2011 IL App (2d) 110681-U
No. 2-11-0681
Order filed December 23, 2011

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

---

| | | |
|---|---|---|
| In re MARIAH M., a Minor | ) | Appeal from the Circuit Court |
| | ) | of Winnebago County. |
| | ) | |
| | ) | No. 08-JA-156 |
| | ) | |
| | ) | Honorable |
| (The People of the State of Illinois, | ) | Patrick L. Heaslip and |
| Petitioner-Appellee v. Bobby M. | ) | Mary Linn Green, |
| Respondent Appellant). | ) | Judges, Presiding. |

---

JUSTICE McLAREN delivered the judgment of the court.
Justices Bowman and Zenoff concurred in the judgment.

**ORDER**

*Held*: The trial court's finding of unfitness and termination of respondent's parental rights was not against the manifest weight of the evidence where respondent had little contact with the minor; he first met her when she was 18 months old; he was incarcerated during most of her life; when he was not incarcerated, he took no steps to find her and violated his parole.

¶ 1 On October 15, 2008, the minor, Mariah M., was adjudicated neglected and made a ward of the court.[1] On August 5, 2011, the trial court found respondent, Bobby M., unfit pursuant to section 50/1(D) of the Adoption Act (750 ILCS 50/1 (D) (West 2008)) and, after a best interests

---

[1]Mariah's two half-brothers were also placed in foster care but are not part of this appeal.

hearing, terminated his parental rights under section 2-29 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-29 (West 2008)). Respondent timely appealed. We affirm.

¶ 2 BACKGROUND

¶ 3 Mariah, born June 20, 2005, is the biological child of Jessica S. and respondent, Bobby M. At the time of these proceedings, Jessica was married to Mike S. On April 23, 2008, the State filed a neglect petition pursuant to section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2006)), alleging that Mariah was neglected in that that her environment was injurious because both her mother, Jessica, and her stepfather, Mike, had substance abuse problems; two separate drug raids had occurred at Mariah's home; and Jessica and Mike had engaged in domestic violence in her presence. After a temporary shelter care hearing, the court found probable cause that Mariah was neglected, and granted temporary custody and guardianship to the Department of Children and Family Services (DCFS), with discretion to place her with a responsible relative or in foster care. Jessica stated that respondent was Mariah's father, that they had never married, that paternity testing was never accomplished, and that he had nothing to do with Mariah The trial court directed DCFS to locate her putative father, respondent, and set May 1, 2008, for a continued shelter care hearing.

¶ 4 On May 1, 2008, the shelter care hearing resumed. It was established that DCFS had unsuccessfully attempted to locate respondent, and on the same date, the clerk issued a summons. Thereafter, on June 20 and July 30, the hearing was continued. Publication was effected.

¶ 5 On October 15, 2008, the trial court found that Mariah was neglected under Section 405/2-3 of the Act (705 ILCS 405/2-3 (West 2008)). after her mother, Jessica, stipulated to count 1 of the neglect petition; custody and guardianship was granted to DCFS. Respondent was defaulted for failure to appear. The matter was continued to April 14, 2009, for a permanency review; on that date, it was continued until October 13, 2009.

¶ 6 On October 13, 2009, respondent appeared. He stated that he was informed "at the end of last year" that Mariah was in DCFS custody. He also stated that he had been incarcerated and had been released on June 8, 2009. The court ordered a paternity test and the case was continued to April 12, 2010.

¶ 7 On April 12, respondent appeared. A caseworker from Evangelical Child and Family Agency (ECFA) testified that respondent had neither visited with Mariah nor completed a substance abuse assessment. He stated that respondent told him that he had completed parenting classes.

¶ 8 The trial court again ordered paternity testing between Mariah and respondent, and continued the case until October 12 for permanency review.

¶ 9 On October 12, the ECFA caseworker stated that respondent had not visited with Mariah, but had completed the paternity test on October 8 and that the results were pending. Mariah was "five or six" and was receiving sexual abuse counseling.[2] The caseworker stated she was doing "very well" in the placement in the relative foster home. The foster parents were prepared to adopt Mariah and her two siblings.

¶ 10 Respondent stated that he had been arrested in Peoria in May 2010 for burglary. In October 2010, he was living in White Oaks, a rehabilitation center in Peoria, Illinois, but he would be leaving the next week and would be looking for a job and for a residence. He also stated that he had completed a parenting certification and as well as a certificate for substance abuse, and would be obtaining two more certificates in the next 15 months.

---

[1]The perpetrator was her step-father. There was an indicated finding by DCFS but no criminal charges were filed against him.

¶ 11 The court found that it was in the best interests of all three children to change the permanency goal to substitute care pending the court's determination of parental rights. The court found that the parents had not made reasonable efforts to correct the conditions that were the basis for the removal of the child. See section 750 ILCS 50/1(D)(m) (West 2008).

¶ 12 On January 26, 2011, based on the paternity test results, the trial court found that respondent was the biological father of Mariah The State filed a motion for termination of parental rights and power to consent to the adoption of Mariah. Pertaining to respondent, the petition alleged unfitness in that he, *inter alia*, had "abandoned the child"; "failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare"; "deserted the child"; was "depraved"; "has shown evidence of intent to forego his parental rights" as evidenced by his failure for a period of 12 months to visit, communicate with the child or agency, or maintain contact with or plan for the future of the child; or as manifested by his failure to establish paternity under the Illinois Parentage Act of 1984 (750 ILCS 45/1 (West 2010)).[3] The case was continued to March 30, 2011.

¶ 13 On that date, respondent was not present but was represented by appointed counsel. The case was continued to May 12, 2011, on which date the court confirmed that respondent was in custody in Peoria County.

¶ 14 On August 4, 2011, a trial was held on the petition with respondent present. Respondent testified that he was born in 1982; he had been convicted of possession of a controlled substance in 2004 and was sentenced to 18 months in the Department of Corrections (DOC); he was convicted of another count of possession of a controlled substance, also in 2004, and sentenced to three years'

---

[2]Three other counts were dismissed by the State after the close of evidence in the fitness hearing.

imprisonment; he was convicted of forgery and sentenced to 30 months' imprisonment. In 2010 he was convicted of burglary in Peoria County and sentenced to four years' imprisonment. He had been in custody from May to August 2010, when he was released on bond. In February 2011, he was returned to custody. His projected parole date was November 17, 2012.

¶ 15 Respondent testified that he first time he saw Mariah was when she was 18 months old. During the time that he was out of prison on bond, he did not visit Mariah because he was in a drug program and was not allowed to leave the City of Peoria. He never attempted to be declared Mariah's father and to obtain visitation rights, never sent cards or gifts, and had not talked to her for a "couple [of] years."

¶ 16 After the hearing concluded, the trial court found that respondent was shown to be unfit by clear and convincing evidence under counts 1, 2, 3, 4, and 8. The trial court then proceeded to a best interests hearing. Mariah's foster mother, Randi Nisius, testified that, since April 2009, Mariah and her two half-brothers had lived with her and her husband, Mariah's biological uncle. She stated that Mariah was in counseling for prior sexual abuse but had no problems in school. Mariah liked to play games and was learning how to read; she loved to do sports, and was included in all family activities. She also stated that Mariah had expressed to her that she would like to be adopted by them. The ECFA caseworker, Heather Murphy, testified that Mariah and her foster mother were very close with "all positive interactions." She stated that it was obvious that both foster parents "cared very much about the kids." She also stated that respondent "has been in and out of jail, hasn't made significant effort for six years of this girl's life." She opined that "[the children] should absolutely be adopted by their current foster parents."

¶ 17 The trial court found that the State had proven by a preponderance of the evidence that it was in the minor's best interests to terminate respondent's parental rights. The trial court then found that it was in the best interests of the minor to set a permanency goal as that of adoption.

¶ 18 Respondent timely appealed.

¶ 19 ANALYSIS

¶ 20 At an unfitness hearing, the State must prove parental unfitness by clear and convincing evidence. *In re D.T.*, 212 Ill. 2d 347, 363 (2004). "A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make." *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90 (2004). Pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2002)), the State must prove parental unfitness by clear and convincing evidence of at least one statutory ground of parental unfitness. *In re Katrina R.*, 364 Ill. App. 3d 834, 842 (2006). We will not reverse the trial court's decision unless the factual findings are against the manifest weight of the evidence. *Tiffany M.*, 353 Ill. App. 3d at 890.

¶ 21 Count 8 of the petition to terminate parental rights, filed January 26, 2011, alleged that respondent was unfit in that:

> "He has shown evidence of intent to forgo his parental rights, whether or not the child is a ward of the court, (1) as manifested by his failure for a period of twelve (12) months; (I) to visit the child, (ii) to communicate with the child or agency, although able to do so and not prevented from doing so by an agency or court order, or (iii) to maintain contact with or plan for the future of the child, although physically able to do so, or (2) as manifested by his failure, where he and the mother of the child were unmarried to each other at the time of the child's birth, to commence legal proceedings to establish his paternity under the [statute]

> within thirty (30) days of being informed *** that he is the father or the likely father of the child ***."

This language mirrors the language of section 1 (D)(n) of the Adoption Act (750 ILCS 50/1 (D)(n) (West 2010)) which states that unfitness may be established "any one or more" of the enumerated grounds. See *C.W.*, 199 Ill. 2d at 210 ("Although section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be deemed 'unfit,' any one ground, properly proven, is sufficient to enter a finding of unfitness.").

¶ 22 Respondent, in three sentences, contends that because he was "in and out of prison or jail during most of the child's life" and when he was not incarcerated "he was either in a residential recovery program, or he was trying to locate the child and the child's mother," the failure to file the petition "can be attributed to the frustration he experienced maintaining contact." We disagree.

¶ 23 Respondent's testimony established that he learned of Mariah and his possible parentage when she was 18 months old, but he never attempted to establish his paternity in a civil action. Therefore, we agree with the State that his failure to commence legal proceedings within 30 days of learning of her existence evidenced his intent to forgo his parental rights. We also agree with the State that, although respondent stated he did not know where Jessica and Mariah were, he could have filed an action that would have compelled Jessica's presence in court in order to find Mariah. Further, there was no evidence that it was impractical for him to file a parentage petition or that his failure to do so was due to circumstances beyond his control. Indeed, he could have asked his attorney to locate her, and although he stated that he called the DCFS caseworker a couple of times a month, he never sought to discover Mariah's whereabouts. Instead, he stated that he tried to "ask around."

¶ 24 In support of this argument, respondent cites one case, *J.S.A. v. M.H*, 224 Ill. 2d 182 (2007), where, after the father of a child born out of wedlock petitioned the court in order to establish his paternity, the mother and her husband, who alleged that they were the "biological parents" of a child and who had never lost rights to that child, filed a legal proceeding of their own to adopt their own "natural child." We fail to see an analogy to the facts of this case.

¶ 25 Pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2002)), the State must prove parental unfitness by clear and convincing evidence of at least one statutory ground of parental unfitness. *In re Katrina R.*, 364 Ill. App. 3d 834, 842 (2006). We find the State has met its burden.

¶ 26 Once a parent's unfitness has been determined, the trial court must consider whether it is in the best interests of the child to terminate parental rights pursuant to the Juvenile Court Act (705 ILCS 405/1-3 (West 2008)). At the second stage of the termination hearing, at which the court considers whether it is in the best interest of the minor that parental rights be terminated, the full range of the parent's conduct can be considered. *In re C.W.*, 199 Ill. 2d 198, 217 (2002). In evaluating the minimum burden of proof at a best-interests hearing, the Illinois supreme court, in *In re D.T.*, 212 Ill.2d 347 (2004), applied the test developed in *Mathews v. Eldridge*, 424 U.S. 319(1976), and concluded:

> "[that] due process does not require imposition of a clear and convincing standard of proof at a best-interests hearing, and that the preponderance standard of proof adequately ensures the level of certainty about the court's factual conclusions necessary to satisfy due process." *D.T.*, 212 Ill.2d at 366.

Our review of the ultimate determination to terminate parental rights is under the manifest weight of the evidence standard. *Tiffany M.*, 353 Ill. App. 3d at 892.

¶ 27 In determining that the best interests of Mariah necessitated termination of respondent's parental rights, the trial court stated:

> "What I must do, however, is base my decisions on obviously the evidence of what's been presented and what's in the best interests of Mariah as well as her siblings ***. I know you're not going to be out of incarceration for a while. I think you know that she needs permanency, she needs stability.
>
> So based upon the evidence as presented today and based upon the factors that the law gives me as the Court called the best interest factors, there are a number of things that must be considered. I've considered those, and in this Court's opinion, the State has met its burden by a preponderance of the evidence in proving those best interest factors, and the Court finds that it's in Mariah's *** best interests *** for her to be part of that family with her siblings, where she's been for over two years ***."

¶ 28 Mariah was adjudicated neglected on October 15, 2008, but respondent was not involved in the case until October 2009, when he appeared in court and stated that he had learned that Mariah had been adjudicated neglected in late 2008. He explained that he could not do anything regarding Mariah until he was released from prison in June 2010. However, at the court hearings in April and October 2010, the caseworkers testified that he had not visited with her. By May 2010, he had violated his probation and was incarcerated. In January 2011, he was incarcerated with an expected parole date of November 2012. Even though he attended parenting classes, obtained a parenting certification, a substance abuse certification, and apparently had plans to continue with classes, the fact is that he was arrested again, violated his probation, and was returned to prison. At no point in Mariah's life did she have a relationship with respondent; instead, she lived with her mother and step-father until DCFS removed her from their custody. Afterward she, along with her two half-

siblings, were in foster care with her maternal uncle and his wife, who were willing and able to adopt all three children.

¶ 29 Under these circumstances, we hold that it was not against the manifest weight of the evidence for the trial court to find that Mariah's best interests were served by terminating respondent's parental rights.

¶ 30 For these reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 31 Affirmed.