

NOTICE
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2011 IL App (4th) 110442-U

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NOS. 4-11-0442, 4-11-0443 cons.

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

In re: Om. A., Si. A., and Se. A., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v. (No. 4-11-0442))	No. 08JA2
MUKHTAR ALI,)	
Respondent-Appellant.)	
-----)	
In re: Om. A., Si. A., and Se. A., Minors,)	No. 08JA2
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-11-0443))	Honorable
VANESSA HALL,)	John R. Kennedy,
Respondent-Appellant.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The trial court's order terminating parental rights is affirmed.

¶ 2 On May 26, 2011, the circuit court entered an order terminating the parental rights of respondent parents as to three of their children, Se. A., Si. A., and Om. A. The respondent parents filed notices of appeal on May 31, 2011, Nos. 4-11-0442 (father) and 4-11-0443 (mother), arguing the manifest weight of the evidence did not support the court's best-interest ruling terminating parental rights, and that it was not in the best interests of the children that parental rights be terminated. We affirm the circuit court's judgment.

¶ 3

I. BACKGROUND

¶ 4 On January 8, 2008, the State filed a "Petition for Adjudication of Abuse/Neglect and Shelter Care," naming Vanessa Hall and Mukhtar Ali as respondent parents. The petition alleged the children of the respondent parents, Se. A., born December 13, 2004, and Si. A., born November 29, 2008, were abused, pursuant to section 2-3 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3 (West 2008)). After a hearing, the trial court found that counts II and IV had been proven by a preponderance of the evidence. Count II alleged that Ali had inflicted excessive corporal punishment on the children, and count IV alleged that Hall failed to protect the children. On July 21, 2008, the court entered a dispositional order finding Hall and Ali to be unfit, making the children wards of the court, and placing custody and guardianship with the Department of Children and Family Services (DCFS). A supplemental petition was filed December 2, 2008, alleging the respondent parents had given birth to Om. A. November 29, 2008, and that Om. A. was neglected by reason of an injurious environment because respondent parents had failed to correct the conditions which had resulted in the finding of unfitness. On March 6, 2009, the court entered a dispositional order finding the parents unfit, making Om. A. a ward of the court, and placing custody and guardianship with DCFS.

¶ 5 On April 28, 2010, the court-appointed special advocate (CASA), the guardian *ad litem* for the children, filed a motion to terminate parental rights, alleging respondent parents were unfit pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)). An amended motion was filed on December 1, 2010. An adjudicatory hearing was held March 9, 2011. At the hearing, respondent parents stipulated they had failed to make reasonable progress toward the return of Se. A. and Si. A. within nine months of the original adjudication of neglect,

and within the period November 28, 2009, to August 28, 2010, for Om. A. On May 26, 2011, the circuit court entered an order terminating parental rights, and changing the permanency goal to adoption. Hall and Ali filed notices of appeal on May 31, 2011.

¶ 6 Hall argued that it was not in the best interests of the children that her parental rights be terminated. "The trial court may have been correct that the relative placement that the children were in provided them with a good home. However, Hall argues the right of Hall, as a parent, to the custody of her children, supersedes that placement," citing *In re Townsend*, 86 Ill.2d 502, 427 N.E.2d 1231 (1981). Hall noted that although the guardian *ad litem* recommended termination, DCFS, in its best-interest report, strongly urged the court not to terminate the parental rights of the parties. Also, the trial court completely ignored the fact that a fourth child of respondent parents, Ni, born January 22, 2010, had been returned after the court gave temporary custody of Ni to DCFS. Although Hall had stipulated to the fitness counts, those counts had dealt with the first nine months after adjudication of neglect, which had ended two years prior to her stipulation. "Hall was justified in thinking that the court would take her accomplishments during those two years into consideration when ruling on the best interest of her children."

¶ 7 Ali argued that the guardian *ad litem* relied on irrelevant material. "She stated that, at the time protective custody of the children was taken, a Ms. Neely, Vanessa and Mukhtar were living in an 'open' relationship, which Mukhtar named an 'Akina,' in which an indeterminate number of females were allowed to join. Traditional medical care, including prenatal care, preventative care and immunizations, as well as attendance at school, were contrary to the Akina's beliefs. Corporal punishment was allowed by the Akina. Ms. Neely left

the Akina." Ali argued that there is no prohibition of "open" relationships, and, as to the dispensing with traditional medical care, the courts have uniformly acknowledged that some sects may do so. "There is no reason to believe that the Akina should be dealt with in a manner different than Christian Science," citing *Baumgartner v. First Church of Christ, Scientist*, 141 Ill. App. 3d 898, 900-01, 490 N.E.2d 1319, 1321 (1986). *Baumgartner*, however, simply held that a Christian Science practitioner, who had been requested to provide Christian Science treatment, could not be sued for medical malpractice.

¶ 8

II. ANALYSIS

¶ 9

After a finding of unfitness, the State must prove by a preponderance of the evidence that it is in the child's best interests to terminate parental rights. *In re D.T.*, 212 Ill.2d 347, 365, 818 N.E.2d 1214, 1228 (2004). Following a finding of unfitness, the focus shifts to the child. During the best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest to live in a stable, permanent, loving home. *D.T.*, 212 Ill.2d at 364, 818 N.E.2d at 1227. In reviewing a trial court's best-interests determination, we apply the manifest-weight-of-the-evidence standard of review. *In re B.B.*, 386 Ill. App. 3d 686, 697-98, 899 N.E.2d 469, 479-80 (2008). 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.F.*, 201 Ill.2d 476, 498, 777 N.E.2d 930, 942 (2002).

¶ 10

The trial court considered the statutory factors listed in section 1-3 (4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2008)). The court had questions about the physical safety and welfare of the children. Although the parents are in the process of learning methods of parental discipline that are less likely to threaten physical safety of the children than

before, "that process has not been completed." Although the court recognized DCFS's confidence in the parents' ability to care for the welfare of the children, that has not been completed, but it is complete in the children's current home. There is "some residual doubt as to the provision of medical care" if the children are returned, and that factor clearly favors termination. Although the oldest child, Se. A., "likely has identity that relates more to his parents" than the younger children who have resided almost entirely with the foster parents, the foster parents have been involved in developing Se. A.'s identity, and "that factor at least marginally favors termination." The same is true as to Se. A.'s background and ties, and that factor is marginal at best. "The children unequivocally feel love, attachment, and a sense of being valued in their current home," but are "more equivocal" about the home of their parents. There have been times the children have sensed a lack of affection through lack of involvement in visitation. There is "doubt about the continuity of placement" if the children were returned to the parental home. The children "don't know exactly what their wishes are," that factor is marginal at best. Community ties, including school, favors termination. Although there is a sibling in the parental home, there is no doubt in the court's mind that the children could continue their relationships with relatives in their current home. "[A]lthough granting the motion legally would terminate the relationship with parents it may not factually and permanently terminate their relationship with parents." There is "significant doubt that permanence can take place with the home of the parents." They are in the process of establishing a permanent, safe, healthy home, but they are not there yet, "and given the ebbs and flows of this case, there is doubt that permanence can be established there." "The Court's conclusion is that it is in the best interests of each of these three children that the prayer for relief be granted."

¶ 11 The trial court clearly considered respondent parents' conduct over the entire three-year period the children were in the custody of DCFS. The return of one child does not compel identical dispositions as to all the children. The court is required to consider the uniqueness of every child. 705 ILCS 405/1-3(4.05)(h) (West 2010). A trial court's decision not to terminate parental rights as to one child does not compel an identical disposition with respect to other children. *In re G.L.*, 329 Ill. App. 3d 18, 26, 768 N.E.2d 367, 373-74 (2002). The court was not required to accept the recommendation of DCFS, which was contradicted by the opinion of the guardian *ad litem*. The court noted that the parents were in the process of making improvements, but the process had not been completed. Given the length of time the children had been in foster care, which was virtually their entire lives, it was not unreasonable for the court to conclude that it would not be in the best interests of the children to continue respondents' parental rights. The court's decision was not contrary to the manifest weight of the evidence.

¶ 12 The courts can consider parents' failure to provide medical care and treatment for their children even assuming such failure is based on religious beliefs. *People ex rel. Wallace v. Labrenz*, 411 Ill. App. 2d 618, 625-26, 104 N.E.2d 769, 773-74 (1952). Family autonomy is not absolute and may be limited where it appears that parental decisions will jeopardize the health or safety of a child. *Wisconsin v. Yoder*, 406 U.S. 205, 233-34, 92 S. Ct. 1526, 1542, 32 L. Ed. 2d 15, 35 (1972). The children were not taken from Ali because he had an "open relationship" with several women. Instead, the children were found to be abused based on lack of proper schooling and improper physical discipline that included beating, use of a belt, and being forced to stand outside in cold weather without proper clothing. There was evidence that the changing

relationships had caused a great deal of instability, chaos, and confusion and interfered with the ability to return the children to respondent and prevented a stable nurturing environment. Hall made inconsistent statements whether she was going to continue living with Ali or whether she was going to obtain separate housing; her housing was inconsistent, with her living at a number of different locations, including with relatives.

¶ 13

III. CONCLUSION

¶ 14 For the foregoing reasons, we affirm the trial court's judgment terminating respondent parents' rights.

¶ 15 Affirmed.