2019 IL App (4th) 190059-U

NO. 4-19-0059

FILED
May 28, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re E.H., a Minor	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	McLean County
Petitioner-Appellee,	)	No. 17JA71
v.	)	
BRANDON H.,	)	Honorable
Respondent-Appellant).	)	J. Brian Goldrick,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's termination of respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 Respondent, Brandon H., appeals the trial court's termination of his parental rights to his child. He argues the court erred in finding that termination was in the child's best interest. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent and Mackenzie P. are the parents of E.H., born January 29, 2016. In July 2017, the State filed a petition for adjudication of wardship, alleging E.H. was a neglected minor in that his environment was injurious to his welfare due to his parents' unresolved issues of domestic violence and/or anger management. In September 2017, the trial court conducted a hearing in the matter and both respondent and Mackenzie admitted that E.H. was a neglected mi-

nor as alleged in the State's petition. The court then entered an adjudicatory order finding E.H. was neglected and setting the matter for a dispositional hearing. In October 2017, the court entered its dispositional order, making E.H. a ward of the court and placing him in the custody and guardianship of the Illinois Department of Children and Family Services (DCFS). The record reflects E.H. was placed in relative foster care with his maternal grandparents.

¶ 5 In June 2018, the State filed a petition to terminate the parental rights of both respondent and Mackenzie. It alleged respondent was unfit because he (1) was depraved (750 ILCS 50/1(D)(i) (West 2016)); (2) failed to make reasonable efforts to correct the conditions that were the basis for E.H.'s removal from his care during the nine-month time period from September 6, 2017, through June 6, 2018 (*id.* § 1(D)(m)(i)); (3) failed to make reasonable progress toward E.H.'s return to his care during the nine-month time period from September 6, 2017, through June 6, 2018 (*id.* § 1(D)(m)(ii)); and (4) was incarcerated at the time the petition to terminate was filed, had been repeatedly incarcerated as a result of his criminal convictions, and his incarceration prevented him from discharging his parental responsibilities (*id.* § 1(D)(s)).

¶ 6 In December 2018, the trial court conducted a hearing on the State's petition. At the outset of the hearing, Mackenzie signed a final and irrevocable consent to E.H.'s adoption by his maternal grandparents and the court ordered her parental rights terminated. Respondent's counsel then made an oral motion to continue the matter, noting respondent had recently been released from the Illinois Department of Corrections (DOC), had reached out to his caseworker, obtained a substance abuse assessment, and was trying to get a domestic violence assessment. The court denied respondent's motion and proceeded with a hearing as to respondent's fitness.

¶ 7 Ultimately, the trial court found respondent unfit on the basis of depravity; failure to make reasonable progress toward E.H.'s return to his care from September 6, 2017, through

June 6, 2018; and respondent's repeated incarceration. With respect to the ground of depravity, the court noted that evidence was presented showing respondent had prior felony convictions for aggravated battery to a police officer in May 2010, mob action in April 2012, and domestic battery against Mackenzie in August 2016. It found respondent's convictions were for "crimes of violence" and "crimes in which alcohol was involved." The court concluded that a presumption of depravity arose from defendant's criminal history and that it was not rebutted by evidence of respondent's attempt to engage in services after his DOC release in December 2018 or by his participation in DOC programs. The court stated as follows:

> "And yes, completion of certain course work is admirable ***. But [the programs did not] address the issues that were the heart of the case which are a significant substance abuse problem and a significant problem with anger and domestic violence, which was the basis for the adjudication in this case. And based upon your testimony, this is not—the problems with substances and with domestic violence or just anger management or violence issues are not recent problems. There is a history of these types of problems going all the way back to 2010, even before [E.H.] was born."

¶ 8 The trial court next addressed the ground of repeated incarceration, stating that from the evidence presented it was "absolutely clear" that respondent had been repeatedly incarcerated. It identified two different periods of incarceration for respondent between the time of E.H.'s birth in January 2016 and the filing of the State's petition for adjudication of wardship in July 2017. The court then found that respondent had been incarcerated for over 13 months of the approximate 17-month period that E.H.'s case had been pending. Evidence at the hearing showed respondent was incarcerated for approximately the first two months that E.H.'s case was pend-

ing, from July 13 to September 16, 2017; incarcerated from October 29 to November 2, 2017, for driving under the influence (DUI), driving on a suspended license, and violating his probation; and imprisoned in DOC from January 2 to December 11, 2018, after his probation in his 2016 domestic battery case was revoked. The court noted E.H. was just shy of three years old and estimated that respondent had been incarcerated greater than 50% of E.H.'s entire life. Further, the court determined that respondent's incarcerations had prevented him from discharging his parental responsibilities.

¶ 9 Finally, the trial court addressed the ground of whether respondent had made reasonable progress toward E.H.'s return home. It again referenced the amount of time respondent had been incarcerated while E.H.'s case was pending. The court determined that, by his choices and actions, respondent had removed himself "from the ability to care for [his] child" and failed to make reasonable progress toward E.H.'s return home.

¶ 10 At the conclusion of the fitness hearing, respondent's counsel asked the trial court "to go out a couple of months for the best interests [hearing]." The court denied the request due to "the age of the case and the age of the minor."

¶ 11 In January 2019, approximately two weeks later, the trial court conducted the best-interest hearing. Initially, the court took judicial notice of the entire court file at the State's request and with no objection from respondent. The court then stated that it had reviewed a best-interest report prepared by the court appointed special advocate (CASA) and filed on December 20, 2018. The report showed that E.H. was removed from his parents' care in July 2017 following an incident of domestic violence. According to the report, a bystander called the police after observing respondent punch Mackenzie while she sat in a vehicle with E.H. The parents had a history of domestic incidents that were documented by the police and they were previously "in-

dicated" in January 2017 for "Substantial Risk of Physical Injury/Environment Injurious to Health and Welfare by Neglect."

¶ 12 The best-interest report further showed that E.H. had been in foster care since the July 2017 domestic violence incident. However, he was placed in relative foster care in the same home he had resided in for most of his life. E.H. was described as being well adjusted to the home, happy, and thriving in his environment. He was also reported to have a strong attachment to his foster family and his foster mother in particular. E.H.'s foster family wanted to adopt him.

¶ 13 Respondent and E.H. were described as having a good relationship, and respondent was noted to be "very engaged" with E.H. during visitations. However, the report also indicated that due to his incarcerations, respondent's visitations with E.H. were sporadic. In January 2018, respondent was in DOC's custody and, thereafter, had only three visits with E.H., occurring in June, July, and October 2018. E.H. "did not express any separation anxiety at the end of the visits." Respondent was also permitted to have phone contact with E.H. They spoke once every two weeks. Due to E.H.'s age and attention span, the calls lasted five to six minutes. E.H.'s foster mother reported that E.H. was disinterested in the phone calls and did not want to speak to respondent when he called.

¶ 14 The report further showed that respondent had largely been unable to engage in services due to his imprisonment. While in prison, respondent expressed interest in enrolling in vocational classes. He also made requests to enroll in DOC's fatherhood program and a substance abuse program. However, due to limited availability and respondent's expected release date, respondent was not accepted into either program. The recommendation from the best-interest report was to terminate respondent's parental rights.

¶ 15 At the hearing, the State further presented the testimony of Jessica Dillard, the

family's caseworker with the Center for Youth and Family Solutions. Dillard stated she had no disagreement with anything contained in the best-interest report. She had observed E.H. in his foster home and stated he was "bonded with everyone in the household." E.H. appeared to be a happy, normal child.

¶ 16 Dillard testified that respondent was imprisoned in DOC from January 2 to December 11, 2018. She estimated that if parental rights were not terminated and respondent engaged in all of his services, it would take "[a]t least a year" before she could recommend that he should be found fit to care for E.H. Dillard testified that it was her opinion that the goal for E.H. should be adoption. She had no concerns about E.H. being integrated into his foster family, stating that to her knowledge E.H. had "always lived with them" and had no memory of ever living anywhere else.

¶ 17 On cross-examination, Dillard testified that after respondent was released from DOC, he contacted her regarding his services and "was trying to get a domestic violence assessment." She was also aware that respondent participated in courses while in DOC and agreed that it was her opinion that respondent "participated to the best of his ability in any possible services while he was incarcerated." However, she asserted that the classes he took did not really apply to his service plan. Specifically, Dillard testified that defendant took an introductory substance abuse class but noted that the class did not qualify as substance abuse treatment. Although there was nothing more respondent could have done to engage in necessary services while he was in DOC, Dillard believed that respondent could have made a better effort to engage in services when he was not in custody.

¶ 18 Dillard also testified that she had observed visits between respondent and E.H. She stated E.H. recognized respondent and loved him. Dillard believed the two had a good rela-

tionship and had no concerns about how respondent treated E.H.

¶ 19 On further examination, Dillard reiterated that she believed it would be at least a year before E.H. could be returned to respondent's care. The two main concerns for respondent were substance abuse and domestic violence issues. Even if respondent were to engage in and complete his services, there would be an additional period of time needed to ensure that he was able to utilize what he learned. Dillard additionally testified that E.H. loved his foster parents. His foster parents had two daughters who were also E.H.'s aunts and E.H. was "crazy about them."

¶ 20 Mindy Pfahl testified she was E.H.'s maternal grandmother and foster parent. E.H. had lived in her home his entire life. If respondent's parental rights were terminated, she believed it would "[a]bsolutely" be in E.H.'s best interest to be adopted into her family. She stated she was 40 years old, had no health concerns, and was financially able to support E.H. even without a State subsidy.

¶ 21 Mindy testified she did not work outside of the home and the family lived close to the public library, where she and E.H. visited almost daily. She described E.H.'s interactions with his extended family members, noting he had a lot of contact with her parents, who had been approved by DCFS to babysit E.H. Mindy stated she had been in contact with respondent's family members and that E.H. saw respondent's mother a few times a month. E.H. had also visited with respondent's father and aunt. Mindy testified she would continue to permit contact between E.H. and respondent's family if she were to adopt E.H. She believed such contact was in E.H.'s best interests. She testified that it was her plan to "keep everybody in [E.H.'s] life," stating as follows:

"I believe [E.H.] needs to be with his family. He knows who his mother and father

> are. He knows that we are his grandma and grandpa. We are not looking to change that in his eyes. And until someone gives me a reason to believe that [E.H.] shouldn't be around [Mackenzie and respondent], I think it's in [E.H.'s] best interest to see his family and be with them."

¶ 22 Mindy stated did not feel comfortable with respondent having unsupervised contact with respondent "at this point" but hoped that he could become fit in the future and that she could trust him to watch E.H. She did not believe that respondent would become fit "anytime in the near future."

¶ 23 On further examination, Mindy testified that Mackenzie and respondent lived in her home at the time of E.H.'s birth. Aside from a period of approximately four days when Mackenzie and respondent moved out of her home with E.H., E.H. lived in Mindy's home from birth. Mindy testified she always drove E.H. to his doctor's appointments. She recalled a couple of occasions when respondent went to E.H.'s appointments but testified that it was otherwise "always [her] and Mackenzie."

¶ 24 Ronald Pfahl Jr., testified that he and Mindy had been married for 20 years. He was 55 years old and had no health concerns. Ronald stated he worked outside the home and had both a full-time and a part-time job performing information technology (IT) work. He testified that also living with him and Mindy were the couple's two daughters, ages 13 and 14. If respondent's parental rights were terminated, it was also Ronald's intention to adopt E.H. Ronald testified he loved E.H., that E.H. had been in his home since birth, and he could not imagine life without E.H.

¶ 25 Respondent testified on his own behalf, stating that E.H. was almost three years old and that he had always been in E.H.'s life. At the time E.H. was born, he was 23 years old

and living with Mindy and Ronald to save money. Although he lived with Mindy and Ronald, he nevertheless was responsible for E.H. and cared for him by changing his diapers, putting him to bed, feeding him, giving him baths, and playing with him. Respondent further testified that he had visits with E.H. after E.H. was taken into care. He stated that E.H. recognized him and called him "Daddy." The longest respondent had gone without seeing E.H. was about six months and his absence was due to his imprisonment in DOC.

¶ 26 Respondent asserted that it was not in E.H.'s best interest to terminate his parental rights because he had been trying to do everything he could to get back on his feet after being released from prison. He stated he grew up without a father and did not want that for E.H. Respondent also testified that he knew he "messed up in the past" but was trying to be a better person and a better father because that is what E.H. deserved. He agreed that some of the services in his service plan would help him become a better parent and asserted that he looked forward to completing those services. While in DOC, respondent tried to get into a substance abuse program and an anger management program; however, DOC stopped doing those programs "because they didn't have the staff." He also attempted to get into a fatherhood program and other programs but the waiting lists were long and he never got into the programs. Respondent testified that he was able to complete a psychology course for family matters, a career technologies course, and an introduction to substance abuse course. He took those classes to better himself, better his thinking, and to understand the consequences of his actions.

¶ 27 Respondent stated that he was currently on parole and not in violation of that parole. He understood that one of the trial court's considerations was permanency for E.H. and that E.H. had been in care for almost a year and a half. Respondent acknowledged that E.H. did not "feel the same way toward [him] that he used to because [respondent was] not there." However,

he was trying to rebuild that relationship and asked the court for more time to allow him to do that. Regarding E.H. continuing in foster care, respondent stated as follows:

> "I mean it's no different than when he was born living there when he was born [*sic*]. He's in the same house. He's in the same environment. He's got the same people around him. He's doing the same things he was when we had him when we lived there. So nothing has really changed, so he doesn't know he's in the system. He's not with strangers. He's not with random people. He's with people that he knows so—that he's been around his whole life, so it's no different for him. The only thing that's different is the court dates and DCFS involvement and them being in his life."

¶ 28 On cross-examination, respondent indicated he went to prison because he "caught a DUI" and missed an appointment with his probation officer. He agreed that he essentially "lost a year" by going to prison. Although respondent understood that it was his fault that he went to DOC, he stated that DOC hindered his ability to complete his services and, as a result, he should "get another chance." He did not believe E.H. would be negatively affected if he were allowed more time to complete his services because E.H. was "not really in a different environment" and was living with the same people. Respondent agreed that E.H. was comfortable in his foster home and had stability. He also testified that he had no issues with the care that E.H. was receiving.

¶ 29 Ultimately, the trial court determined that termination of respondent's parental rights was in E.H.'s best interests. It determined that the factors for consideration when determining a child's best interests weighed in favor of termination. In particular, the court stated that "[p]ermanency" was one of the "strongest factors" supporting termination, finding as follows:

> "The case has been going on for a year and a half. The court believes it would take a substantial amount of time for the court to ascertain or determine whether any alternative placement would be appropriate and available, and that's again, another year would be a quarter of [E.H.'s] life."

Following the hearing, the trial court entered a written order, terminating respondent's parental rights.

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 A. Best-Interest Determination

¶ 33 On appeal, respondent does not challenge the trial court's finding that he was unfit. Instead, he argues only that the court's best-interest determination was against the manifest weight of the evidence.

¶ 34 Under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-29(2) (West 2016)), a trial court may involuntarily terminate parental rights where it finds, by clear and convincing evidence, that a parent is unfit based on grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) and that termination is in the minor's best interest. *In re M.I.*, 2016 IL 120232, ¶ 20, 77 N.E.3d 69. At the best-interest stage of termination proceedings, the State has the burden of proving that termination is in a minor's best interest by a preponderance of the evidence and the trial court "must give full and serious consideration to the child's best interest." *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290 (2009). Additionally, " '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)).

¶ 35 The Juvenile Court Act sets forth several factors for consideration when determining a minor's best interest. 705 ILCS 405/1-3(4.05) (West 2016). Those factors must be considered in the context of the child's age and development needs and include (1) the child's physical safety and welfare; (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; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks associated with substitute care; and (10) the preferences of the persons available to care for the child. *Id.*

¶ 36 On review, a trial court's best-interest determination will not be reversed unless it is against the manifest weight of the evidence. *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 53, 74 N.E.3d 1185. "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." *Jay H.*, 395 Ill. App. 3d at 1071.

¶ 37 Respondent first argues that termination was not in E.H.'s best interest because he engaged in various programs while imprisoned in DOC and was trying to engage in services upon his release from prison. Although evidence was presented to support these contentions, the evidence also showed that respondent made very little movement toward actually addressing the issues that caused E.H.'s removal from his care. Respondent's caseworker testified that, assuming respondent complied with his service plan requirements, it would be at least one year before E.H. could be returned to his custody. While respondent professed an intention to fully engage in services in the future, his past behavior casts doubt on his assertions. Respondent's history is significant for substance abuse, anger, and domestic violence issues. The evidence indicates he was on probation for a domestic violence conviction when the domestic violence incident that

precipitated this case occurred. Additionally, even after E.H.'s case was pending, respondent's contacts with law enforcement persisted. In particular, respondent acknowledged being charged with DUI in October 2017 and failing to abide by the terms of his probation in a 2016 domestic violence case. Ultimately, there is uncertainty regarding respondent's ability to fully engage in services and the length of time it would take him to become a fit parent with the ability to care for E.H.

¶ 38 More importantly, the evidence showed E.H. was happy and thriving in his foster home and that he had the opportunity for permanency through adoption. The record reflects E.H. was in the care of his maternal grandparents and had resided in that home for essentially his entire life. He had stability in the home, and, contrary to respondent's assertions on appeal, evidence was presented that E.H. was bonded to his foster family. Additionally, respondent himself acknowledged that his relationship with E.H. had suffered due to the absences his incarcerations caused.

¶ 39 On review, respondent challenges the trial court's reliance on permanency as a factor favoring termination. He argues that E.H. has no concept of permanency due to his young age and "because he's never changed who he lives with." However, as the State points out, the relevant consideration is "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[.]" 705 ILCS 405/1-3(4.05)(g) (West 2016). Respondent's argument ignores that the foster home is where E.H. has experienced stability and developed bonded relationships with his grandparents as his parental figures. Evidence that E.H. had resided in his foster home since birth only weighs in favor of finding that his sense of attachment was connected with that home and family. It further supports a finding that removal from that home, whether now or in the future,

would be disruptive to E.H. and not in his best interests.

¶ 40 Finally, respondent argues that the factor of "the risks attendant to entering and being in substitute care" (*id.* § 1-3(4.05)(i)) favored "non termination of parental rights" because E.H. sustained an injury while residing in the foster home. First, we note that the only evidence of an injury to E.H. while living with his maternal grandparents was a notation in a June 2018 CASA permanency report contained within the common law record. E.H.'s injury was never explicitly discussed at the best-interest hearing, nor was it argued as a basis for "non termination" by respondent. In fact, respondent testified at the hearing and represented that he had no concerns about the care E.H. received in his foster home. Second, the information relating to the injury fails to indicate it was the result of abuse or neglect in the foster home. Rather, the CASA report shows only that E.H. injured his left wrist in a fall and that his foster mother immediately sought medical care for his injury. We find no support in the record for respondent's contention that this factor weighed against termination of his parental rights.

¶ 41 Here, evidence showed E.H. resided with his maternal grandparents since birth. He was bonded to them and thriving in their home. Conversely, it was uncertain as to when respondent would address his significant substance abuse, anger, and domestic violence issues such that he could be determined fit and have E.H. returned to his care. Moreover, we find that respondent's arguments on appeal improperly focus more on his interest in maintaining a parent-child relationship rather than on what is in E.H.'s best interest. Accordingly, we find the trial court's best-interest determination was not against the manifest weight of the evidence.

¶ 42 B. Motion to Continue

¶ 43 On appeal, respondent also argues the trial court erred in denying his motion to continue the best-interest hearing. He contends he was "clearly serious about his service plan"

and that there was a "rush to judgment" by the court that was not in E.H.'s best interest.

¶ 44 "Under Illinois law, a party has no absolute right to a continuance" and "[a] trial court's decision to deny a continuance will not be reversed absent an abuse of discretion." *In re Tashika F.*, 333 Ill. App. 3d 165, 169, 775 N.E.2d 304, 307 (2002). "Additionally, the denial of a request for continuance will not be grounds for reversal unless the complaining party has been prejudiced by such denial." *Id.*

¶ 45 Here, the record reflects the trial court denied respondent's motion to continue on the bases "of the age of the case and the age of the minor." The record reflects E.H. was nearly three years old and, at the time of the court's ruling, his case had been pending for over 17 months with little engagement in required services by respondent. Further, we note that the basis for respondent's request for a continuance was to give him more time to participate in his required services. However, at that point in time, respondent had already been found unfit and the focus of the case shifted from respondent's actions to E.H.'s best interest.

¶ 46 Additionally, respondent has failed to establish that he was prejudiced by the trial court's denial of his motion. Even assuming he fully engaged in services, a continuance of "a couple of months" as requested by his counsel would not likely have changed the result of the best-interest hearing. Specifically, the record reflects that respondent was a long way off from addressing his substance abuse and domestic violence issues, while E.H. was thriving in a loving and stable foster home, bonded with his foster family, and had the opportunity for permanency through adoption. Accordingly, we find no abuse of discretion by the trial court.

¶ 47 III. CONCLUSION

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

¶ 49 Affirmed.