

NOTICE
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2011 IL App (4th) 110306-U

Filed 9/6/11

NO. 4-11-0306

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: L.D., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 10JA70
CATINA RILEY-MOORE,)	
Respondent-Appellant.)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* As (1) respondent mother forfeited her argument that the State's petition to terminate her parental rights was deficient and (2) the trial court's termination of her parental rights at the initial dispositional hearing was supported by the manifest weight of the evidence, we affirm the trial court's judgment.

¶ 2 Catina Riley-Moore, respondent mother of L.D., a minor born October 6, 2010, appeals from the trial court's March 30, 2011, judgments finding respondent unfit and permanently terminating her parental rights. She argues (1) she was given inadequate notice that her parental rights could be terminated at the March 29, 2011, hearing that was the basis for the March 30, 2011, termination order; and (2) the court erred by terminating her parental rights following the March 29, 2011, hearing. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent mother has had four children: K.M., a son born August 1989; K.R., a

daughter born February 26, 1996, who died October 14, 1999; K.D., a daughter born October 16, 2005; and L.D. On October 6, 1999, respondent beat then three-year-old K.R. with a belt for 10 minutes after K.R. pulled some clothes off their hangers, stopping only after K.R. pleaded, "Momma, you hurt my head." K.R. was hospitalized on October 11, 1999, and died on October 14, 1999, of injuries sustained during the beating. The Illinois Department of Children and Family Services (DCFS) indicated respondent for inadequately supervising K.M. and K.R., whom respondent left alone together at her apartment from 2:30 a.m. onward the day that K.R. was later taken to the hospital, and for K.R.'s death by abuse. Respondent was charged with the first degree murder of K.R. and eventually pleaded guilty to involuntary manslaughter. She was sentenced to 10 years in prison, was released on mandatory supervised release or parole in 2004, and successfully completed her sentence in 2006.

¶ 5 Sometime in 2004 or 2005, respondent entered a relationship with K.D. and L.D.'s father, L.D., Sr. In October 2005, shortly after K.D. was born, DCFS obtained protective custody of K.D. based on respondent mother's history of child abuse and the father's incarceration at that time. When they failed to follow through with recommended services, the parents' parental rights with respect to K.D. were terminated. This court affirmed the termination on appeal. *In re K.D.*, No. 4-06-0304 (September 1, 2006) (unpublished order under Supreme Court Rule 23).

¶ 6 On November 6, 2010, when L.D. was several weeks old, the father was arrested for and charged with domestic battery for battering respondent. He pleaded guilty that same day, and on November 17, 2010, an order was entered prohibiting contact between L.D.'s parents.

¶ 7 On November 19, 2010, the State filed a petition for adjudication of neglect and shelter care regarding L.D., based on his parents' ongoing domestic violence and respondent's

history of child abuse and neglect. The petition alleged L.D. was neglected as his environment was injurious to his welfare. That same day, the trial court held a hearing on the petition. It found probable cause to believe L.D. was neglected and granted temporary custody of L.D. to DCFS.

¶ 8 On December 17, 2010, the State filed a petition entitled "2nd AMENDED PETITION FOR ADJUDICATION OF ABUSE/NEGLECT AND SHELTER CARE AND EXPEDITED MOTION TO TERMINATE THE PARENTAL RIGHTS OF CATINA RILEY-MOORE, [L.D.] SR., AND ANY UNKNOWN FATHER OF [L.D.]" The petition alleged L.D. was abused and neglected, based on his parents' incidents of domestic violence and respondent mother's history of child abuse and neglect. It alleged respondent mother, L.D., Sr., and any unknown biological father of L.D. were unfit. It alleged respondent and L.D., Sr., had involuntarily lost parental rights to L.D.'s sister K.D. in 2005. In its prayer for relief, the State requested among other things "[t]hat the respondent parents *** be admonished as to the allegations of this motion and the possible consequences of permanent termination and loss of their parental rights as to [L.D.]"

¶ 9 On February 10, 2011, the trial court held an adjudicatory hearing on the second amended petition. Respondent stipulated, as alleged in the petition, that L.D. was abused and neglected and that she was unfit to parent him. L.D., Sr., made similar stipulations. The court accepted these stipulations and found L.D. abused and neglected. In a February 24, 2011, written order, the court found respondent mother and L.D., Sr., unfit based on their stipulations.

¶ 10 On March 29, 2011, the trial court held a dispositional and best interest hearing on the second amended petition. A DCFS report, prepared by Lutheran Social Services of Illinois

with respondent mother's participation in an integrated assessment, was entered into evidence. According to the report, respondent stated she was not responsible for K.R.'s death. She expressed an interest in reuniting with L.D., Sr., despite their repeated incidents of domestic violence and the resulting no-contact order in force at the time—respondent mother wrote the State's Attorney's office about absolving the order to allow the parents to attend parenting classes together, and she reported speaking with the father about regaining custody of L.D. and attending church with him regularly while the order was in place.

¶ 11 The report noted the steps respondent was taking toward resuming care of L.D. She attended each available supervised visit with L.D. During those visits, she exhibited affection and attentiveness toward L.D., and L.D. spent much of their time together sitting in her lap. Respondent maintained suitable housing and obtained employment. In coordination with Lutheran Social Services, she attended individual counseling, parenting classes, and domestic-violence classes. She also participated in support groups with her church.

¶ 12 According to the report, L.D. was placed in his paternal grandmother's home after emergency custody was taken by DCFS. He continued to reside there, where he received due attention and visited regularly with family members. The grandmother's daughter, who lived with the grandmother and L.D., expressed an interest in adopting L.D. A background check was being performed to determine whether she was a viable adoptive mother for L.D.

¶ 13 The report recommended that respondent and L.D., Sr.'s parental rights with respect to L.D. be terminated. The author of the report concluded L.D. "should not be made to wait for the extended period of time it would take for his parents to demonstrate the ability to provide him with a safe and secure home." The cover letter submitted with the report echoed, "It

does not appear that [the mother] and / or [the father] will be able to meet this minor's basic needs for an extended period of time." Termination was recommended to allow adoption proceedings to advance.

¶ 14 The trial court took judicial notice of the trial and appellate proceedings resulting in the termination of the parents' parental rights with respect to K.D. After hearing evidence and argument in the initial dispositional phase, the court determined it was in L.D.'s best interest to remove custody and guardianship of L.D. from respondent parents and place custody and guardianship with DCFS.

¶ 15 The dispositional portion of the hearing was followed after a recess by the best interest portion, during which the trial court considered the State's petition for expedited termination of parental rights. Following the parties' arguments, the court concluded (1) the preconditions for expedited termination contained in section 2–21(5) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2–21(5) (West 2008)) were met and (2) it was in L.D.'s best interest to terminate respondent parents' parental rights and obligations with respect to L.D.

¶ 16 This appeal by respondent mother followed.

¶ 17 II. ANALYSIS

¶ 18 A. Adequacy of Notice

¶ 19 Respondent mother first argues she received inadequate notice that her parental rights could be terminated at the March 29, 2011, dispositional hearing. Specifically, she contends the State failed to comply with section 2–13(4) of the Act (705 ILCS 405/2–13(4) (West 2008)), which provides in pertinent part:

"If termination of parental rights and appointment of a guardian of

the person with power to consent to adoption of the minor *** is sought, the petition shall so state. If the petition includes this request, the prayer for relief shall clearly and obviously state that the parents could permanently lose their rights as a parent at this hearing." 705 ILCS 405/2-13(4) (West 2008).

Respondent claims the State failed to state "clearly and obviously" in its prayer for relief that she could lose her parental rights with respect to L.D. We conclude respondent forfeited this argument by not presenting it before the trial court.

¶ 20 Custody, guardianship, and termination proceedings under the Act are governed by rules of civil procedure. *In re J.R.*, 342 Ill. App. 3d 310, 315, 794 N.E.2d 414, 419 (2003). Under section 2-612(c) of the Code of Civil Procedure (735 ILCS 5/2-612(c) (West 2008)), "[a]ll defects in pleadings, either in form or substance, not objected to in the trial court are waived." *J.R.*, 342 Ill. App. 3d at 315, 794 N.E.2d at 419. Because justice in some cases requires relaxation of strict forfeiture rules, an otherwise forfeited argument regarding an error in the petition may be considered where the claimed deficiency in the State's pleadings amounts to a failure to state a cause of action. *Id.* As in *J.R.*, however, the State in this case "clearly stated what action it sought the trial court to take, and the legal grounds that justify that action." *Id.* at 316, 794 N.E.2d at 419. Thus, "the defect respondent complains of did not constitute a failure to state a cause of action." *Id.*

¶ 21 This conclusion does not end our forfeiture analysis, however. As proceedings to terminate a parent's parental rights approach criminal proceedings in nature, we should consider whether respondent has met the more lenient standard of forfeiture against which we evaluate

allegations of pleading errors raised for the first time on appeal in criminal cases. *Id.* at 316, 794 N.E.2d at 420. In such criminal appeals, the otherwise forfeited attack on the charging instrument will be addressed only if "the defendant shows that the defect prejudiced him in preparing his defense," either by failing to apprise him of the nature of the case against him or by preventing a resulting conviction from barring future prosecution for the same conduct. *Id.* at 317, 794 N.E.2d at 420.

¶ 22 Even applying this more lenient standard, we would not reach the merits of respondent's claim. Respondent does not allege that she was prejudiced by the alleged pleading defect. Further, it seems unlikely that respondent was prejudiced, considering (1) her previous experience with termination proceedings; (2) her presence for repeated mentions of termination during the February 10, 2011, adjudicatory hearing; (3) respondent's representation by a qualified attorney throughout these proceedings; and (4) the indication in the title of the State's petition that the State sought the termination of respondent's parental rights. Absent a demonstration of prejudice, respondent may not argue for the first time on appeal that the State failed to comply with section 2–13(4).

¶ 23 Respondent argues we should disregard her forfeiture and rule on the merits of her argument "in furtherance of [this court's] responsibility to maintain a sound and uniform body of precedent." *In re D.F.*, 208 Ill. 2d 223, 239, 802 N.E.2d 800, 810 (2003). Specifically, respondent points to a conflict between this court's interpretation of section 2–13(4) in *J.R.* and the Second District's interpretation of the same statute in *In re Andrea D.*, 342 Ill. App. 3d 233, 794 N.E.2d 1043 (2003).

¶ 24 This argument is not compelling. This court's interpretation of section 2–13(4) in

J.R. is irrelevant to our analysis. Rather, we rely on *J.R.* only for its discussion of the forfeiture issue. We decline to address the cited disagreements in the analyses of *J.R.* and *Andrea D.* when unnecessary to the resolution of this case.

¶ 25 Despite our conclusion that respondent's forfeiture is unavoidable, we note that we would not likely be persuaded by respondent's claim if we addressed its merits. The State's prayer for relief asked "[t]hat the respondent parents *** be admonished as to the allegations of this motion *and the possible consequences of permanent termination and loss of their parental rights* as to [L.D.]" (emphasis added). This statement clearly and obviously put respondent on notice that her parental rights were in jeopardy in these proceedings and provided her an opportunity to prepare a defense.

¶ 26 B. Expedited Termination of Parental Rights

¶ 27 Next, respondent mother argues the statutory prerequisites for the expedited termination of her parental rights at the dispositional hearing were not met. Specifically, she claims the trial court erred by finding (1) "reasonable efforts *** [were] inappropriate or such efforts were made and were unsuccessful" (705 ILCS 405/2-21(5)(iv)(A-5) (West 2008)) and (2) "termination of parental rights *** [was] in the best interest of the child" (705 ILCS 405/2-21(5)(iv)(B) (West 2008)). We disagree.

¶ 28 Section 2-21(5) of the Act allows a court to terminate parental rights at the initial dispositional hearing in some circumstances. Specifically, section 2-21(5) states:

"The court may terminate the parental rights of a parent at the initial dispositional hearing if all of the following conditions are met:

(i) the original or amended petition contains a request for termination of parental rights and appointment of a guardian with power to consent to adoption; and

(ii) the court has found by a preponderance of evidence, introduced or stipulated to at an adjudicatory hearing, that the child comes under the jurisdiction of the court as an abused, neglected, or dependent minor under Section 2-18; and

(iii) the court finds, on the basis of clear and convincing evidence admitted at the adjudicatory hearing that the parent is an unfit person under subdivision D of Section 1 of the Adoption Act [750 ILCS 50/1 (West 2008)]; and

(iv) the court determines in accordance with the rules of evidence for dispositional proceedings, that:

(A) it is in the best interest of the minor and public that the child be made a ward of the court;

(A-5) reasonable efforts under subsection (1-1) of Section 5 of the Children and Family Services Act [20 ILCS 505/5 (West 2008)] are inappropriate or such efforts were made and were unsuccessful; and

(B) termination of parental rights and appointment of a guardian with power to consent to

adoption is in the best interest of the child pursuant to Section 2–29." 705 ILCS 405/2–21(5) (West 2008).

Respondent mother concedes that all conditions were met except those contained in subsections (iv)(A–5) and (iv)(B).

¶ 29 A trial court considering whether termination of parental rights is in a minor's best interest is directed to consider, "in the context of the child's age and developmental needs," (1) the physical safety and welfare of the child; (2) the development of the child's identity; (3) the child's background and familial, cultural, and religious ties; (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, including church, school, and friends; (7) the child's need for permanence and stability in relationships with parental figures, siblings, and other relatives; (8) the uniqueness of every family and child; (9) the risks attendant 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).

¶ 30 We will not disturb the trial court's best-interest determination unless it is against the manifest weight of the evidence. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 291 (2009). "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." *Id.* "[T]his court gives great deference to the trial court's determinations at the dispositional hearing, given that the court is in the best position to observe the demeanor of the witnesses and the parties, assess credibility, and weigh the evidence presented." *Id.* at 1070, 918 N.E.2d at 290.

¶ 31 In this case, the evidence supports the trial court's findings. The court considered respondent's statement in her integrated assessment that she was not responsible for K.R.'s death. It considered her intention to continue her relationship with L.D., Sr., despite repeated incidents of domestic violence between the two and L.D., Sr.'s extensive criminal history and frequent incarceration. It considered that the same domestic violence was cited as a reason for terminating respondent's parental rights with respect to K.D. in 2005, yet it had not been corrected. DCFS and L.D.'s guardian *ad litem* recommended that respondent's parental rights be terminated to allow anticipated adoption proceedings to advance in a timely manner and to avoid prolonged efforts by respondent to become qualified to resume her role as L.D.'s guardian and custodian. Under these circumstances, considering especially the availability of a potential adoptive parent, the court's findings that reasonable efforts were inappropriate or had been unsuccessfully made and that termination of respondent's parental rights was in L.D.'s best interest were not against the manifest weight of the evidence. Accordingly, the court's termination of respondent's parental rights at the dispositional hearing was not erroneous.

¶ 32

III. CONCLUSION

¶ 33

For the foregoing reasons, we affirm the trial court's judgment.

¶ 34

Affirmed.