2012 IL App (2d) 120021-U
No. 2-12-0021
Order filed April 10, 2012

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ETHAN R.R., a minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 07-JA-264
	)	
	)	
	)	Honorable
(The People of the State of Illinois,	)	Mary Linn Green,
Petitioner-Appellee, v. Robin L.,	)	Patrick L. Heaslip,
Respondent-Appellant).	)	Judges, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Bowman and Schostok concurred in the judgment.

ORDER

Held: The trial court's finding that the State proved by a preponderance of the evidence that termination of parental rights was in the minor's best interest is not against the manifest weight of the evidence; affirmed.

¶ 1 Following a bench trial, respondent, Robin L., appeals the judgment of the circuit court of Winnebago County terminating her parental rights in her child, Ethan R.R. Respondent does not contest the trial court's determination that she was unfit. Respondent's sole contention on appeal is that the trial court's finding that termination of her parental rights was in the best interest of Ethan is against the manifest weight of the evidence. We affirm.

¶ 2 BACKGROUND

¶ 3 Ethan was born on November 7, 2006, with tracheostenosis, a condition which made it difficult for air to pass through his trachea and required a tracheotomy tube inserted in his neck. Ethan was hospitalized five weeks after his birth for approximately six months due to this medical condition. When he was released from the hospital, he lived with his paternal grandmother because she was willing to be trained to care for his tube. Ethan required at-home care for breathing treatments and medication. He also needed 24-hour observation and nursing assistance. Respondent and Ethan's father, David R., came to live in the home and remained there for four months. There was concern that the parents were not cooperating with training for Ethan's care; they had not visited Ethan at the hospital regularly and had been aggressive with hospital staff.

¶ 4 David had mental health issues and a history of substance abuse that placed Ethan at risk of harm. On September 21, 2007, the Department of Children and Family Services (DCFS) received a report that Ethan and his half-sister, Destiny, were at risk of harm due to David's erratic behavior and mental health issues and respondent's inability to protect the children from David. David had had positive urine screens for cocaine, THC, heroin, and methadone while receiving DCFS services. His behavior was reported to be delusional, and he had been verbally aggressive. DCFS took protective custody of the children after respondent and David would not cooperate with a safety plan for the grandmother to care for the children.

¶ 5 The State filed a neglect petition alleging that Ethan's environment was injurious to his welfare due to David's substance abuse and mental health issues, which David left untreated, respondent's refusal to follow a safety plan forbidding David from having any contact with Ethan, and because respondent and David engaged in domestic violence in Ethan's presence. Following

a hearing, the trial court found Ethan neglected and the parties agreed to a dispositional order which placed Ethan in the guardianship and custody of DCFS with the discretion to place him with a responsible relative or foster care. Respondent was to remain drug and alcohol free, submit to random drug tests, comply with her caseworker and treatment plan, but she was allowed to reside with the grandmother and the minor. The trial court, however, advised respondent that, if she continued to associate with David, and he refused treatment, she could lose her children.

¶ 6 In May 2008, Ethan was placed in the home of his present foster mother, Jennifer Binder, a registered nurse who had been one of the nurses who had provided at-home care for Ethan when he lived with his mother and grandmother. Destiny was placed in different foster care, and she is not a party to this appeal.

¶ 7 Respondent did not complete the services required, including random drug tests and a protective parenting assessment. She had done some drug drops, which were all negative until she stopped attending services. By January 2009, respondent had been laid off work, was homeless, and was staying with friends. Respondent had been arrested for shoplifting and was jailed for a little more than one month. Among other requirements, respondent did not attend substance abuse assessments, did not complete urine screens, did not attend medical appointments for the children, did not attend early intervention therapy for Ethan, and did not establish a safe residence for the children. After being released from jail, respondent was allowed weekly visits with the children, but she missed three times. She re-engaged in counseling but was later discharged from counseling and did not make further progress. Respondent was treated for heroin addiction, which was previously unknown to be an issue.

¶ 8 At the fifth permanency review in January 2010, Jeanette Grygiel, Ethan's caseworker from Lutheran Social Services of Illinois (LSSI), testified that she did not think respondent was maintaining enough structure during respondent's visits with Ethan. At that time, respondent was pregnant by a new boyfriend, Darrell Lamb, who had not become involved in services. Grygiel had concerns about Lamb's past, but she had not observed any indications of domestic violence during the time respondent had associated with him. There were additional concerns regarding respondent's ability to care for three children and she continued to reside with Lamb, who refused to participate further in services. Finding that respondent had failed to make reasonable efforts or progress, the court stated: "Frankly, I don't know how long we're expected to sit around and wait for this mom to pick her children over the males in her life, but, frankly, I'm tired of waiting." The court then changed the treatment goal to substitute care pending termination of parental rights, and instructed the State to file petitions to terminate the parents' rights without regard to the DCFS screening process.

¶ 9 On March 19, 2010, the State filed a motion for termination of parental rights and power to consent to adoption. Following argument, the trial court found that the State had proved, by clear and convincing evidence, that respondent and David were unfit. The court noted (1) the serious domestic violence issues between respondent and David; (2) respondent's sporadic visits with the children; (3) respondent's poor choices in selecting the men with whom she became involved; (4) the refusal of her present paramour, Lamb, the father of respondent's youngest child to cooperate with requested services; and (5) respondent's failure to inquire about her children's mental or physical welfare.

¶ 10 At the best-interest hearing, the following evidence was presented. The home health nurses all expressed concern regarding how respondent cared for Ethan while respondent was the primary caregiver. Leslie James testified that, while Ethan was being cared for by respondent, James had concerns about the lack of care regarding Ethan's hygiene. She stated that there were times when respondent had told her that she had bathed Ethan, but James would find old mucus and food around Ethan's trachea tube and the ties attached to the trachea tube were dirty. James was also concerned about how respondent fed Ethan. Even though respondent was told not to, respondent used a blanket to prop up a bottle to feed Ethan, rather than hold the bottle herself. James testified that, in about one year, Ethan will have reconstructive surgery and then he will have the trachea tube removed. This is major surgery and requires continued, 24-hour monitoring for about one month afterwards. If he is not monitored properly or if he developed infection, it could be extremely dangerous, possibly fatal, and Ethan's foster parent, Binder, has had training to care for Ethan.

¶ 11 James further testified that respondent's interactions with Ethan during visitation were no different than her interactions when she was the primary caregiver. James testified that she saw little nurturing from respondent while Ethan was in respondent's care. When Ethan was not in her primary care, respondent chose not to visit Ethan while he was hospitalized because respondent said she had to work.

¶ 12 Binder testified that she frequently had concerns about respondent's care of Ethan. Binder would find Ethan sleeping because no one had awakened him from his afternoon nap, which meant that respondent had not fed Ethan or given him his medication. Binder stated that respondent would leave Ethan in his crib, "left to his own vices," and so Ethan would just sleep all day and be up during the night.

¶ 13 Grygiel, the caseworker, testified that Ethan showed by his actions that he was very comfortable with Binder and very attached to her. In her opinion, the minor's best interests would be to be adopted by Binder, who was committed to adopting Ethan. Grygiel also expressed concern that Lamb, with whom respondent continued to reside, remained unwilling to work with the required services.

¶ 14 Mary Jo Frey, another home health nurse, testified that Ethan considered Binder to be his "mom," and looked to her when he wanted attention, validation, or reassurance. Frey testified that, during the weekly visits, Ethan did not go to respondent "much, or at all."

¶ 15 Respondent testified that she wanted to have Ethan home with her but acknowledged that Binder had become an important figure in Ethan's life. When asked whether it would be better for Ethan to be cared for by her or by his foster mother, respondent replied that Binder had more medical training to care for Ethan.

¶ 16 The trial court found that Ethan's bond with his biological mother was minimal. The court noted that respondent was living with Lamb, who has not been cooperative with services and that his failure to cooperate hindered consideration of returning Ethan to respondent's care. The court found respondent could not care for Ethan, given his complicated medical history and respondent's failure to be able to take care of him in the past. The trial court further found that Binder has been involved for the majority of Ethan's life, that Binder had committed herself to Ethan's care, and that she was willing to provide a permanent home to Ethan through adoption. The court observed that Ethan was closely bonded with Binder and her extended family, that he was integrated into Binder's home, extended family, and community, and that Ethan thinks of Binder as his mother and calls her "mom." Accordingly, the court determined that the State had shown, by a preponderance of the

evidence, that it would be in the best interest of Ethan that the parental rights of David and respondent be terminated. Respondent timely appeals.[1]

¶ 17 ANALYSIS

¶ 18 As noted, respondent does not dispute the trial court's finding of unfitness, as she concedes she can not mount a good faith dispute. Rather, respondent contends that the evidence is insufficient to support the trial court's determination that it is in Ethan's best interest to terminate her parental rights.

¶ 19 After a finding of parental unfitness, the trial court must give full and serious consideration to the child's best interest. *In re G.L.*, 329 Ill. App. 3d 18, 24 (2002). At the best-interest stage of termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination is in the child's best interest. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). When determining whether termination is in the child's best interest, the court must consider, in the context of a child's age and developmental needs, the following factors: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (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; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2010).

[1]During the best-interest hearing, it was reported that David had died from an overdose.

¶ 20 We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence. *In re Tiffany M.*, 353 Ill. App. 3d 883, 890 (2004). 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. *In re D.M.*, 336 Ill. App. 3d 766, 773 (2002). Cases involving an adjudication of neglect and wardship are *sui generis* and must be decided on the unique facts of the case. *In re Z.L.*, 379 Ill. App. 3d 353, 376 (2008).

¶ 21 Respondent argues, inter alia, that (1) the trial court improperly found that she could not provide the necessary medical care for Ethan; (2) the trial court failed to consider that her lack of care for Ethan occurred during a period in which she was "clearly dominated by Father"; (3) the trial court was too focused on the situation that caused Ethan's removal from her home, and not on what respondent was presently capable of doing; (4) it was "unreasonable to expect that [she] could effectively parent [Ethan and his sister] together and attend to an infant while seeing the children only one hour per week"; (5) the trial court improperly considered the impact Lamb had on her ability to be a good parent; and (6) Ethan had bonded with Binder because Binder is with Ethan all of the time. The evidence belies respondent's arguments and supports the trial court's determination that respondent was unable to provide a safe and stable environment for Ethan.

¶ 22 We first observe that, at the best-interest hearing, the "full range of the parent's conduct" must be considered, including the grounds for finding the parent unfit. *In re C.W.*, 199 Ill. 2d 198, 217 (2002). Such evidence is a "crucial consideration" at the best-interest hearing. *In re D.L.*, 326 Ill. App. 3d 262, 271 (2001). The primary issue before the trial court is what action is in the child's best interest. See *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008) (the purpose of the best-interest hearing is to minimize further damage to the child by shifting the court's scrutiny to the child's best

interest). In this case, the evidence shows that respondent did not properly care for Ethan while he was in her care; that respondent had difficulty caring for Ethan's medical needs when he was in her custody; that her parenting skills as exhibited during visitations were deficient; that she was minimally nurturing to Ethan; that she failed to make good parenting decisions; and that Lamb, with whom respondent continued to reside, was unwilling to engage in the services necessary to place Ethan in the home.

¶ 23 Moreover, the evidence admitted reveals that Ethan has bonded with Binder because she has been caring for Ethan since he was an infant. Ethan had little time to develop a bond with respondent due to her failure to make reasonable efforts or progress toward the goal of return home. However, even if there existed a bond between respondent and Ethan, this would not automatically insure that a parent will be fit or that the child's best interest will be served by that parent. See *In re K.H.*, 346 Ill. App. 3d 443, 463 (2004). Of importance here is that Binder provides Ethan with a nurturing and loving environment. Binder is committed to adopting Ethan and is willing to maintain Ethan's relationship with his sister, respondent, and his paternal grandmother. Binder can provide Ethan with shelter, food, and the necessary medical care and support that Ethan requires. An adoptive home is available not only to satisfy Ethan's important medical needs but also his need for permanency and stability. Further delay and lack of permanency and stability certainly would not be in Ethan's best interest. See *K.H.*, 346 Ill. App. 3d at 463 (permanency and stability is important for a child's welfare). Given our standard of review, we conclude that the court's finding that it is in the best interest of Ethan to terminate respondent's parental rights is not against the manifest weight of the evidence.

¶ 24 Affirmed.