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2011 IL App (4th) 110657-U

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NOS. 4-11-0657, 4-11-0658 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: H.H., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v. (No. 4-11-0657))	No. 10JA7
DAVID HUDSON,)	
Respondent-Appellant.)	
_____)	
)	
In re: H.H., a Minor,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-11-0658))	Honorable
BRITTANY HUDSON,)	John R. Kennedy,
Respondent-Appellant.)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's findings the minor's best interests would be served by termination were not against the manifest weight of the evidence.
- ¶ 2 In July 2011, the trial court terminated the parental rights of respondents, David Hudson and Brittany Hudson, to H.H. (born December 18, 2009). David and Brittany filed separate appeals, which we have consolidated for appellate review. Both David and Brittany argue the trial court's best-interest findings are against the manifest weight of the evidence. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On February 5, 2010, the State filed a five-count petition for adjudication of abuse/neglect and shelter care for three of Brittany's children: A.L. (born August 28, 2005), M.L. (born March 2, 2007), and H.H. Steve Largent is A.L. and M.L.'s father and is not a party to this appeal. David is H.H.'s father. The counts involving David and pertaining to H.H. alleged H.H. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2008)) because she resided in an environment injurious to her welfare in that she was exposed to the risk of physical harm (count IV) and the abuse of M.L. (count V). We note Brittany's other children are not at issue in this appeal.

¶ 5 According to the February 5, 2010, shelter-care report, the Department of Children and Family Services (DCFS) received a report on January 31, 2010, indicating two-year-old M.L. had received two black eyes during the time she was visiting with David. According to the report, the pattern of the bruising indicated M.L. had been struck on both sides of her face. It was also reported M.L. had experienced a black eye the month before and also "had a handprint on her leg." Additionally, it was reported M.L. had a tooth knocked out.

¶ 6 Following a February 8, 2010, shelter-care hearing, the trial court found probable cause to believe H.H. was neglected as alleged and an immediate and urgent need existed for shelter care. The court placed H.H.'s temporary custody with DCFS.

¶ 7 On February 28, 2010, DCFS received a call indicating David's two-year-old daughter was present during a domestic dispute where David reportedly struck Brittany in the head.

¶ 8 On April 8, 2010, the State filed an amended petition for adjudication of

abuse/neglect and shelter care, additionally alleging H.H. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2008)) because her environment exposed her to domestic violence (count VI).

¶ 9 During the April 2010 adjudicatory hearing, Mary Kathleen Buetow, M.L.'s treating physician and an expert in pediatrics, testified that based on her examination and interviews, M.L.'s injuries were intentionally inflicted.

¶ 10 On April 13, 2010, the trial court entered an adjudicatory order finding H.H. was neglected in that her environment was injurious to her welfare and she was at substantial risk of physical abuse. The court found David had struck Brittany "on a number of occasions" when the other minors were present. In its order, the court also noted Brittany "has offered various untruthful explanations for the causation of the injuries to [M.L.] This lack of candor makes the environment where one child was injured more likely to be injurious to the [other] children in her care."

¶ 11 According to the service plan filed by DCFS on April 13, 2010, David was to participate in a psychological evaluation, complete domestic-violence treatment, parenting classes, individual counseling, and attend couples counseling with Brittany. The service plan also recommended Brittany complete parenting classes, domestic-violence treatment, individual counseling, and couples counseling.

¶ 12 During the May 11, 2010, dispositional hearing, David's counsel acknowledged it was appropriate to make H.H. a ward of the court. Similarly, Brittany's counsel stated Brittany recognized "problems within her family unit" and understood H.H. was not going to be returned until she completed her services.

¶ 13 At the conclusion of the hearing, the trial court stated it considered the dispositional report, arguments, and evidence presented. The court found respondents unfit, unable, and unwilling to care for, protect, train or discipline the minor and the health, safety, and best interest of the minor would be jeopardized if the minor remained in respondents' custody. In its May 12, 2010, dispositional order, the court made H.H. a ward of the court and placed her custody and guardianship with DCFS.

¶ 14 The November 22, 2010, permanency report, prepared by Catholic Charities, noted Brittany had been referred to a parenting class, individual counseling, and Cognition Works for the OPTIONS program. The report indicated Brittany was involved in most of the recommended services. However, her participation had been sporadic. With regard to David, the report indicated David was to complete a psychological evaluation, a parenting class, individual counseling, and domestic-violence classes. While David had recently started to engage in some of those services, he was "not even close to completing them." According to the report, David had denied he had any issues requiring services. The report recommended DCFS maintain custody and guardianship of H.H. Following a December 1, 2010, permanency review hearing, the trial court entered a permanency order finding respondents had not made reasonable progress or efforts towards H.H.'s return home.

¶ 15 On February 23, 2011, the State filed a petition seeking the termination of respondents' parental rights. The petition alleged both parents were unfit because they failed to maintain a reasonable degree of interest, concern, or responsibility as to H.H.'s welfare (count I), and failed to make reasonable progress toward the return of H.H. within nine months after the adjudication of neglect (count II).

¶ 16 At the May 4, 2011, hearing on the State's petition, both David and Brittany admitted and stipulated to the allegations in count II of the State's termination petition. The trial court found both David and Brittany unfit. Specifically, the court found the basis for H.H.'s neglect adjudication was domestic violence and the physical abuse of M.L. The court noted David and Brittany "continued to deny responsibility" for M.L.'s injuries. Further, the court found respondents "were very slow to engage in [the] necessary services" and did not make reasonable progress toward H.H.'s return within nine months of the adjudication of neglect.

¶ 17 The July 15, 2011, best-interest report prepared by Catholic Charities, indicated H.H., who was 19 months old at the time of the report, had been in her foster placement since she was 2 months old. The report indicated H.H. had been placed with her paternal aunt and uncle and was doing well in her relative foster placement. According to the report, H.H. was bonded with her foster parents and referred to them as "mama" and "dada." H.H. also appeared bonded to her foster parents' children. H.H. often became excited to return home to her foster family after visiting with Brittany and David. The report further indicated H.H.'s foster parents were willing to provide her permanency through adoption.

¶ 18 The report also indicated Brittany and David intended to remain together. They resided in a home owned by Brittany's mother. While Brittany had completed her general equivalency diploma (GED), she was unemployed. David had been employed full time until May 2011. The report indicated David was performing "odd jobs every once in a while" and intended to go back to school. The report concluded by stating

"Both [David and Brittany] have made progress in the past six months, but made little progress in their services prior to the

petition being filed to terminate parental rights in January 2011.

Both parents also visit consistently and have formed a bond with [H.H.] Although it seems harsh to separate [H.H.] from her parents after they have made progress and formed bonds, it would not be in [H.H.'s] best interest to separate her from the foster parents who have raised her since she was two months old. It is for this reason that it would be in [H.H.'s] best interest to remain in her foster home and be adopted by her current relative foster parents."

¶ 19 During the July 20, 2011, best-interest hearing, David's counsel presented the testimony of one witness, Terry Reed, A.L. and M.L.'s stepmother. Reed testified while she had not had an opportunity to observe David interact with H.H., she noted David interacted appropriately during supervised visits with her stepdaughters. She also testified Brittany met A.L. and M.L.'s needs during her visitation with them.

¶ 20 At the conclusion of the hearing, the trial court stated it had considered the best-interest report, the evidence presented, and counsels' arguments. While the court recognized David and Brittany had shown improvement and were now "more invested in the process of making changes," the court also found respondents were

"not at the point of the process where the Court could at any time in the near future with any confidence restore custody to either or both of the parents, and it's important to consider the relationship of the parents because [David and Brittany] have chosen to parent together. That's a decision that they've made and so really it has to

be considered in that context.

At this time the Court could not confidently restore custody even from the idea of general physical safety of [H.H.] [H.H.] is entitled of course to more than just general physical safety. [She is] entitled to development and the opportunity to have a permanent home.

Clearly [H.H.] has a permanent home, one that can become permanent through the process of adoption with parents who will provide her continuity, will provide her safety, [and] will provide her development that she had not at this time and at any time in the near future achieved by restoration of custody to each or both parents."

¶ 21 The trial court concluded it was in the minor's best interest to terminate respondents' parental rights.

¶ 22 These appeals followed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, both David and Brittany argue the trial court's best-interest findings are against the manifest weight of the evidence. We note neither David nor Brittany challenge the trial court's unfitness findings. Instead, both respondents challenge *only* the court's best-interest determinations.

¶ 25 Once a parent has been found unfit for termination purposes, the focus changes to

whether it is in the best interest of the child to terminate parental rights. 705 ILCS 405/2-29(2) (West 2008); *In re D.F.*, 201 Ill. 2d 476, 494-95, 777 N.E.2d 930, 940 (2002). The trial court conducts the best-interest hearing using a preponderance of the evidence standard of proof. *In re D.T.*, 212 Ill. 2d 347, 367, 818 N.E.2d 1214, 1228 (2004). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2008). These include the following:

"(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child."

In re Daphnie E., 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 26 The trial court's best-interest determination is reviewed under the manifest weight of the evidence standard. *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). A decision will be found to be against the manifest weight of the evidence "if the facts clearly

demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 27 In this case, H.H. had been placed with her paternal aunt and uncle. At the time of the best-interest hearing, H.H. was 19 months old. H.H. had resided in her foster placement for 17 of those 19 months. The best-interest report indicated H.H. was bonded to her foster family and thriving in her foster home. The report also indicated H.H.'s foster parents were able to care for her needs and were willing to provide permanency to H.H. through adoption.

¶ 28 At the time of the hearing, both Brittany and David were unemployed, with David occasionally performing "odd jobs." While the trial court noted David and Brittany had been making progress, the court found their progress was insufficient to justify restoring custody to either or both of the parents at any time in the near future. Based on the evidence presented, we hold the trial court's orders finding termination of respondents' parental rights was in the minor's best interest was not against the manifest weight of the evidence.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court's judgment with regard to the termination of David and Brittany's parental rights.

¶ 31 No. 4-11-0657, Affirmed.

¶ 32 No. 4-11-0658, Affirmed.