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2011 IL App (3d) 110591-U

Order filed December 9, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2011

<i>In re</i> L.H.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-11-0591
)	Circuit No. 09-JA-255
v.)	
)	
Shawn H., Sr.,)	Honorable
)	Mark E. Gilles,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding that it was in the minor's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.
- ¶ 2 The trial court found respondent, Shawn H., Sr., to be an unfit parent. At the best interest hearing, the trial court determined that it was in the best interest of the minor, L.H., to terminate respondent's parental rights. On appeal, respondent argues that the trial court erred when it

found that it was in the minor's best interest to terminate respondent's parental rights. We affirm.

¶ 3

FACTS

¶ 4 On October 8, 2009, the State filed a juvenile petition, alleging that L.H. was neglected because her environment was injurious to her welfare. Specifically, the petition alleged, in part, that L.H. was neglected because: (1) respondent was previously found unfit in case No. 08-JA-82, regarding L.H.'s older brother, S.H.; (2) respondent had multiple positive drug tests in July, August, and October 7, 2008, for cannabis; (3) there had been no subsequent finding of fitness; (4) respondent had not completed services which could lead to the return home of S.H.; and (5) L.H. tested positive for cannabis at birth. Respondent admitted to these allegations.

¶ 5 At the subsequent adjudicatory and dispositional hearing, L.H. was found to be neglected, respondent was found dispositionally unfit, and L.H. was made a ward of the court. Respondent was ordered, in part, to obtain a drug and alcohol assessment, perform four random drug drops a month, attend individual and couples counseling, and obtain and maintain stable housing.

¶ 6 At respondent's permanency review hearings on July 7, 2010, and January 13, 2011, the trial court found that respondent remained unfit by failing to make reasonable efforts. Respondent had not completed a drug and alcohol assessment, his last drug drop was on December 2, 2009, which tested positive for cannabis, he had been discharged from counseling for the third time due to excessive absences, and he had not visited L.H. since July 21, 2010. On February 22, 2011, the State filed a petition for termination of parental rights. The petition alleged that respondent was an unfit parent in that he failed to make reasonable progress toward

the return of L.H. during the nine-month period from December 2, 2009, through September 2, 2010. 750 ILCS 50/1(D)(m)(ii) (West 2010). Respondent's fitness hearing took place on June 29, 2011. After all the evidence was presented, the trial court ultimately found by clear and convincing evidence that respondent did not make reasonable progress toward the return of L.H. during the applicable nine-month period.

¶ 7 The matter proceeded to a best interest hearing on July 27, 2011. In preparation for the hearing, caseworker Dawn Keister filed a best interest hearing report. The report stated that L.H. was born on October 3, 2009, and tested positive for cannabis at birth. She was placed into relative foster care with her godmother upon her release from the hospital on October 7, 2009. It should be noted that L.H. was not placed in a foster home with her brother because neither foster home was able to accommodate two foster children.

¶ 8 The report further stated that L.H.'s basic needs of food, shelter, health, and clothing were met by her foster mother. The foster mother had integrated L.H. into her family, and L.H. referred to her as "mommy." L.H. had a strong bond with her foster mother, and became anxious when she left her during visits. L.H. also had a bond with the foster mother's three children, as well as the children in her neighborhood and at her day care. L.H.'s foster mother was eager to provide permanency for L.H. through adoption. The caseworker was unable to determine if there was a bond between respondent and L.H. because respondent had not attended visitation since July 21, 2010. However, when respondent did visit, the visits were sporadic, and he mostly spent time visiting with his son instead of L.H. Respondent also refused to change L.H.'s diapers or hold her in order to bond.

¶ 9 Respondent testified at the hearing that he and L.H.'s mother could provide a safer home

for L.H. than her foster mother. Respondent testified that he was concerned for L.H.'s safety because a shooting had occurred outside the foster mother's house. The caseworker assured respondent that there were no findings of the home being an unsafe environment. Respondent testified that there were no new incidents that concerned him. Respondent claimed there was a bond between him and L.H., despite his sporadic visitation. Respondent explained that his visitation was sporadic because he wanted to avoid being accused of making threats to caseworkers or disrespecting them.

¶ 10 After reviewing all the evidence and arguments, the trial court found that it was in L.H.'s best interest to terminate respondent's parental rights. Respondent appeals.

¶ 11 ANALYSIS

¶ 12 On appeal, respondent argues that the trial court's finding that it was in the best interest of L.H. to terminate his parental rights was against the manifest weight of the evidence. Specifically, respondent asserts that he and L.H.'s mother could provide a safer home for L.H., that there is a bond between him and L.H., and that L.H. should be given the opportunity to reunite with him in order to strengthen their family ties. We disagree.

¶ 13 On review, we will not disturb the trial court's best interest ruling unless it is contrary to the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31 (2005). A finding is against the manifest weight of the evidence where a review of the record demonstrates that the opposite conclusion is clearly evident. *In re B.B.*, 386 Ill. App. 3d 686 (2008).

¶ 14 At the best interest hearing, all considerations must yield to the best interest of the minor. *In re G.L.*, 329 Ill. App. 3d 18 (2002). It is the State's burden to prove by a preponderance of the evidence that terminating parental rights is in the minor's best interest. *In re D.T.*, 212 Ill. 2d

347 (2004). The trial court must consider several statutory factors, including: (1) the minor's physical safety and welfare; (2) the development of the minor's identity; (3) the minor's familial, cultural, and religious background and ties; (4) the minor's sense of attachment and continuity of relationships with parental figures; (5) the minor's wishes; (6) the minor's community ties; (7) the minor's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of persons available to care for the minors. 705 ILCS 405/1-3(4.05) (West 2010).

¶ 15 Our review of the record indicates that the State proved by a preponderance of the evidence that it was in L.H.'s best interest to terminate respondent's parental rights. L.H. was only four days old when she was placed into relative foster care with her godmother. Despite L.H. living in foster care her entire life, respondent asserts that he still had a bond with L.H. However, it is clear from the record that respondent had a minimal relationship with L.H. due to sporadic visitation, and as of July 21, 2010, respondent stopped visitations altogether.

¶ 16 Respondent also contends that the trial court should have given L.H. an opportunity to reunite with him in order to strengthen their family ties. While it is a primary goal of the Juvenile Court Act of 1987 to preserve and strengthen the minor's family ties, the record does not support respondent's intention or ability to strengthen family ties. See 705 ILCS 405/1-2 (West 2010). Respondent had not visited L.H. in over a year, and when he was visiting, he gave most of his attention to his son. Respondent also refused to change L.H.'s diaper or hold her in order to bond.

¶ 17 By contrast, L.H. was an integral part of her relative foster family. L.H. bonded with her foster family and community, and referred to her foster mother as "mommy." Although L.H. and

her older brother were placed in separate foster homes, this was not against L.H.'s best interest. L.H. had lived with her relative foster mother her entire life and had bonded with the family, and her foster mother loved her and was willing to adopt her. Therefore, permanence for L.H. was best served by terminating respondent's parental rights. Furthermore, there was no evidence from the record that L.H. had a close relationship with her brother because L.H. had lived in foster care since birth.

¶ 18 Respondent also asserts that he was concerned for L.H.'s safety in foster care. Respondent's only evidence in support of this was a shooting that occurred outside the foster mother's house. However, the caseworker assured respondent that there were no findings of the home being an unsafe environment.

¶ 19 Additionally, respondent's failure to cooperate with court-ordered tasks such as random drug testing, as well as his failure to visit L.H. for over a year, shows he is unable to provide a safe and stable environment for L.H. Accordingly, the trial court's determination that terminating respondent's parental rights was in L.H.'s best interest was not against the manifest weight of the evidence.

¶ 20 **CONCLUSION**

¶ 21 For the foregoing reasons, the judgment of the trial court of Peoria County is affirmed.

¶ 22 Affirmed.