

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 2011

<i>In re</i> E.M., J.M. and T.M.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors,)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	Appeal No. 3-11-0489 (Consolidated)
Petitioner-Appellee,)	Circuit Nos. 11 JA 47, 48, and 49
)	
v.)	
)	
GORDON M.,)	Honorable
)	Mark E. Gilles,
Respondent-Appellant).)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The court’s order finding that it was in the best interests of the minor to terminate father’s parental rights was not against the manifest weight of the evidence where father was found unfit, based on depravity, and the children were bonded with their maternal grandparents who desired to adopt the children.

¶ 2 Respondent-appellant Gordon M. is the father of three minor children, E.M., J.M., and T.M. On February 15, 2011, the State filed a separate petition on behalf of each child asking the court to find the children were neglected because their environment was injurious to their

welfare. The petitions alleged father stabbed and killed the children's mother in the presence of E.M. and T.M. On March 28, 2011, the State filed a concurrent petition, on behalf of each of the three children, requesting the court to terminate the parental rights of father on the grounds of depravity based upon killing the children's mother.

¶ 3 On May 20, 2011, the court found the State proved both petitions. After a best interests hearing, the court found that it was in the best interests of the three children to terminate the parental rights of father and authorize the Department of Children and Family Services (DCFS) to consent to the adoption of the children.

¶ 4 Father filed a timely appeal, challenging only the trial court's finding that it was in the children's best interests to terminate his parental rights. We affirm.

¶ 5 **BACKGROUND**

¶ 6 Respondent-appellant Gordon M. is the father of three minor children: E.M., born March 14, 1996; J.M., born March 15, 1999; and T.M., born January 21, 2008. The mother of the children died on January 31, 2011. On February 4, 2010, the State filed a neglect petition alleging the children's environment was injurious to their welfare because father stabbed and killed the mother of the children in the presence of both E.M., who was 14 years old at the time, and T.M., who was 3 years old. The court entered a temporary shelter care order placing the children with DCFS on February 16, 2011. DCFS placed the children with their maternal grandparents. The court also entered an order of protection, at the same time, ordering father to have no contact with the children.

¶ 7 On March 28, 2011, prior to adjudication on the initial petition, the State also filed a concurrent petition, on behalf of each of the three children, requesting the court to terminate the

parental rights of father on grounds of depravity based on killing the children's mother. At the close of the combined adjudicatory hearings, the court found the State proved that the children were neglected based on an injurious environment by a preponderance of the evidence. The court also found that the State proved father unfit, under the concurrent petition to terminate father's parental rights, by clear and convincing evidence.

¶ 8 The court received the best interests report as evidence during a combined dispositional and best interests hearing. That report documented that father stabbed mother numerous times with a knife while E.M. unsuccessfully attempted to protect her mother. Father then turned around and "made several steps toward [E.M.]," so she fled the house with her three-year-old brother, T.M. According to the report, mother was pronounced dead at the scene of that domestic violence incident, on January 31, 2011. On the same date, father was transported to the hospital after he stabbed himself at the scene.

¶ 9 Pursuant to court order, all three children remained with their maternal grandparents following the death of their mother. The best interests report stated that the maternal grandparents were willing and able to adopt all three children. According to the report, E.M. stated that she did not want to live with her grandparents or her father. Instead, E.M. wanted to live with younger parental figures. E.M. minimally participated in counseling, as of the date of the report, and refused to talk to the caseworker.

¶ 10 According to this report, pursuant to court orders, the children had not visited with their father since the death of their mother. Father, through his attorney, refused to speak with the caseworker who was preparing the report for the dispositional and best interests hearings and, at the time of the hearing, father remained incarcerated in the Peoria County jail awaiting trial on

the murder charge. Therefore, the worker was unable to determine whether there would be services available to father through her agency.

¶ 11 According to the grandparents, the two younger children had a good relationship with father before the incident, while E.M. referred to father as “Chip.” The caseworker, in her report, stated that, although there are difficulties between E.M. and her grandparents, the grandparents shared a strong relationship with the two younger children. T.M. now referred to them as “dad” and “mom.” The best interests report also indicated that the grandparents intended to either remodel their current home or purchase a new home so there was more room for the children. The grandparents wished to adopt all three children.

¶ 12 The court held the dispositional/ best interests hearing on June 10, 2011. At the close of this hearing, the court found that it was in the best interests of the minors that father’s parental rights be terminated, and granted DCFS the power to consent to adoption.

¶ 13 Father filed a timely notice of appeal challenging the court’s finding that it was in the best interests of the minors to terminate his parental rights.

¶ 14 ANALYSIS

¶ 15 In the case at bar, father does not challenge the court’s finding of unfitness based upon depravity, but appeals the court’s finding that it was in the children’s best interests to terminate his parental rights and place the children for adoption. The State contends that the court’s finding was not against the manifest weight of the evidence.

¶ 16 Proceeding on a petition for termination of parental rights involves a two-step, bifurcated approach where the court first holds an “unfitness hearing” (705 ILCS 405/2-29 (West 2000); 750 ILCS 50/1(D) (West 2010)) and, if the parent is found unfit, conducts a subsequent “best

interests hearing.” 705 ILCS 405/2-29(2) (West 2010); *In re D.T.*, 212 Ill. 2d 347, 352-53 (2004). In the instant case, father contends that the court erroneously found that it was in the best interests of the minors to terminate his parental rights and allow DCFS to place the minors for adoption.

¶ 17 After a finding of unfitness, the State must prove by a preponderance of the evidence that it is in the child’s best interests to terminate the parental rights. *D.T.*, 212 Ill. 2d at 365-66.

During the best interest hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest to live in a stable, permanent, loving home. *D.T.*, 212 Ill. 2d at 364.

¶ 18 When determining the best interests of a child for purposes of a termination petition, the court is required to consider a number of statutory factors “in the context of the child's age and developmental needs.” 705 ILCS 405/1-3(4.05) (West 2008). These statutory factors include: a) the physical safety and welfare of the child, 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 (i) where the child actually feels love, attachment, and a sense of being valued; (ii) the child's sense of security; (iii) the child's sense of familiarity; (iv) continuity of affection for the child; and (v) the least disruptive placement alternative for the child; (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 which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; (h) the uniqueness of every family and child; (i) the risks attendant to entering and being in substitute care; and (j) the preferences of the persons available to care

for the child. 705 ILCS 405/1-3(4.05) (West 2008); *In re B.B.*, 386 Ill. App. 3d 686, 698-99 (2008).

¶ 19 On review, we will not reverse a trial court's finding that termination of a parent's rights is in the child's best interests unless it is against the manifest weight of the evidence. *In re D.M.*, 336 Ill. App. 3d 766, 773 (2002); *B.B.*, 386 Ill. App. 3d at 697. A trial court's decision is against the manifest weight of the evidence if the facts clearly demonstrate that the court should have reached the opposite result. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

Here, the record reveals the minors were siblings who had never been separated and had been placed with their maternal grandparents since the date of their mother's death. The two younger siblings adjusted well to their grandparents household as evidenced by strong bonds. Although E.M. was having difficulty adjusting to the grandparents' home, E.M. did not have close relationship with her father either. The best interests report revealed E.M. was not fully engaging or participating in counseling. In spite of these difficulties, the grandparents were willing to provide safe, healthy, and permanent homes which would allow all three siblings to remain together if the court released them for adoption. The grandparents were willing to remodel or replace their current home to accommodate the three children.

The record reveals that father remained in custody awaiting trial on the murder charges and was not available to care for his children. Father did not propose any other suitable caregivers for his children. In addition, the best interests hearing report documented safety concerns based on the allegation that father stabbed mother multiple times in the presence of two of his children and then stabbed himself. Further, when E.M. tried to intercede on her mother's behalf, father took several steps toward E.M. during the stabbing incident, causing E.M. to flee

the residence with T.M.

¶ 20 Based on this information, the trial judge found that the State had established, by a preponderance of the evidence, that it was in the best interests of the minors to terminate father's parental rights. After our careful review of the record, we conclude the trial court's finding regarding the children's best interests was not against the manifest weight of the evidence.

¶ 21 **CONCLUSION**

¶ 22 For the foregoing reasons, we affirm the decision of the trial court terminating father's parental rights.

¶ 23 Affirmed.