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No. 3–10–0866

Order filed March 9, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 2011

<i>In re</i> T.G., Jr. and D.G.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors,)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Nos. 08--JA-143 and 08-JA-153
)	
v.)	
)	
T.G., Sr.,)	Honorable
)	Richard D. McCoy,
Respondent-Appellant.))	Judge Presiding.

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

ORDER

Held: The court's order finding that it was in the best interests to terminate father's parental rights was not against the manifest weight of the evidence where father was found unfit at the termination hearing, the children had been in placement in a loving, safe, secure foster home for an extended period of time and were bonded with their foster parents who desired to adopt the children and were able to provide for the children's daily, medical, educational, and emotional needs.

Respondent-appellant T.G., Sr., is the father of two minor children, T.G., Jr., born on June

13, 2007, and D.G., born on July 22, 2008. After finding the children's environment was injurious to their welfare, at the dispositional hearing, the court declared the minors wards of the court, named the Department of Children and Family Services (DCFS) the guardian of both minors, and entered orders detailing the tasks each parent needed to complete to regain custody of the children. On February 3, 2010, the State filed a separate petition on behalf of each child requesting to terminate the parental rights of both parents because neither parent had made reasonable progress toward the return of the children to their care within nine months of the adjudication of neglect, specifically from September 16, 2008, through June 16, 2009. The court found the State proved both parents unfit by clear and convincing evidence during the termination hearing. After a separate best interests hearing, the court found that it was in the best interests of both minors to terminate the parental rights of both parents and authorize DCFS to consent to the adoption of the minors.

Father filed a timely appeal challenging the trial court's finding that it was in the minors' best interests to terminate father's parental rights.

BACKGROUND

Respondent-appellant T.G., Sr., is the father of the two minor children, T.G., Jr., born on June 13, 2007, and D.G., born on July 22, 2008. On July 9, 2008, the State filed a petition on behalf of T.G., Jr., alleging that the parents provided T.G., Jr., with an injurious environment. On July 25, 2008, a second petition was filed on behalf of a second child of the same parents, D.G., who was born on July 22, 2008. This petition alleged D.G. was born with cannabis in his system, both parents were homeless, and both parents refused to cooperate with the requirements for admission to a homeless shelter, thus creating an injurious environment for D.G. The court

entered temporary shelter care orders placing each child in the temporary care of DCFS. On August 12, 2008, both parents stipulated to some of the allegations in the separate petitions. Following the stipulations by the parents, the court entered an adjudicatory order, on September 16, 2008, finding that both minors were neglected because the parents provided an injurious environment for the minors. On the same date, the court conducted the dispositional hearing.

The court found father was dispositionally “fit” but concluded mother was dispositionally “unfit.” Since father continued to reside with the natural mother, the court did not place the children in the same household with mother. Consequently, the court made the minors wards of the court, and named DCFS the guardian of both minors. The court also entered orders, on September 16, 2008, detailing the tasks each parent needed to complete to regain the custody of their children.

On March 19, 2009, the State filed a “Motion for Unfitness” asking the court to now find father dispositionally unfit to have custody of the children restored to him on the grounds that father had not cooperated with any court-ordered tasks, had not visited with the children or contacted DCFS since November 19, 2008, and his whereabouts were unknown. The court held a permanency review hearing and fitness hearing pertaining to father on August 11, 2009. Father was not present for the hearing. On that date, the court entered an order finding father unfit and that mother remained unfit to care for the children. The permanency goal for the children was changed to “substitute care pending TPA [Termination of Parental Rights].”

On February 10, 2010, the State filed petitions to terminate the parental rights of both parents, on behalf of each child, and asked the court to appoint a guardian with power to consent to the minors’ adoption. Count I of both petitions alleged grounds that mother failed to make

reasonable progress toward the return of the minors to the parent within 9 months of adjudication, from September 16, 2008, through June 16, 2009. Count II alleged the same allegations against father. Father was incarcerated at the Stateville Correctional Center at the time of the filing of these petitions to terminate his parental rights. The court issued an order for *habeas corpus* and appointed a public defender to represent father on the petitions.

On October 6, 2010, the court held a contested termination hearing on the petitions with father present. The State admitted a copy of father's certified criminal conviction for unlawful possession of a controlled substance, a Class 1 felony, committed on February 13, 2009, and certified copies of mother's criminal convictions for retail theft, Class A misdemeanors, committed on March 27, 2009 and May 30, 2009. Additionally, the State admitted exhibits showing the attendance history and results of father's and mother's drug testing pursuant to court orders in this case. Finally, the State asked the court to take judicial notice of the previous orders entered in these cases for both minors.

The State's only witness, Joan Pegues, a child welfare specialist for DCFS, testified that she was the caseworker for this family from September 16, 2008, through June 16, 2009. Pegues stated that she referred both parents to attend parenting classes on September 24, 2008, and neither parent completed those classes. On October 2, 2008, Pegues said she referred both mother and father to attend counseling and, as of June 16, 2009, mother and father attended only two counseling sessions. According to Pegues, the first session was an introductory session and, during the second session, mother became very irate and left the session. Thereafter, neither parent returned for counseling sessions following this incident. Neither parent completed a drug and alcohol assessment as ordered.

Regarding visitation with the children, Pegues testified that mother and father were offered supervised visits with the children on a weekly basis beginning in September 2008. The parents attended all three scheduled visits in September 2008, three out of five scheduled visits in October 2008, and three out of four scheduled visits in November 2008. Regarding the visit with the children on November 19, 2008, father attended the visit as scheduled. Mother was one hour and seventeen minutes late for that visit and appeared with a scratch on her face and a lump on her forehead. Mother told the caseworker that father had physically attacked her and they were no longer together. Mother told Pegues that she spent nights at a friend's house since the incident occurred, but father needed to leave the residence that mother and father previously shared.

In December 2008, mother attended one out of four scheduled visits and father did not attend any of the visits. From December 2008 through April 2009, father did not attend any visitation with the children and mother attended sporadically. In May 2009, mother and father attended one out of four visits. Pegues testified, when father attended visits, he behaved appropriately with the children. According to Pegues, neither parent visited the children again after the visit in May of 2009.

Regarding father's housing situation during this period, Pegues testified:

“Father kind of dropped out of the picture in November of 2008. That's - - he stopped visiting his children. That was the last month he visited his children for quite some time. I made searches to find out where he was living. I sent letters to addresses in Harvey, Illinois and in Bloomington, Illinois. Harvey, Illinois came back. Bloomington, Illinois didn't come back. And then when he came back in May he told me where he was living. He made an appointment with me to meet at his home in

Bloomington.”

Pegues testified that she went to father’s home in Bloomington, Illinois, in May of 2009. When she arrived, father was not present but a gentleman at that house offered to call father and Pegues spoke with father by telephone. During this conversation, father asked Pegues to come back later that day or wait for him at this residence. However, Pegues could not wait because she had other appointments. Pegues stated her next contact with father was at the scheduled visitation in May 2009. During that visit, father told Pegues that he had been in jail from February 12 to March 12, 2009, but father did not tell Pegues where he lived after being released on March 12, 2009. After that visit, the caseworker attempted to contact father at the phone numbers he provided to her as contact information, but other individuals who answered the phone told the caseworker that father did not “stay” there or that he was “not there.”

After the State rested, father testified that he moved to Bloomington, Illinois, to live with his cousin after he and mother separated. From November 2008 until July 2009, father said he lived in Bloomington, but he was incarcerated on a possession of controlled substances charge from January to March of 2009, and now was residing at Danville Correctional Center.

Father said he told Ms. Pegues about his Bloomington address during his December 2008 visit with his children. Father said he also gave Pegues his cell phone number at that time. According to father, he did not visit with his children again after December 2008 because he did not have transportation. Father said he asked Pegues about parenting classes in October of 2008, and Pegues told him the classes started at the Elks Center in January 2009, however, he was no longer living in Peoria at that time. Father explained that he was not present at the Bloomington house on the day Pegues arrived because his “grandma had got checked in a nursing home, so I

went to Chicago to support my mom.” Father said a friend provided him with transportation to Chicago.

Father testified that the house in Bloomington had two bedrooms, a living room, kitchen, and a bathroom and it was a “safe, stable place for the kids.” Father stated he was not employed while he lived in Bloomington. Father testified that he did not know he was court-ordered to complete all of those tasks. Father testified that he was a good dad and that he had a close bond with his children. He testified that he loved his children unconditionally and his children loved him, too.

At the close of the evidence, the court found that the State had proven counts I and II of the petitions by clear and convincing evidence, and found mother and father unfit. The court entered a written order and scheduled a best interest hearing on November 3, 2010.

During the best interest hearing, the court admitted a report, prepared by Julie Lane, an adoption specialist for DCFS. In that report, Lane reported that T.G., Jr., had been in foster care placement at the Brown’s foster home since July 8, 2008, when he was 13 months old. Lane reported that D.G. was placed in the same foster home on July 24, 2008, when he was two days old. Both minors resided with the Browns throughout the entire proceedings and “adjusted extremely well” to the Brown’s foster home. According to the report, the children did not have a bond with their biological parents.

Lane’s report provided that the children had bonded well with their foster family and the foster parents wanted to adopt the two minors. Mr. And Mrs. Brown’s house was described as “very clean, nicely furnished and there were no safety hazards in the home.” According to the report, the “Brown’s meet and exceed DCFS licensing standards and have cooperated fully with

DCFS Rules and Procedures.” Lane reported that the Brown’s attend to all of the children’s needs from daily needs to medical and educational needs. “They are always there to provide [T.G.] and [D.G.] with love, support, and guidance.” The report also stated that “[n]either child can remember their biological parents and turn to the Brown’s for all of the daily needs.” The report provided that the children attend church weekly and attend a local daycare center at Kindercare. Ms. Lane recommended, in her report, that the biological parents’ rights be terminated and that the court grant DCFS the power to consent to adoption.

At this best interests hearing, father stated that he took full responsibility for his current situation and that he had made bad choices in the recent past which “landed” him in prison. Father said that he was presently participating substance abuse and parenting classes in prison. Father said that he loved his children and wanted what was best for the children. He told the court he deserved another chance to try to get the children out of DCFS care because that was his responsibility as a father. Father also told the court that he knew he would be out of prison before 2013 and that he was hoping to qualify for placement in a work release camp before 2012. Father told the court that his criminal cases were being appealed which could change the outcome of his sentence.

Father stated that he was not aware that the court ordered him to cooperate with DCFS or the specific tasks listed in the original disposition order. He said he thought that anything he did to cooperate was voluntarily on his part. Father also said that he was thankful to God for the children’s foster parents who “love my children like a foster parent’s supposed to. Maybe more.” Additionally, father reminded the court that he was initially found dispositionally fit in these cases, and that was changed later in the case.

At the close of the case, the court said it considered the best interests report, the statements and arguments of all present at the hearing, and the best interest factors as required by law. The court noted that mother had abandoned these children and that the children had been in foster placement for a substantial period of time. Additionally, the court found that the children were currently in a very loving and secure placement, the children had a very strong sense of attachment with their foster parents, and they loved their foster parents.

The court found there was a need for permanence in the these children's lives and the foster parents provided the children with a sense of security and safety, developed the children's sense of identity, and were willing to provide permanence for the children by adopting them. The court then ordered that both parents' parental rights be terminated and that DCFS be given power to consent to adoption. Subsequently, the trial court then entered a written "Best Interest Order" on November 3, 2010, in conjunction with that ruling. Father filed a timely notice of appeal.

ANALYSIS

On appeal, father challenges the trial court's ruling that it was in the best interests of the children to terminate father's parental rights. The State contends that the evidence supported the trial court's decision to terminate father's parental rights based upon the best interests of the children.

The involuntary termination of parental rights involves a two-step process. The court must first find, by clear and convincing evidence, that the parent is unfit as defined under section 1(D) of the Adoption Act 9750 ILCS 50/1(D) (West 2008)). *In re D.T.*, 212 Ill. 2d 347, 363 (2004); *In re Jay H.*, 395 Ill. App. 3d 1063, 1069 (2009). Once the State proves parental

unfitness, the court then must consider whether it is in the best interests of the children to terminate the parents rights. *D.T.*, 212 Ill. 2d at 363-64; *Jay H.*, 395 Ill. App. 3d at 1069. On appeal, father only raises the issue of whether the trial court erred in finding that it was in the children's best interests to terminate his parental rights.

During the best interests phase of the termination proceedings, the focus shifts to the child and whether, in light of the child's needs, parental rights should be terminated. *D.T.*, 212 Ill. 2d at 364. At the best interests hearing, a parent's interest in maintaining a parent/child relationship must yield to the child's interest in living in a safe, stable, and loving home. *D.T.*, 212 Ill. 2d at 363-64. The State must prove that it is in the child's best interests to terminate parental rights by a preponderance of the evidence. *D.T.*, 212 Ill. 2d at 366. Although the Adoption Act does not set forth the factors to be considered by the court when deciding what is in a child's best interests, section 2.1 of the Adoption Act provides that the Adoption Act shall be construed in concert with the Juvenile Court Act (705 ILCS 405/ 1-1 *et seq* (West 2008)). 750 ILCS 50/2.1 (West 2008). The Juvenile Court Act lists several factors to consider, which must be considered in the context of a child's age and developmental needs, when determining whether termination of parental rights is in a child's best interests, including: (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, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care;

and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2008).

We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence. *Jay H.*, 395 Ill. App. 3d at 1071; *In re Tiffany M.*, 353 Ill. App. 3d 883, 890 (2004). 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.

In the instant case, both the best interests report and the court addressed the statutory factors to support the report's recommendations and the court's findings. Both parents were found unfit at the termination hearing by clear and convincing evidence, which father has not challenged. T.G., Jr., had been in placement with the foster parents since he was 13 months old and D.G. was placed with them two days after his birth. Neither of these children remembered or shared a bond with their biological parents.

The record reflects that the children were bonded to the foster parents, loved them, and turned to them for all of their daily needs. The foster family was willing to adopt these children and provided a house that was "very clean, nicely furnished and there were no safety hazards in the home." The foster parents not only met, but exceeded, the DCFS licensing standards and cooperated fully with the DCFS rules and procedures. Additionally, the foster parents were able to address all of the children's daily needs as well as medical and educational needs. They also provided the children with love, support, and guidance.

Based upon our review of the record, we conclude that the trial court's determination that it was in the children's best interests to terminate father's parental rights was supported by the

record and was not against the manifest weight of the evidence. Accordingly, we hold that the trial court did not err in terminating father's parental rights and authorizing DCFS to consent to the adoption of the children.

CONCLUSION

For the reasons set forth above, the judgment of the circuit court of Peoria County is affirmed.

Affirmed.