the minors had each lived with for more than the last two years. The foster families were supportive of the minors' cultural background, and the minors were in contact with friends and family in the community,

including their grandmother. The best interest reports highlight that all four minors are very attached to their foster parents.

¶ 23 The minors love their foster parents and view them as their real parents. While D.T.K., D.K., and D.A.K. wished to stay with their foster families “forever,” we, like the trial court, carefully consider but do not attribute great weight to the minors’ wishes based on their tender ages. With regard to community ties, D.T.K., D.K., and D.A.K. are involved in the community and enjoy local parades, children’s museums, movies, going out to eat, and area parks. R.K. is still too young to have meaningful community involvement. There are certainly risks attendant upon placement in substitute care, but this court is comforted by the fact that each minor has been placed in a home with another sibling. Lastly, the minors in this case need and deserve permanence and structure. Here, the minors’ foster families are willing and able to adopt the minors.

¶ 24 In stark contrast to their foster families, the minors have no relationship with their biological father. In fact, father commented that D.A.K. and D.K. “maybe” know who he is, while it is clear neither D.T.K. nor R.K. have any recollection of their biological father. Father is currently incarcerated and cannot provide for the needs of the minors. This court is encouraged by father’s testimony that he wished to “step up to the plate” for the minors, however, past behavior is the best predictor of future behavior, and father continues to exert minimal effort with regard to parenting the minors. Unfortunately, this case has progressed past the point of waiting for father to straighten out his life. For these reasons, the trial court’s finding that it was in the best interest of the minors to terminate father’s parental rights was not against the manifest weight of the evidence.

¶ 25

III. CONCLUSION

¶ 26

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

¶ 27

Affirmed.