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2012 IL App (3d) 110514-U

Order filed February 8, 2012

IN THE
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

<i>In re</i> R.E., Jr.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor,)	Tazewell County, Illinois
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-11-0514
)	Circuit No. 09-JA-131
v.)	
)	
S.N.,)	
)	Honorable Joe Vespa,
Respondent-Appellant).)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Appellant did not establish that she received ineffective assistance of counsel at the best interest hearing. Appellant forfeited this argument by failing to cite relevant authority. Even if the argument were not forfeited, appellant failed to establish either of the required elements of the *Strickland* analysis.

¶ 2 Appellant, S.N., appeals the trial court's decision to terminate her parental rights. She alleges that she received ineffective assistance of counsel at the best interest hearing. Appellant arrived at the best interest hearing after the trial court had already ruled. The trial court offered to redo the hearing and allow appellant to testify. After conversing with appellant, trial counsel stated that they were not seeking to reopen the evidence as they had no additional evidence to present. The trial court then stated that its prior ruling, terminating appellant's parental rights, stood. Appellant argues counsel was ineffective in failing to have her testify.

¶ 3 **FACTS**

¶ 4 In September 2009, the State filed a shelter care petition alleging that appellant was a heroin user, had recently overdosed on heroin, used cannabis while pregnant with R.E., Jr., and that the child was born with cannabis in his system. Following a hearing, guardianship of the child was placed with the Illinois Department of Children and Family Services (DCFS).

¶ 5 Appellant failed to make progress toward being fit. In January 2011, the State filed a petition for the termination of parental rights. A hearing was held in May 2011 where appellant was found unfit. A best interest hearing was held in July. The hearing was scheduled to, and did, begin at 1 p.m.; appellant was not present. The State presented testimony of the caseworker, foster parent and guardian ad litem.

¶ 6 The evidence presented showed that the bond of the child was stronger with the foster parent than with the mother. When appellant spent time with the child, she repeatedly spent time complaining about the services she was provided and the court system instead of spending her time with the child. The evidence showed that appellant became angry during the visits and used

inappropriate language around the child. The caseworker testified that appellant refused to submit to mandated drug testing; she did not want to pay for tests she knew would show she was still using drugs. Appellant also lied to the caseworker about her relationship with the child's father. He had voluntarily relinquished his parental rights, and appellant told the caseworker that she was no longer involved with him. The father had a history of drug abuse and criminal activity. Appellant was still involved with the father on an ongoing basis, even while she told the caseworker that she was not involved with him.

¶ 7 The caseworker explained that the foster mother is the child's paternal aunt. She also stated that the child's bond with the foster mother is stronger than the bond with the appellant. The foster parent has children living at home, the child's cousins. The foster parent also desires to adopt the child. Finally, the caseworker testified that it was her opinion that with respect to all the factors the court was required to consider, it was in the best interest of the child that appellant's parental rights be terminated and the child placed with the foster parent.

¶ 8 At the conclusion of the evidence, the court found that it was in the best interest of the child to terminate appellant's parental rights. The court also found that appellant had actual notice of the hearing.

¶ 9 At this point, more than 30 minutes after the hearing started, appellant arrived. The trial court stated that it was willing to "redo" the hearing. During a brief recess, appellant discussed the matter with her trial counsel. Following the recess, trial counsel stated he had spoken with his client about reopening evidence. He explained that the only reason to do so would be to allow appellant to testify. Counsel then said, "She and I discussed that at length, and for reasons

best known only to her and I, we have both decided that we will not be making a motion at this point in time. *** I don't know that there's anything that I could present to carry the day through the mother's testimony." The court then asked appellant if she agreed with what her counsel had just said, and she agreed. The trial court then said that its entire ruling, as previously given, would stand.

¶ 10 This appeal followed.

¶ 11 ANALYSIS

¶ 12 Appellant argues only that she received ineffective assistance of counsel at the best interest hearing. Specifically, that it was error not to have her testify. In a proceeding to terminate parental rights, parents are entitled to effective assistance of counsel. *In re R.G.*, 165 Ill. App. 3d 112, 127 (1988). To establish that she received ineffective assistance of counsel, appellant must show that her trial counsel's representation fell below an objective standard of reasonableness and that, but for the actions of her trial counsel, there is a reasonable probability the trial court would not have terminated her parental rights. See *Strickland v. Washington*, 466 U.S. 668, 687-95 (1984); *People v. Albanese*, 104 Ill. 2d 504, 526 (1984).

¶ 13 The State argues that appellant has waived review of this issue due to a failure to cite legal authority in support of her position and a failure to argue how trial counsel's actions fell below the *Strickland* standard. Supreme Court Rule 341(h)(7) requires appellate briefs to contain "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Additionally, "[p]oints not argued are waived and shall not be raised in the reply brief,

in oral argument, or on petition for rehearing.” *Id.*; *In Re Marriage of Johnson*, 2011 IL App (1st) 102826, ¶ 25.

¶ 14 The only case cited by appellant does not address ineffective assistance of counsel; it held that a mother was denied due process when the trial court did not let her testify. Appellant forfeited this argument.

¶ 15 In this case, the trial court offered to allow appellant to testify. She conferred with her attorney and decided she did not want to testify. Appellant has put forth no evidence showing that her trial counsel’s actions fell below an objective standard of reasonableness. We simply do not know what was discussed between trial counsel and appellant. The evidence presented shows that trial counsel acted reasonably by discussing the issue with appellant. After her trial counsel told the court that they were not going to introduce any evidence, the court asked appellant if she agreed with what her attorney had said, and she agreed.

¶ 16 Even if appellant had established that her trial counsel’s actions fell below an objective standard of reasonableness, she has not presented evidence of what her testimony would have been and how it would have changed the outcome. After a thorough examination of the record, we cannot see how appellant’s testimony would have had any chance of changing the outcome. The evidence clearly establishes that it was in the best interest of the child to terminate appellant’s parental rights and place the child with the foster parents. Appellant continues to use drugs, and maintain a relationship with a man who is a drug user with ongoing criminal problems. She lied to the caseworker about this relationship. The child has a stronger attachment to the foster mother than to appellant, and the foster mother desires to adopt the child.

Appellant also acted inappropriately in her visits with the child, using improper language and focusing on her services instead of the child.

¶ 17

CONCLUSION

¶ 18 For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

¶ 19 Affirmed.