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2011 IL App (3d) 110596-U

Order filed December 15, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In re</i> S.H. and L.H.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-11-0596
)	Circuit Nos. 08-JA-82 and 09-JA-255
v.)	
)	
Deshauna F.,)	Honorable
)	Mark E. Gilles,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding that it was in the minors' best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.
- ¶ 2 The trial court found respondent, Deshauna F., to be an unfit parent. At the best interest hearing, the trial court determined that it was in the best interest of the minors, S.H. and 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 minors' best interest to terminate respondent's parental rights. We affirm.

¶ 3

FACTS

¶ 4 The State filed juvenile neglect petitions in case Nos. 08-JA-82 and 09-JA-255 involving respondent's two children. The petition involving S.H. was filed on April 15, 2008, alleging that S.H. was neglected because his environment was injurious to his welfare. The petition alleged, in part, that S.H. was neglected because: (1) S.H. tested positive for cannabis at birth; (2) respondent refused to submit to a drug and alcohol assessment and counseling; and (3) respondent was staying with S.H.'s father, Shawn H., Sr., instead of at her foster home, and on January 28, 2008, at least six shots were fired outside Shawn's home and one bullet landed in S.H.'s crib.

¶ 5 At the adjudicatory and dispositional hearing on September 24 and October 22, 2008, S.H. was found to be neglected, respondent was found dispositionally unfit, and S.H. was made a ward of the court. Respondent was ordered, in part, to obtain a drug and alcohol assessment, perform two random drug drops a month, attend individual and couples counseling, and attend supervised visitation with S.H. Respondent's permanency review hearings concerning S.H. took place from April 1, 2009, through July 7, 2010. At the hearings, the trial court found that respondent was not making reasonable efforts since she failed to participate in drug testing or treatment, and lied to her caseworker about being pregnant with L.H.

¶ 6 The petition involving L.H. was filed on October 8, 2009, four days after her birth. The petition alleged, in part, that L.H. was neglected because: (1) respondent was previously found unfit in case No. 08-JA-82, concerning S.H.; (2) respondent's drug test of October 7, 2008, was positive for cannabis; (3) there had been no subsequent finding of fitness; and (4) L.H. tested positive for cannabis at birth. At the subsequent adjudicatory and dispositional hearing on December 2, 2009,

and January 27, 2010, L.H. was found to be neglected, respondent was found dispositionally unfit, and L.H. was made a ward of the court. Respondent's service plan remained the same as previously ordered, but her drug drops were increased to four times a month, and she was ordered to obtain and maintain stable housing. 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 failed to attend counseling, failed to complete a drug assessment, and only submitted one drug test during the nine-month period, which was positive for cannabis.

¶ 7 On February 22, 2011, the State filed petitions to terminate respondent's parental rights concerning S.H. and L.H. The petitions alleged that respondent was an unfit parent in that she failed to make reasonable progress toward the return of S.H. and L.H. during the nine-month period from December 2, 2009, through September 2, 2010. 750 ILCS 50/1(D)(m)(ii), (iii) (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 S.H. and L.H. during the applicable nine-month period.

¶ 8 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 S.H. had been in foster care since August 28, 2008. The foster home met all of S.H.'s basic needs of food, shelter, health, and clothing. S.H. adjusted to the home very well, and referred to his foster family as his "mom" and "sisters." S.H.'s foster mother had integrated S.H. into her family, and was eager to adopt him. S.H. would look to his foster mother for comfort and guidance, and responded to her discipline. S.H. had a strong bond with the children in his neighborhood, and at his school and day care. S.H. was doing well in school, and his foster mother was dedicated to his success. The report

also noted that during visitations, S.H. appeared to have no bond with respondent, but he did refer to her as "mom." S.H. often defied respondent's direction and discipline. In response, respondent would either ignore S.H. or tell him he was bad. Additionally, respondent often became overwhelmed and frustrated during visits and often asked for help from the person supervising the visit.

¶ 9 The report further stated that L.H. was born on October 3, 2009, and was placed into relative foster care with her godmother upon her release from the hospital on October 7, 2009. L.H. was not placed in a foster home with S.H. because both foster homes were unable to accommodate two foster children. L.H.'s basic needs of food, shelter, health, and clothing were met by her foster mother. L.H. was integrated into her foster family, and referred to her foster mother as "mommy." L.H.'s foster mother was eager to provide permanency for L.H. through adoption. 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. When with her foster family, L.H. was very outgoing and talkative. By contrast, during visitations, L.H. was unable to comprehend that respondent was her mother, and was very quiet and distant. L.H. would accept food or toys from respondent, but preferred to be on her own.

¶ 10 Shawn testified at the hearing that he and respondent could provide a safer home for their children than their current foster homes. Shawn testified that he was concerned for S.H. because while in custody, S.H. received stitches on his finger, a scar above his eye, and a chipped tooth, and sometimes he had wet diapers. Shawn was concerned for L.H.'s safety because he claimed a shooting had occurred outside the foster mother's house. The caseworker assured Shawn that S.H.'s injuries did not require an investigation, and also that there were no findings that L.H.'s foster home

was an unsafe environment. Shawn testified that there were no new incidents that concerned him. Respondent did not testify at the hearing, but supported the testimony of Shawn.

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

¶ 12 ANALYSIS

¶ 13 On appeal, respondent argues that the trial court's finding that it was in the best interest of S.H. and L.H. to terminate her parental rights was against the manifest weight of the evidence. Specifically, respondent asserts that despite her failure to participate in drug treatment or testing, her cannabis use did not impair her ability to parent the children. We disagree.

¶ 14 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).

¶ 15 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 minors' best interest. *In re D.T.*, 212 Ill. 2d 347 (2004). The trial court must consider several statutory factors, including: (1) the minors' physical safety and welfare; (2) the development of the minors' identity; (3) the minors' familial, cultural, and religious background and ties; (4) the minors' sense of attachment and continuity of relationships with parental figures; (5) the minors' wishes; (6) the minors' community ties; (7) the minors' 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).

¶ 16 Our review of the record indicates that the State proved by a preponderance of the evidence that it was in S.H.'s and L.H.'s best interest to terminate respondent's parental rights. Respondent contends that, despite her failure to participate in drug treatment or testing, her cannabis use did not impair her ability to parent her children. However, regardless of respondent's cannabis use, she had a minimal bond with both S.H. and L.H. Keister reported that S.H. and L.H. appeared to have no bond with respondent during visitations. S.H. often defied respondent's direction and discipline, and L.H. was distant and quiet. Furthermore, respondent often had to ask for assistance during visitations because she would become overwhelmed and frustrated with the children.

¶ 17 It should be noted that although S.H. and L.H. were placed in separate foster homes, this was not against their best interest. S.H. had been in foster care since he was approximately six months old, and L.H. had been in foster care since birth. Both children were integrated into their foster families and referred to their foster mothers as "mom," and both foster mothers were willing to adopt the children. Both foster homes met the Department of Children and Family Services standards, in addition to providing the children with all their basic needs and a sense of security. Therefore, permanence for S.H. and 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 S.H. because L.H. had lived in foster care since birth.

¶ 18 Respondent's failure to cooperate with court-ordered tasks, such as drug testing and treatment, as well the frustration she often had when visiting with her children, shows she is unable to provide a safe and stable environment for S.H. and L.H. Accordingly, the trial court's determination that terminating respondent's parental rights was in S.H.'s and L.H.'s best interest was

not against the manifest weight of the evidence.

¶ 19

CONCLUSION

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

¶ 21 Affirmed.