

NOTICE

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2019 IL App (4th) 180785-U

NO. 4-18-0785

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 9, 2019

Carla Bender

4th District Appellate Court, IL

<i>In re</i> E.S. and R.S., Minors,)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Ford County
Petitioner-Appellee,)	No. 16JA1
v.)	
Angela M.,)	Honorable
Respondent-Appellant).)	Matthew John Fitton,
)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding (1) it lacked jurisdiction to review the trial court's dispositional order and (2) the trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 In May 2016, the trial court adjudicated R.S. (born December 19, 2012) and E.S. (born April 23, 2015) neglected after respondent mother, Angela M., stipulated to allegations of neglect where she subjected R.S. and E.S. to an environment injurious to their welfare as defined by section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2016)). In July 2016, the court entered a dispositional order making R.S. and E.S. wards of the court and granting custody and guardianship to the Department of Children and Family Services (DCFS). The court found respondent "unable for some reason other than financial circumstance alone to care for, protect, train, or discipline the minor(s)."

¶ 3 In November 2018, the trial court terminated respondent's parental rights to R.S. and E.S. Respondent father, John S., is not a party to this appeal. On appeal, respondent argues (1) the dispositional order and (2) the court's best-interest finding terminating her parental rights were against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Initial Proceedings

¶ 6 On March 16, 2016, the State filed a petition for adjudication of wardship, alleging R.S. and E.S. were neglected minors where respondent subjected them to an injurious environment due to her drug and alcohol abuse. 705 ILCS 405/2-3(1)(b) (West 2016). Following a temporary custody hearing that same day, the trial court removed the minors from respondent's home and awarded temporary custody to DCFS. At the May 23, 2016, adjudicatory hearing, respondent stipulated to the allegations of neglect in count I of the State's petition.

¶ 7 On July 25, 2016, the trial court held a dispositional hearing. Following the dispositional hearing, the trial court entered a dispositional order granting DCFS custody and guardianship of the minors. The court found respondent "unable for some reason other than financial circumstance alone to care for, protect, train, or discipline the minor(s)." During the majority of the pendency of respondent's case, Lutheran Social Services of Illinois (LSSI) acted as the agency assigned to handle the matter. Because we find, as explained below, that we lack jurisdiction to review the dispositional order, we turn now to the termination proceedings.

¶ 8 B. Termination Proceedings

¶ 9 On September 11, 2017, the State filed a petition seeking termination of parental rights alleging respondent to be unfit where she (1) failed to maintain a reasonable degree of interest, concern, or responsibility toward R.S.'s and E.S.'s welfare, (2) suffered from habitual

drunkenness or addiction to drugs, and (3) failed to make reasonable progress and efforts toward the return of R.S. and E.S. during the nine-month period following the date of adjudication.

¶ 10 *1. Fitness Hearing*

¶ 11 On August 15, 2018, the trial court began a bifurcated hearing on the petition for termination of parental rights, first considering respondent's fitness. Respondent stipulated to her unfitness based on her failure to make reasonable efforts to correct the conditions that were the basis for the removal of the children during the nine-month period following the date of adjudication, that being May 23, 2016 to February 23, 2017. Based on respondent's stipulation, the court found respondent unfit.

¶ 12 *2. Best-Interest Hearing*

¶ 13 During a total of two days in October and November 2018, the trial court held a best-interest hearing where the court considered the best-interest report filed by LSSI and testimony elicited during the hearing.

¶ 14 *a. Best-Interest Report*

¶ 15 In the best-interest report prepared by Rachel Kramer, LSSI recommended maintaining respondent's parental rights where respondent, at the time of the hearing, remained sober (for 16 months), attended all of her services, resided in stable housing, and continued to maintain employment with the same company since July 2017.

¶ 16 The best-interest report indicated respondent's therapist, Ms. Kuna, described respondent's progress as fair and hopeful. Kuna recommended respondent "continue to attend individual therapy, psychiatric appointments, 12-step meetings and work with her accountability partner to maintain sobriety." According to Kuna, respondent was compliant with her medication prescribed for her bipolar disorder.

¶ 17 According to the report, in August of 2017, the case goal changed to substitute care pending court determination on termination of parental rights. When the case goal changed, LSSI reduced respondent's visitation to once per month. During the monthly visits, the children appeared excited to see respondent who exhibited appropriate parenting and interacted well with her children.

¶ 18 The report noted that R.S. suffers from attention deficit/hyperactivity disorder (ADHD) and disruptive mood dysregulation disorder. She exhibits aggressive and disruptive behaviors, often physically attacking her sister, and she struggles with behavioral issues at home and in school. At the time of the best-interest hearing, R.S. found herself under psychiatric hospitalization for the seventh time. R.S. takes multiple prescribed medications, attends counseling, and participates in various support services aimed at stabilizing R.S. and supporting the foster family. An individual education plan is in place at her school to address a developmental delay identified in R.S.

¶ 19 The report described E.S. as a healthy three-year-old child current on her medical exams and attending licensed day care full time while the foster parents work. E.S. "continues to develop her own identity in the foster placement and has become a family member in the household." E.S. is not yet receiving services. However, the foster parents have requested play therapy for E.S. who, at times, mimics her sister's disruptive behavior.

¶ 20 The foster parents are meeting the physical safety and welfare of both children including food, shelter, health, and clothing. In describing how the foster parents address the challenges R.S. presents, the report reflected that when R.S. requires hospitalization, "the foster parents participate in staffing, maintain contact with R.S., and allow her return to their home upon each discharge."

¶ 21 The report indicated that "[t]he foster parents have reported a willingness to provide permanency to both children; however, LSSI did recently learn (through text message documentation provided by [respondent]) that the foster father does not want to provide permanency for [R.S.] and that the foster parents only want to provide permanency for [E.S.]." LSSI expressed concern about the foster parents' level of commitment where LSSI is strongly against separating R.S. and E.S. On September 14, 2018, LSSI transferred respondent's case to DCFS due to staffing shortages at LSSI.

¶ 22 b. Julie Birt

¶ 23 Julie Birt testified that in February 2017, she and her husband became R.S. and E.S.'s foster parents. Birt stated that R.S. and E.S. refer to her as "Mommy" or "Julie" and to her husband as "Daddy" or "Shawny." Birt testified that R.S. and E.S. were involved in several activities within the community.

¶ 24 Birt testified R.S.'s physician diagnosed R.S. with reactive attachment disorder (RAD), post-traumatic stress disorder, nonspecific conduct disorder, and ADHD. Birt expressed concern that DCFS would discontinue services for R.S. after adoption; however, she stated she and her husband wanted R.S. and E.S. placed permanently in their care.

¶ 25 c. Rebecca Woodward

¶ 26 Rebecca Woodward, a caseworker with DCFS, testified she became the caseworker on R.S. and E.S.'s case after LSSI transferred the case to DCFS in September 2018. As of October 22, 2018, Woodward never observed any interaction between respondent and her children. Woodward agreed that services can be difficult to obtain post-adoption and that R.S. will need services until she is an adult. Woodward stated that, for children diagnosed with RAD, stability is the most important thing.

¶ 27 Woodward also testified she could not state with confidence a time period when returning R.S. and E.S. to respondent's care would be in their best interest. Rather, she stated there would be "baby steps" in increasing respondent's visits with the children, as the visit just a week before the best-interest hearing ended with the visitation monitor escorting the foster mother and the children to the car when respondent became erratic and yelled, causing the children to become upset.

¶ 28 d. Rachel Kramer

¶ 29 Kramer testified to being the program director for LSSI and the caseworker in R.S. and E.S.'s case from May 2018 until DCFS took over the case. Kramer authored LSSI's report for the best-interest hearing. In her report, Kramer recommended maintaining respondent's parental rights in light of her progress as outlined above. However, Kramer fell short of indicating an imminent return home. In fact, Kramer believed the girls needed more time with respondent in order to assess her parenting ability.

¶ 30 Also, Kramer questioned whether respondent could care for her children considering R.S.'s behavioral issues. Kramer stated her concerns with the foster parents involved their reservation about whether or not they were interested in providing permanency for both R.S. and E.S. Kramer acknowledged that Birt testified she and her husband were interested in providing permanency to both R.S. and E.S. Kramer implied this information eased her concerns stating, "obviously when any child can achieve permanency or children can achieve permanency with parents they have lived with, then that's a good thing." Kramer conceded that failing to terminate respondent's rights might potentially harm the girls and achieving permanence sooner rather than later was in R.S.'s and E.S.'s best interest.

¶ 31 e. Michelle Maness

¶ 32 Michelle Maness testified to being R.S. and E.S.'s first foster parent for about six months. She also testified to her friendship with respondent for the past six years. Maness attended visitations with respondent, R.S., and E.S. She stated that both R.S. and E.S. enjoyed the visits with respondent but they all were upset when visits concluded. Maness testified that she reported respondent's drug addiction to DCFS but that respondent overcame her addiction, and respondent really loved her children a lot.

¶ 33 f. Frankie Ward

¶ 34 Frankie Ward testified that she supervised respondent at LD Cleaning where respondent worked for the past 14 months. Ward stated LD Cleaning promoted respondent to crew leader so they no longer worked together but they attended Celebrate Recovery meetings together. Ward viewed respondent as a great friend and dependable worker.

¶ 35 g. Respondent

¶ 36 Respondent testified to being sober since May 2017. She regularly attended counseling and Celebrate Recovery meetings. While respondent worked for LD Cleaning, she hoped to go back to work as a Licensed Practical Nurse (LPN). Respondent testified to being able to support her children if she continued to follow a strict budget. Respondent qualified for public housing and indicated she arranged for a transfer to housing large enough for the entire family in the event the children returned to her care.

¶ 37 Respondent testified she attended all of her visits with R.S. and E.S. She stated that in July 2018, Birt discussed with her the possibility of splitting R.S. and E.S. up. She indicated she wanted to keep the girls together if possible. Respondent conceded that the girl's time in DCFS care approached three years. Further, respondent acknowledged that the girls returning home to her would be a lengthy process that "would be like starting over."

¶ 38

3. Trial Court's Findings

¶ 39 After considering the evidence presented at the best-interest hearing, the trial court found the best-interest factors weighed in favor of termination. The court based its reasoning on "the history of this case and each case is unique, again, given the timeframe of this case, going back to, again, the filing of this case, back on March 16th, 2016, that's 32 months ago; given the age of these children and the length of time they [have] been in foster care[.]" Specifically, the court emphasized that "[t]he permanence for the child is paramount." The court congratulated respondent on her progress but found by a preponderance of the evidence that it was in the best interest of the minors to terminate respondent's parental rights.

¶ 40 This appeal followed.

¶ 41

II. ANALYSIS

¶ 42 On appeal, respondent argues (1) the dispositional order finding respondent unable to care for R.S. and E.S. and (2) the trial court's best-interest finding terminating respondent's parental rights were against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 43 Before proceeding to the merits of this appeal, we must address our jurisdiction to review respondent's complaint regarding the trial court's dispositional order. Although the State failed to raise the issue of jurisdiction, "a reviewing court has a duty to consider *sua sponte* its jurisdiction and to dismiss the appeal if it determines that jurisdiction is wanting." *In re Alexis H.*, 335 Ill. App. 3d 1009, 1011, 783 N.E.2d 158, 160 (2002). The court's dispositional order, entered July 25, 2016, was a final order subject to appeal. See *In re Leona W.*, 228 Ill. 2d 439, 456, 888 N.E.2d 72, 81 (2008) (Dispositional orders of this kind are regarded as final and appealable as a matter of right.). Illinois Supreme Court Rule 303 (a)(1) (eff. July 1, 2017)

required respondent to file a notice of appeal within 30 days after the circuit court entered the dispositional order. Respondent failed to do so. In failing to timely appeal the dispositional order, respondent forfeited her opportunity to seek review of any claimed errors in that proceeding. Because respondent failed to timely appeal the court's dispositional order, we lack jurisdiction to review the dispositional order. *In re Janira T.*, 368 Ill. App. 3d 883, 891, 859 N.E.2d 1046, 1054 (2006). We now turn to whether the court's best-interest hearing decision to terminate respondent's parental rights was against the manifest weight of the evidence.

¶ 44 "At the best-interest stage of termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination [of parental rights] is in the child's best interest." *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). The reviewing court will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence. *Id.* A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate the court should have reached the opposite result. *Id.* Ultimately, the court is in the best position to determine the credibility of the witnesses. *In re K.B.*, 314 Ill. App. 3d 739, 748, 732 N.E.2d 1198, 1206 (2000).

¶ 45 During the best-interest stage of termination proceedings, "The parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005) (quoting *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004)). The trial court takes into consideration the best-interest factors in section 1-3(4.05) of the Juvenile Act (705 ILCS 405/1-3(4.05) (West 2016)).

¶ 46 Respondent argues the trial court's termination of respondent's parental rights was against the manifest weight of the evidence because nearly all of the statutory factors weighed against termination. Specifically, respondent argues that she maintains a steady income, stable housing, and is willing to provide permanency for R.S. and E.S. unconditionally, while the foster parents were quick to try to toss out the older and more difficult sister but keep the younger and sweeter sister in their home. Respondent points out that she completed all of her services while maintaining her sobriety for the past 16 months. Respondent further argues R.S.'s behavior problems are the result of substitute care, not respondent's attention during visits where R.S. behaved at every visit except one. Respondent asserts the only factor that weighs in favor of termination is R.S. and E.S. having more community ties in the foster home. However, she questions how deep those ties are in light of the ages of the children.

¶ 47 We disagree with respondent and find the factors weigh more heavily in favor of termination. Both R.S. and E.S. are together in the same foster home, and the foster parents expressed their intention to provide permanency for both minors, even with R.S.'s behavioral problems. Although Kramer recommended maintaining respondent's parental rights, she conceded that she based her recommendation on the possibility that the foster parents were going to adopt E.S. and not R.S. Birt rejected this notion at the best-interest hearing. Kramer also stated that failing to terminate respondent's rights might potentially harm R.S. and E.S.

¶ 48 Respondent admitted the girls returning home to her care "would be like starting over." Woodward reiterated this sentiment when she failed to state with confidence a time period when returning R.S. and E.S. to respondent's care would be in their best interests. Woodward testified that "baby steps" would be necessary to assess respondent's ability to parent and be involved in the therapeutic process. Although respondent has made great strides, she

simply allowed the children to linger in care too long before making what we hope are permanent positive changes in her life.

¶ 49 We agree with the trial court that permanency is paramount in this case. The foster parents are willing to adopt both R.S. and E.S. Thus, the children would be in a permanent living situation with each other, raised by parents who demonstrate no signs of instability. Respondent's ability to care for R.S.'s and E.S.'s needs and R.S.'s behavioral problems is uncertain. Based on the evidence, we find the court's decision to terminate respondent's parental rights was in the minors' best interests and not against the manifest weight of the evidence. Accordingly, we affirm the court's judgment.

¶ 50 III. CONCLUSION

¶ 51 For the stated reasons, we affirm the trial court's judgment.

¶ 52 Affirmed.