

NOTICE
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NO. 4-10-0802

Order Filed 2/16/11

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

In re: De.E. and Da.E., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	McLean County
v.)	No. 07JA141
PHOENICIA ESKEW,)	09JA76
Respondent-Appellant.)	
)	Honorable
)	Kevin P. Fitzgerald,
)	Judge Presiding.

JUSTICE MYERSCOUGH delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

Held: Trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence where the children had lived in the foster home essentially their entire lives and the foster parent wanted to adopt them.

In September 2010, the trial court terminated the parental rights of respondent, Phoenicia Eskew, to her two children, Da.E. (born June 5, 2007) and De.E. (born June 5, 2009). Respondent appeals, arguing the court's conclusion that it was in the children's best interests to terminate respondent's parental rights was contrary to the manifest weight of the evidence. We affirm.

I. BACKGROUND

Respondent and Dajuan Brown are the biological parents

of Da.E. and De.E. The trial court terminated Brown's parental rights, and he is not a party to this appeal.

A. Summary of Events Preceding the
Termination of Parental Rights

In September 2007, the Department of Children and Family Services (DCFS) took Da.E. into protective custody following an incident of domestic violence between respondent and Brown. The State filed a petition for adjudication of wardship alleging Da.E. was a neglected minor (McLean County case No. 07-JA-141).

In November 2007, at the adjudicatory hearing, respondent admitted Da.E. resided in an injurious environment when in respondent's care because respondent had unresolved issues of alcohol and/or substance abuse that created a risk of harm to Da.E (705 ILCS 405/2-3(1)(b) (West 2006)). The court adjudicated Da.E. neglected. At the January 2008 dispositional hearing, the court made Da.E. a ward of the court and placed custody of Da.E. with the guardianship administrator of DCFS.

Da.E. was initially placed with his maternal grandmother. In November 2007, Da.E. was placed with Teresa G., whom respondent had appointed as Da.E.'s godparent.

On June 5, 2009, during the pendency of Da.E.'s case, respondent gave birth to De.E. On June 6, 2009, upon his release from the hospital, DCFS took protective custody of De.E. and

placed him with Teresa. The State filed a petition for adjudication of wardship alleging De.E. was neglected (McLean County case No. 09-JA-76). On December 17, 2009, the trial court adjudicated De.E. neglected. On February 10, 2010, the court made De.E. a ward of the court and placed custody of De.E. with the guardianship administrator of DCFS.

The following facts are relevant to put in context respondent's arguments on appeal and the evidence presented at the best-interest hearing. Respondent made some progress during the pendency of the case. She completed a substance-abuse treatment program in early 2008, but shortly thereafter suffered a relapse. In October 2008, she again successfully completed a substance-abuse treatment program. Her drug screens from February through June 2009 were all negative.

At the June 30, 2009, permanency hearing for Da.E., the trial court found respondent "fit" but continued legal and physical custody of Da.E. with DCFS. Thereafter, in July 2009, Baby Fold--the DCFS agency providing services--began to transition Da.E. and De.E. to respondent's home by allowing respondent overnight, unsupervised visits.

However, in August 2009, respondent lost her employment. Also in August 2009, Baby Fold workers began to notice respondent was asleep on several occasions either prior to a scheduled visitation or during an unannounced drop in on a

visit, which was a change in respondent's behavior. On one occasion when Baby Fold workers made an unannounced visit, respondent did not know where the children were, although respondent's sister had told respondent she was taking them to the park across the street.

Consequently, Baby Fold slowed the transition of the children into respondent's home. By February 2010, respondent received only four hours of monitored visitation weekly. In February and April 2010, respondent tested positive for marijuana. She also missed nine drug screens between February and April 2010.

At the May 18, 2010, permanency hearing, the trial court found respondent "unfit" and changed the permanency goal to "[s]ubstitute care pending determination of termination of parental rights." The court advised respondent that she was at a critical point in the proceedings and had to decide whether to "make an effort to turn things around" and retain her parental rights.

B. Trial Court Terminated Respondent's Parental Rights

On May 28, 2010, the State filed a petition to terminate respondent's parental rights. On July 22, 2010, at the hearing on unfitness, respondent admitted she failed to maintain a reasonable degree of interest, concern, or responsibility as to Da.E. and De.E.'s welfare (750 ILCS 50/1(D)(b) (West 2008)).

After admonishing respondent, the trial court accepted respondent's admission and found her unfit.

On September 10, 2010, the trial court held the best-interest hearing. The court noted the filing of the best-interest report prepared by Tiffany Wells, a child-welfare specialist for Baby Fold. The State also asked the court to take judicial notice of the entire court file, to which respondent had no objection. Respondent does not object to that procedure in this appeal.

In the best-interest report, Wells identified concerns regarding respondent's (1) sobriety, noting respondent's positive drug screens in April 2010 and her failure to complete any drug screens in March 2010; (2) employment, because respondent changed employment five times in six months; and (3) housing, because respondent moved approximately nine times during the pendency of the cases and currently lived with a registered sex offender. The report further provided that the children had lived with Teresa almost their entire lives. The children "feel love" from both Teresa and respondent. The children had an attachment to their foster family but also appeared happy to see respondent. However, the children separated easily from respondent after visits and were excited to return to Teresa's home. The report recommended that respondent's parental rights be terminated.

Wells testified at the hearing that neither child had

special needs or any medical problems. Teresa had ensured the children's needs were met and wanted to adopt them. Wells recommended that respondent's parental rights be terminated.

Teresa, the foster mother, testified Da.E. had been in her care since November 2007, when he was five months old. De.E. was brought to her from the hospital after he was born. The boys called her "mommy" and "mommy Teresa," although Da.E. sometimes called her "Teresa." Da.E. called Teresa's home his home and called respondent's house "mommy Phoenicia's house."

Teresa testified that, in July 2009, when respondent had overnight visits with the children, Teresa saw mood changes in Da.E. after these overnight visits. Da.E. was angry, clingy, and did not want to be left alone. Teresa thought Da.E. wanted reassurance as to the schedule, where he was going to be, and what was going to happen to him. Once the overnight visits stopped in September 2009, those behaviors ceased.

Teresa confirmed that she wanted to adopt the children. Teresa testified Da.E. and De.E. currently shared a room in her home, but she had a spare bedroom so they can have their own rooms in the future. Da.E. and De.E. were bonded with Teresa's other children--only one of whom lived at Teresa's home--as well as Teresa's parents.

Respondent testified on her own behalf. Respondent had obtained a two-bedroom apartment in the event the children were

returned to her. In the meantime, she remained living with a convicted sex offender, although she had no intention of having the children in that home. Respondent had a romantic relationship with the registered sex offender seven years earlier, but they were not currently romantically involved. Respondent was employed. Respondent recently completed an intensive outpatient treatment program at Chestnut Health Systems and was currently in "aftercare."

Respondent understood her children had a bond with their foster parent and foster siblings. However, she loved her children, believed she had a bond with the children, and wanted to keep her parental rights.

The State requested termination of respondent's rights, arguing that, although the children had a bond with respondent, they did not regard her as the person who would provide their care and stability. Respondent's attorney argued respondent was close to being fit, was involved in services, and that the case should remain open to see how respondent progresses. The guardian *ad litem* (GAL) recognized the bond between respondent and her children but recommended termination of parental rights. In particular, the GAL noted the length of time the children had been in foster care and Teresa's residence was the only home they had known. The GAL noted respondent's difficulty throughout the case in maintaining a residence. The GAL further noted

respondent was "working a substance[-]abuse program, but we have been down that path before, and we had a relapse."

The trial court considered each of the relevant statutory factors on best interest (705 ILCS 405/1-3(4.05) (West 2008)). The court found each statutory factor either favored termination or was neutral. In particular, the court noted respondent had made more progress than most respondents and had a clear bond with the children. The court concluded, however, that the children had a "huge bond" with Teresa and had essentially lived their entire lives with Teresa. Respondent had at least another year before she could possibly expect to have the children returned to her care. Therefore, the court determined it was in the children's best interests that respondent's parental rights be terminated.

This appeal followed.

II. ANALYSIS

On appeal, respondent argues the trial court's finding --that it was in Da.E. and De.E.'s best interests to terminate respondent's parental rights--was against the manifest weight of the evidence. Respondent asserts guardianship would have been more appropriate and would have allowed the children the benefit of Teresa's care but also would have allowed the children to maintain a relationship with respondent.

A. Manifest-Weight-of-the-Evidence Standard Applies to the Trial Court's Determination on Best Interest

The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 through 7-1 (West 2008)) and the Adoption Act (750 ILCS 50/1 through 24 (West 2008)) govern the involuntary termination of parental rights upon the petition of the State. *In re Rodney T.*, 352 Ill. App. 3d 496, 502, 816 N.E.2d 741, 746 (2004). A two-step process is mandated. First, the State must show by clear and convincing evidence, that the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2008)); *In re C.W.*, 199 Ill. 2d 198, 210, 766 N.E.2d 1105, 1112-13 (2002). If the court finds the parent unfit, the court then considers whether it is in the best interest of the child that parental rights be terminated. *C.W.*, 199 Ill. 2d at 210, 766 N.E.2d at 1113; 705 ILCS 405/2-29(2) (West 2008).

At the best-interest hearing, the trial court must consider several factors when considering a child's best interest, including (1) the child's physical safety and welfare; (2) the child's development of identity; (3) the child's background and ties; (4) the child's sense of attachments, including where the child actually feels love, the child's sense of security, the child's sense of familiarity, the continuity of affection for the child, and the least-disruptive placement alternative for the child; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the

risks to being in substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2008). "The court's best-interest finding will not be reversed unless it is against the manifest weight of the evidence." *In re Veronica J.*, 371 Ill. App. 3d 822, 831-32, 867 N.E.2d 1134, 1142 (2007). A 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.M.*, 336 Ill. App. 3d 766, 773, 784 N.E.2d 304, 310 (2002).

B. Termination of Parental Rights Was Not
Against the Manifest Weight of the Evidence

Respondent argues the trial court's termination of her parental rights was against the manifest weight of the evidence because (1) the court told her at the permanency hearing that she had to decide whether to "turn things around" and she did so by making significant progress; (2) the GAL should not have based his recommendations on respondent's past transgressions, (3) the court's ruling was contrary to the Act's goal of family preservation, and (4) guardianship would have been in Da.E. and De.E.'s best interests. While we concede respondent came closer to completing her service plan than some respondents, we disagree that the court erred by terminating her parental rights.

Respondent first argues the trial court's decision was against the manifest weight of the evidence because the court told respondent at the May 2010 permanency hearing that she had

to "turn things around" to maintain her parental rights. Respondent asserts she had made progress throughout the entire case, especially between the May 2010 permanency hearing and the September 2010 best-interest hearing. Therefore, according to respondent, it was against the manifest weight of the evidence for the court to find she had not done enough.

The record shows the trial court did consider respondent's progress but, in balancing the statutory best-interest factors set forth in section 1-3(4.05) of the Act (705 ILCS 405/1-3(4.05) (West 2008)), concluded termination was in the children's best interests. Moreover, subsequent to the May 2010 permanency hearing, respondent admitted she was unfit. Once a parent is found unfit, the focus shifts to the child, and "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004).

Respondent next argues the GAL should not have based his recommendation on respondent's past transgressions, including her previous relapses. Respondent forfeited this argument by failing to object before the trial court. See, e.g., *In re Jay H.*, 395 Ill. App. 3d 1063, 1067, 918 N.E.2d 284, 288 (2009). In any event, even assuming the trial court accepted the GAL's recommendation and likewise considered respondent's past

transgressions, doing so was proper. See, e.g., *Jay H.*, 395 Ill. App. 3d at 1072, 918 N.E.2d at 291 (appellate court affirmed termination of parental rights based, in part, on evidence that the respondent had a history of alcohol and drug abuse and had difficulty maintaining sobriety, in addition to evidence that the children had been thriving in foster home with a foster parent who wanted to adopt them).

Respondent argues the trial court disregarded the Act's goal to preserve the family. See 705 ILCS 405/1-2(1) (West 2008) (providing that the purpose of the Act includes preserving the minor's family ties whenever possible). We disagree that the court disregarded the goals of the Act.

Although the Act "directs that, whenever possible, the child's family ties should be preserved," the Act also sets forth other considerations, including the child's welfare and the need to establish permanency "'at the earliest opportunity.'" *In re Faith B.*, 359 Ill. App. 3d 571, 572, 834 N.E.2d 630, 632 (2005) (involving the setting of a permanency goal) (quoting 705 ILCS 405/1-2(1) (West 2002)). Here, the trial court considered the appropriate best-interest factors and determined that preservation of the children's family ties to respondent was not in their best interests. In fact, the court essentially found that, given that the children had effectively been born into the foster family, their family ties were with Teresa.

Finally, respondent argues guardianship--as opposed to termination of parental rights--was in the children's best interests. A parent found unfit may remain a child's parent if it is in the child's best interest to maintain an existing relationship with the parent. *In re M.F.*, 326 Ill. App. 3d 1110, 1118, 762 N.E.2d 701, 708-09 (2002) (finding the evidence did not establish that it would be in one of the children's best interests to terminate the mother's parental rights because visitation benefitted the child by preserving the relationship and termination would not provide the child with more stability).

Here, however, the children did not really have an existing relationship with respondent, having lived nearly their entire lives with Teresa.

As of the date of the best-interest hearing, Da.E., age 39 months, had been in foster care for 36 months, and De.E., age 15 months, had been in foster care for 15 months. The trial court specifically noted that because Da.E. and De.E. had lived nearly their entire lives with Teresa, the factors pertaining to the children's background and ties, community ties, and need for permanence all favored termination. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 893, 819 N.E.2d 813, 822 (2004) (in making a best-interest determination, a trial court can consider the nature and length of the child's relationship with the foster parent and the effect any change would have upon his well-being).

Although the children had a bond with respondent, the trial court found they had a "huge bond" with Teresa, and the bond between the parent and child is but one factor to consider. See, e.g., *In re K.H.*, 346 Ill. App. 3d 443, 463, 804 N.E.2d 1108, 1124 (2004) (rejecting the argument that the strength of the parent-child bond trumps all other factors and finding that despite that bond, termination was in the minor's best interest). Teresa was willing to adopt both boys. See *In re Tashika F.*, 333 Ill. App. 3d 165, 170, 775 N.E.2d 304, 308 (2002) (noting that a child's likelihood of adoption is one factor that may be considered at a best-interest hearing).

The trial court also heard evidence that when Baby Fold attempted to transition the children to live with respondent in July 2009, Da.E. became angry and clingy following his return and sought reassurance as to his schedule. Those behaviors stopped when the transition stopped. This evidence further supported the court's conclusion that the children had a sense of security with Teresa. See, e.g., *In re J.G.* 298 Ill. App. 3d 617, 627, 699 N.E.2d 167, 174 (1998) (finding the trial court did not err by terminating the respondent's parental rights where the evidence included testimony by the case manager that the minor's behavior problems had improved since being placed in his new foster home).

Da.E. and De.E. deserved permanence. Therefore, the trial court's finding that termination of respondent's parental

rights was in Da.E. and De.E.'s best interests was not against the manifest weight of the evidence. See *In re Gwynne P.*, 346 Ill. App. 3d 584, 600-01, 805 N.E.2d 329, 343 (2004) (termination of parental rights was not against the manifest weight of the evidence where the minor lived with her foster parents almost her entire life, had bonded with her foster family, and the foster family wanted to adopt her), *aff'd*, 215 Ill. 2d 340, 363, 830 N.E.2d 508, 521-22 (2005).

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment terminating respondent's parental rights.

Affirmed.