

2012 Ill. App. (2d) 111246-U  
No. 2-11-1246  
Order filed April 17, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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In re S.H., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 07-JA-104
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee v. Kenneth H.,	)	Mary Linn Green,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Zenoff concurred in the judgment.

**ORDER**

*Held:* The trial court's decision to terminate respondent's parental rights was not contrary to the manifest weight of the evidence where respondent did not attempt to visit minor for 10 months and minor's need for stability supported conclusion that termination was in her best interests.

¶ 1

I. INTRODUCTION

¶ 2 Respondent, Kenneth H., appeals an order of the circuit court of Winnebago County terminating his parental rights to the minor, S.H. Before this court, he challenges the trial court's determinations that he is an unfit parent and that it is in the best interests of S.H. to terminate his parental rights. For the reasons that follow, we affirm.

¶ 3 The parties are aware of the facts, and we will not restate them in detail here. Pertinent facts will be discussed below as they pertain to the issues raised by the parties. By way of background, we note that the minor that is the subject of these proceedings was born on January 21, 2007. She was born with cocaine in her system and adjudicated neglected. The minor has resided with her grandparents (who had acted as foster parents) for her entire life. On October 19, 2007, respondent was incarcerated for possession of cocaine. He was released from prison in January 2010. The minor's maternal grandparents wish to adopt her, and the minor's mother consents to the adoption.

¶ 4 Illinois law contemplates a two-step process for terminating an individual's parental rights. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). First, a court must determine whether a parent is unfit, and if that threshold is crossed, the court must consider whether termination of the parent's rights is in the best interests of the minor. *Id.* Thus, we will first consider the trial court's ruling regarding fitness and then turn to its analysis of the minor's best interests.

¶ 5

## II. FITNESS

¶ 6 Defendant first contests the trial court's decision regarding his fitness. In reviewing a trial court's finding that a parent is unfit, we utilize the manifest-weight standard. *In re M.M.*, 303 Ill. App. 3d 559, 565 (1999). A finding is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *M.M.*, 303 Ill. App. 3d at 565. A trial court's determination on this issue is entitled to great deference, since the trial court was in the best position to view the parties and evaluate their testimony. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). At trial, the burden was on the State to prove that respondent was unfit by clear and convincing evidence. *In re E.O.*, 311 Ill. App. 3d 720, 726 (2000).

¶ 7 In this case, the trial court found respondent unfit on two separate bases. First, it found that respondent did not maintain a reasonable degree of interest, concern and responsibility for the minor (750 ILCS 50/1(D)(b) (West 2010)). Second, it concluded that respondent had failed to make reasonable progress during a nine-month period (January 2010 to November 2010) toward return of the minor to him (750 ILCS 50/1(D)(m)(iii) (West 2010)). We note that a finding adverse to respondent on either of these bases is sufficient to sustain the trial court’s finding regarding fitness. *In re Gwynne P.*, 215 Ill. 2d 340, 363 (2005). Hence, if we conclude that the trial court’s decision regarding either basis is not contrary to the manifest weight of the evidence, we need not consider the other one. We will focus on the first basis.

¶ 8 Section 1(D)(b) of the Adoption Act defines an unfit parent as one who fails “to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare.” 750 ILCS 50/1(D)(b) (West 2010). The statute is written disjunctively, so it is sufficient if the State proves a parent has failed to maintain either interest *or* concern *or* responsibility—proof of all three is not necessary. *In re Richard H.*, 376 Ill. App. 3d 162, 166 (2007). Relevant considerations include “a parent's efforts to visit and maintain contact with the child, as well as other indicia of interest, such as inquiries into the child's welfare.” *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010). In making this determination, the parent’s conduct must be assessed in light of the relevant circumstances, which include “difficulty in obtaining transportation, the parent's poverty, statements made by others to discourage visitation, and whether the parent's lack of contact with the children can be attributed to a need to cope with personal problems rather than indifference towards them.” *Id.*

¶ 9 As substantial evidence exists in the record to support the trial court’s finding, we cannot say that its decision is contrary to the manifest weight of the evidence. In support of its finding, the trial

court relied on the fact that respondent was released from prison in January 2010 and he did not request visitation with the minor until November 2010. The court noted that in April, 2010, a permanency review hearing was held. During this hearing, a case worker explained to respondent what he needed to do to establish visitation. The trial court further observed that, though “[t]here was some question as to whether [respondent] knew what rights he had upon his release from incarceration in January, 2010, \*\*\* there was a case worker available to him, and he also was represented by counsel, so there was a form [sic] for him to be able to determine what rights he had and what activities he would be required to do.” The court also pointed out that “[t]here was no evidence of any regular contact with the foster parents to ask for visitation.” As there was evidence that respondent essentially ignored the minor from January 2010 to November 2010, we cannot say that the trial court’s finding that respondent did not maintain a reasonable degree of interest in the minor is contrary to the manifest weight of the evidence. This is sufficient to affirm its ultimate judgment regarding fitness. *In re Konstantinos H.*, 387 Ill. App. 3d 192, 204 (2008) (holding any one of the three grounds set forth in section 1(D)(b) is sufficient to sustain a finding of unfitness).

¶ 10 We recognize that respondent believed that, after his release from prison, visitation would have to be approved by the court. Further, he was told this by the minor’s maternal grandmother, who was acting as the minor’s care giver. It is true that the existence of “statements made by others to discourage visitation” has been expressly recognized as a consideration in determining whether a parent has maintained an adequate degree of interest for a minor. *In re C.E.*, 406 Ill. App. 3d at 108. While this consideration does weigh in respondent’s favor, we cannot say that it is so significant as to outweigh the fact that respondent did not seek visitation until approximately 10

months after being released from prison, particularly in light of the fact that his case worker told him what he needed to do after about 3 months.

¶ 11 In sum, the trial court's finding that respondent did not maintain a reasonable degree of interest in the minor's welfare is not contrary to the evidence, and its decision regarding fitness is affirmed.

¶ 12 III. BEST INTERESTS

¶ 13 Even where a parent is unfit to have custody of his or her child, "it does not follow that the parent is unfit to remain the children's legal parent with the attendant rights and privileges." *Lael v. Warga*, 155 Ill. App. 3d 1005, 1011 (1987). Hence, before parental rights are terminated, the State must prove by a preponderance of the evidence that termination is in the child's best interests. See *In re D.T.*, 212 Ill. 2d 347, 365-66 (2004). The legislature has set forth a number of factors to guide this inquiry:

“(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(I) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

- (iv) continuity of affection for the child;
- (v) the least disruptive placement alternative for the child;
- (e) the child's wishes and long-term goals;
- (f) the child's community ties, including church, school, and friends;
- (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
- (h) the uniqueness of every family and child;
- (I) the risks attendant to entering and being in substitute care; and
- (j) the preferences of the persons available to care for the child.” 705 ILCS 405/1-3 (West 2010).

On review, we apply the manifest-weight standard. *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). A decision is against the manifest weight of the evidence only where an opposite conclusion is clearly apparent. *M.M.*, 303 Ill. App. 3d at 565.

¶ 14 In ruling that the termination of respondent’s parental rights was in the minor’s best interests, the trial court first noted that the minor had resided with her grandparents for her entire life and that “there is a bond there.” The trial court acknowledged that respondent loved the minor and wished to have a relationship with her. The court observed that the minor’s maternal grandmother was repeatedly asked whether she would be willing to foster a relationship between the minor and respondent’s other children, and she stated that she would if the minor was comfortable with it. The trial court stated that it had considered all of the evidence, arguments, and “statutory best interest factors.” The court then encouraged the parties to continue to maintain a relationship between the

minor, her father, and her siblings to the extent that it is in her best interests. It then found that termination was in the minor's best interests.

¶ 15 Respondent now contends that an opposite conclusion to the one drawn by the trial court is clearly apparent. He first asserts that he loves and wants to maintain a relationship with the minor—propositions that we do not doubt. Respondent next points out that he recognizes the importance of stability in the minor's life and does not want to remove her from her current home. Furthermore, he continues, he has resumed consistent visitation with his daughter, established a stable home environment, and has “been working himself.” Moreover, respondent's case worker had “no safety concerns” regarding two other children who are in respondent's care. The case worker also believed it was in the minor's best interests to know her father. Respondent has remained drug free, as evidenced by his completion of random drug drops. Respondent asserts that the termination of his parental rights jeopardizes the minor's relationship with him and his family, as visitation “could be arbitrarily suspended at any time.” Respondent also points to the bond between the minor and his children. Finally, respondent asserts:

“One could very reasonably conclude that naming the maternal grandparents as [the minor's] guardians is the better outcome. Because of [respondent's] clear love for his daughter, his respect for the stability in his daughter's life, and the fact that severing his parental rights jeopardizes [the minor's] ability to continue building relationships with [respondent] and his family, the State failed to prove by a preponderance of the evidence that it is in [the minor's] best interests to terminate her father's parental rights.”

While we agree that “one could very reasonably conclude” a guardianship is appropriate, that is not the question before this court. We are not free to simply substitute our judgment for that of the trial

court, (*In re B.B.*, 386 Ill. App. 3d 686, 698 (2008)), and that court came to a different conclusion. The question we must address, then, is whether an opposite conclusion to the trial court's decision is clearly apparent. See *In re Deandre D.*, 405 Ill. App. 3d at 953.

¶ 16 The trial court's decision reflected a great concern for stability in the minor's life, a factor that the legislature has recognized (705 ILCS 405/1-3(d), (g) (West 2010)). On the other hand, respondent relies heavily on the ties between the minor, him, and his other children, which are also legitimate considerations (705 ILCS 405/1-3(b), (c), (g) (West 2010)). While a parent has a fundamental interest in maintaining a relationship with a child, the child's interest in a stable home is of equal importance. *In re Travarius O.*, 343 Ill. App. 3d 844, 851 (2003). By placing responsibility for the care and upbringing of the minor in the hands of a single family, the trial court ruling clearly resulted in a more stable situation. Moreover, contrary to respondent's protestations, we cannot say that the evidence establishes that termination threatens the relationship between the minor and respondent in a way that is detrimental to the minor. The minor's maternal grandmother repeatedly testified that she would be willing to foster a relationship between the minor and respondent (as well as his children) so long as the minor was comfortable with it. Hence, the manifest weight of the evidence does not establish that the trial court's order is a threat to the relationship between the minor and respondent and his other children. As such, respondent's reliance on a purported threat to these relationships is misplaced.

¶ 17 Moreover, as the State points out, not all of the evidence respondent relies on is uncontroverted. For example, contrary to respondent's testimony about the bond between the minor and his other children, the minor's foster mother testified that the minor does not understand that respondent's other children are her siblings. Resolving such conflicts in the evidence is a matter for

the trial court. *In re Donald R.*, 343 Ill. App. 3d 237, 246 (2003). In other words, given the state of the record, the trial court's ruling is not contrary to the manifest weight of the evidence.

¶ 18

#### IV. CONCLUSION

¶ 19 In light of the foregoing, the order of the circuit court of Winnebago County terminating respondent's parental rights is affirmed.

¶ 20 Affirmed.