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2012 IL App (3d) 110617-U

Order filed January 6, 2012

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

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| *In re* M.W., V.W., N.W., and K.M., Minors | ) | Appeal from the Circuit Court |
| | ) | of the 10th Judicial Circuit, |
| (THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Peoria County, Illinois, |
| | ) | |
| Petitioner-Appellee, | ) | Appeal No. 3-11-0617 |
| | ) | Circuit Nos. 04-JA-44 |
| v. | ) | 04-JA-46 |
| | ) | 04-JA-47 |
| LATASHA M., | ) | 05-JA-110 |
| | ) | |
| Respondent-Appellant). | ) | Honorable |
| | ) | Mark E. Gilles, |
| | ) | Judge, Presiding |

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JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

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## ORDER

¶ 1 *Held*: Trial court did not err in finding respondent mother unfit and terminating her parental rights for failing to maintain a reasonable degree of interest, concern, or responsibility regarding her children's welfare.

¶ 2 Respondent mother Latasha M. was found unfit and her parental rights to minors M.W., V.W., N.W. and K.M. were terminated. She appeals the termination. We affirm.

¶ 3 **FACTS**

¶ 4 In February 2004, the State filed juvenile neglect petitions regarding Latasha M.'s children, M.W., V.W., N.W., and D.B. The status of D.B. is not at issue in this appeal. The petitions made the following allegations: (A) the minors' sibling, J.M., was born three months premature and released from the hospital on January 17, 2004; (B) on February 3, 2004, J.M. was taken to the hospital in critical condition; ( C) also on February 3, Latasha left J.M., K.M., V.W. and D.B., in the care of their sibling, N.W., who was eight years old; [(D) allegation struck;] (E) Latasha gave J.M. a soap and water enema without the advice of a doctor; (F) Latasha took J.M. off an apnea monitor without a doctor's advice; and (G) on February 3, 2004, J.M.'s sibling placed him near an open window when it was below freezing, and when J.M. arrived at the hospital, his temperature was 86 degrees. Latasha admitted the allegations, with some amendments.

¶ 5 An adjudication order was entered on November 8, 2004, with a finding of neglect regarding M.W., V.W. and N.W. A dispositional order was entered on January 10, 2005, finding Latasha unfit on the proof of the petitions. The children were made wards of the court and the Illinois Department of Children and Family Services (DCFS) was named guardian. Latasha was ordered to perform a number of tasks. A neglect petition was filed regarding K.M. in May 2005, and alleged that Latasha was found unfit in the 2004 juvenile petitions and no subsequent finding of fitness had been made. An order entered on November 22, 2005, finding that Latasha remained unfit concerning K.M. on the basis of the prior petitions and granting custody and guardianship to DCFS. Latasha was ordered to perform substantially the same tasks as assigned in the first service plan, with some changes to, and elimination of, tasks. The goal was for the children to return home within one year. A number of permanency review orders were entered beginning in June 2005, generally finding Latasha's reasonable efforts were mixed, she developed a more cooperative attitude, and met her goals overall.

¶ 6 In April 2006, Latasha executed a termination of her parental rights as to J.M., who is not a part of this proceeding. An October 2006 permanency review order established a new goal to return the children home pending status, finding that Latasha had made efforts over a period of time but not any progress toward reunification. The change in goal was based on Latasha's failure to correct the conditions that required removal of her children and to make reasonable efforts toward reunification. The trial court noted that although Latasha had made reasonable efforts in all areas, except as to her relationship with the children's father, she failed to make progress. In December 2006, D.B., Latasha's other child, admitted that he had sexually abused M.W. and N.W. In an April 2007 permanency review order, the trial court admonished Latasha to make more progress. At an October 2007 permanency hearing, the trial court found that Latasha had made reasonable efforts to achieve the permanency goal. Also, the trial court suspended D.B.'s visits with his siblings. In January 2008, the trial court found Latasha fit pursuant to her motion and by agreement of the parties. DCFS was given discretion whether to grant Latasha unsupervised visits with her children but it was barred from allowing overnight visits or the children's return home. The trial court again ordered that D.B. have no contact with his siblings. In a February 2008 permanency review order, the trial court found Latasha was making reasonable efforts.

¶ 7 Unsupervised visitation began on March 3, 2008 at Latasha's home. A June 2008 permanency review report stated that at one visit, Latasha forcibly cut K.M.'s hair, which traumatized him. At another visit, Latasha called V.W. names. V.W. and M.W. reported to the caseworker after a visit with Latasha that "[V.W.] is scared at the visits because Latasha will sometimes get mad and strike at him." The foster parents later informed the caseworker that V.W. and M.W. told him that Latasha made them eat off the floor and forced K.M. to eat when he did not

want to eat. The report also stated that Latasha had been in contact with the children's father and that she brought an unannounced guest to a visit with D.B. at his residential facility, lied about the girl's identity and made D.B. complicit in her lie. In August 2008, the trial court issued a permanency review order in which found that Latasha's visitation with M.W. and V.W. "seriously endangered [their] emotional, physical well-being," entered a finding of neglect, ordered that visitation be supervised, and changed the permanency goal to substitute care pending its determination of termination of parental rights. The court found that Latasha had not benefitted from more than three years of counseling and that she refused to learn anything during visitation, despite guidance from her caseworker and counselor. A January 2009 PRO indicated that Latasha's efforts at reunification were mixed at best, although her only task to complete was counseling. A July 2009 PRO stated that Latasha failed to make reasonable efforts and that she had been discharged from counseling for lack of attendance. The trial court ordered Latasha to again engage in counseling.

¶ 8 On December 1, 2009, the State filed petitions to terminate Latasha's parental rights as to all four children. The petition alleged that Latasha failed to make reasonable progress toward the return of her children within a nine-month period after a neglect finding, with a nine-month period extending from February 1, 2009 to November 1, 2009. A January 2010 court report indicated that Latasha had been engaged in counseling twice a month since July 2009. C236 A PRO dated January 6, 2010, found that Latasha failed to make reasonable efforts toward reunification. In May 2010, the trial court denied the State's petition to terminate, finding it was misdirected because Latasha had been found and remained fit. The State filed a motion to reconsider. The trial court issued an order denying the State's motion and stating that when a parent's fitness is restored, the parent is

"declared by the court to be competent in terms of those parenting skills." The foster parents of V.W. and M.W. and the foster parents of N.W. and K.M. moved to intervene, which the trial court allowed. They subsequently petitioned for guardianship. A PRO, issued on July 21, 2010, established a new permanency goal of returning the children home within five months. The trial court found that Latasha was making reasonable efforts toward reunification. A new visitation plan was established that allowed Latasha a supervised, one-hour visit with her children once a week.

¶ 9 A report filed by the children's guardian *ad litem* (GAL) in August 2010 stated that M.W., V.W. and N.W. told the GAL they were scared to live with Latasha, they liked their foster homes, and did not want to live with her. In August 2010, a best interests report was prepared by the children's caseworker which recommended guardianship for the children. In October 2010, the State filed a petition for unfitness. The petition alleged the reasons for the initial removal in 2004, and added as grounds that Latasha "loses track of the minors at visits," refused to identify a man who was at her residence, did not verify her employment, and "is often not ready or not at home for visits." An addendum to the best interests report established that Latasha provided proof of employment, which was verified. Latasha also provided information on her brother and mother for background checks. Also in October 2010, two addenda were filed to update Latasha's progress and detailed the events resulting in the State's petition for unfitness.

¶ 10 On December 2, 2011, the trial court issued a ruling granting the foster parents' motions for guardianship. It denied the State's petition for unfitness, finding that Latasha had "come to grips with the reason the children originally came into care" and no other reasons warranted an unfitness finding. The trial court ordered that an unsupervised visitation plan be immediately established. The trial court also issued its best interests findings regarding the children's placement. It made

express findings regarding the best interest factors and concluded that it was in the best interests of the children that they are placed with their foster parents. The trial court reconsidered its ruling on the State's motion, which it granted as to one best interest factor and denied as to a second factor. The trial court denied the motion to reconsider regarding the State's motions for an unfitness finding and supervised visitation. A new visitation plan was established, allowing Latasha a one-hour visit with her children once a month.

¶ 11 In March 2011, the State filed an emergency petition for unfitness and to suspend visitation. The petition alleged that Latasha engaged in inappropriate behavior at visitation and had attempted to bring an advocate to a visitation, contrary to the terms of the visitation plan. A hearing on the emergency motion was held. Testimony was presented that at the January visitation, Latasha told M.W. she was "fat" and that "no one would like a fat girl." At the February visitation, Latasha forced M.W. to talk to her brother, D.B. on her mother's cell phone, contrary to the no-contact order. Latasha also allowed N.W. to talk to D.B. The trial court found that D.B. spoke to M.W. and N.W., and that M.W. did not want to speak to D.B. The trial court took judicial notice of D.B.'s juvenile file, long-term participation in a residential program for sex offenders, and admissions that he had sexually abused M.W. and his other siblings. The trial court found that the call Latasha made to D.B. damaged M.W. and put the other children at a risk of harm. It stated that Latasha put "[D.B.] and his relationship with his siblings above almost everything else." The trial court suspended visitation under the emergency petition and prohibited Latasha from having contact with any of her children.

¶ 12 The State filed petition to terminate Latasha's parental rights in April 2001, alleging that Latasha was unfit for failure to maintain a reasonable degree of interest, concern or responsibility

for the welfare of her children. In June 2011, a hearing ensued. M.W. testified that at a visitation with Latasha, her mother slammed a cell phone to her ear and made her speak to D.B. He told her he would come and do something, which scared her. Afterward, she had nightmares that D.B. was in her room and telling her to run away. On another visit, her mom told her she was fat and that no one would like a fat girl. The trial court entered an order finding Latasha unfit, suspending visitation, and holding the petition to terminate proved. The trial court made findings that Latasha's version of events at the January and February visitations and her claims that she did not understand the no-contact order regarding D.B. were not credible. The trial court noted that a fit parent would not submit a child to someone who had sexually assaulted her. The trial court acknowledged that Latasha showed interest in her children but that it was not reasonable and did "not involve the correct concern or responsibility as to the welfare of the minors." The trial court found Latasha unfit on the basis of failure to maintain a reasonable degree of interest, concern, or responsibility as to her children. The trial court suspended visitation and found that the petition for termination of parental rights was proved.

¶ 13 Best interests reports were submitted by DCFS and a best interests hearing took place. The evidence in the submitted reports established the M.W., V.W., N.W. and K.M. wanted to be adopted by their foster parents, their needs were being met by their foster families, and it was in their best interests that Latasha's parental rights be terminated. The foster parents of M.W. and V.W. intended to adopt them and the foster parents of N.W. and K.M. intended to maintain permanent guardianship. The trial court issued a best interest order on July 28, 2011, terminating Latasha's parental rights as to M.W., V.W., N.W., and K.M. The trial court stated that Latasha was unable to put the best interests of her children above her own motives. The trial court found that it was in the best interests

of M.W., V.W., N.W., and K.M. that Latasha's parental rights be terminated and granted the State's petition. The trial court also found that it was no longer in the children's best interest to remain wards of the court and closed the file. Latasha appealed.

¶ 14 **ANALYSIS**

¶ 15 On appeal, Latasha challenges the trial court's finding that termination of her parental rights was in the children's best interests. She argues that the trial court erred in determining that she had not maintained a reasonable degree of interest, concern, or responsibility concerning the welfare of her children. She submits that she substantially completed her required tasks as set forth in her service plan and had been previously found fit, which indicated that she maintained reasonable interest, concern or responsibility in her children's welfare.

¶ 16 After a parent has been found unfit, the trial court determines whether to terminate the parent's rights based on the child's best interests. *In re D.H.*, 323 Ill. App. 3d 1, 13 (2001). The trial court focuses on the child's welfare and whether termination would improve the child's future, including his financial, social and emotional well-being. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072 (2006). In determining whether termination of a parent's rights is in a minor's best interest, the trial court considers the following factors: (1) the minor's physical safety and welfare; (2) development of his identity; (3) his background and ties, including familial, cultural, and religious; (4) the minor's sense of attachments; (5) the minor's wishes; (6) the minor's ties to his community; (7) the minor's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8), the uniqueness of every child; (9) risks related to substitute care; and (10); the preferences of individuals available to care for the minor. 705 ILCS 405/1-3(4.05)(a) through (j) (West 2010). The State must prove by a preponderance of the evidence that

termination is in the child's best interests. *Daphnie E.*, 368 Ill. App. 3d at 1072. We will not reverse a trial court's finding that termination of parental rights is in the child's best interests unless it is against the manifest weight of the evidence. *Daphnie E.*, 368 Ill. App. 3d at 1072.

¶ 17 The evidence does not support Latasha's claim that she maintained reasonable interest, concern or responsibility for her children, despite substantial completion of her service tasks and a prior restoration to fitness. Neglect findings were entered regarding M.W., V.W. and N.W. in February 2004 and K.M. in November 2005. The children were removed from her care and a service plan established. Latasha was restored to fitness by agreement of the parties in January 2008. A second neglect finding was entered in August 2008, based on Latasha causing serious endangerment to the children. Although she remained fit, Latasha's efforts at satisfying the permanency goals were inconsistent, ranging from mixed efforts to failure to make reasonable efforts. A new service plan was entered in July 2010, with the permanency goal of returning the children within five months. However, the children and the caseworker expressed concerns regarding Latasha's parenting abilities. In March 2011, the trial court found that Latasha had caused severe damage and risk of harm to her children by allowing contact between them and D.B. The State followed with a petition to terminate Latasha's parental rights, based on Latasha's unfitness for failing to maintain a reasonable degree of interest, concern or responsibility regarding her children. The trial court found that termination was in the children's best interests. We find that the trial court's decision was not against the manifest weight of the evidence and affirm its termination of Latasha's parental rights.

¶ 18 At the best interest hearing, the trial court made express findings in support of its decision to terminate Latasha's parental rights. It stated Latasha was unable to put her children's best

interests above her own motives which have been or may be contrary to their interests. The March 2011 emergency petition for unfitness and to suspend visitation was prompted by Latasha not only failing to protect her children's physical safety and welfare but setting up the phone call with D.B. and forcing M.W. and N.W. to speak to him, contrary to M.W.'s wishes and the trial court's no-contact order. Other incidents raising concerns about the children's safety and well-being included M.W. and N.W. reporting that Latasha called them names and ridiculed them. This first factor favors termination. The second best interests factor, development of the children's identities, also favors termination. M.W., N.W. and V.W had been in foster care since 2004 and K.M., since his birth in 2005. By all reports, they had each fully integrated into their foster families. The foster parents provided all four children with extracurricular activities, maintained counseling for them, and assisted them in developing positively. The third factor also favors termination. Due to the children's long-term placement with their foster families, the bulk of their familial, cultural and religious background and ties originated in their foster placement. Each set of foster parents appears committed to maintaining a relationship with the other foster family, allowing the children to maintain and strengthen ties with their siblings. The fourth and fifth factors, the minor's sense of attachments and wishes, similarly favor termination. The children stated that they want to stay with their foster families, that they are scared of their mother and do not believe she is a good parent. Visitation reports indicate that they have little attachment and are not bonded to their mother. The children are integrated into their foster families and have established relationships with their foster family siblings and extended families. The next factor, the minor's ties to his community, also favors termination. The children are settled in their schools and involved in extracurricular and church activities.

¶ 19 The caseworker and trial court both emphasized the children's need for permanence, the next best interests factor. This factor includes the need for stability and continuity of relationships with parent figures and siblings. M.W., V.W., and N.W. have been in foster care since 2004 and K.M. since 2005. He was placed after birth and knows only life with his foster family. The eighth factor, the uniqueness of every child, favors termination. The foster parents have worked diligently to assure that the children receive the necessary counseling and medical care and have shown a commitment to recognizing and acknowledging the children's abilities and weaknesses. There are no evident risks related to substitute care, the ninth factor. The preferences of the available caregivers, the tenth factor, also favor termination. The foster parents are committed to permanency for the children and are seeking to either adopt or maintain permanent guardianship.

¶ 20 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 21 Affirmed.