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2012 IL App (3d) 110778-U

Order filed March 12, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

In re D.F., D.T., D.T., A.G., and D.G.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-11-0778
	)	Circuit Nos. 05-JA-159, 05-JA-45,
v.	)	06-JA-203, 08-JA-01 and
	)	08-JA-256
Monica G.,	)	
	)	
Respondent-Appellant).	)	Honorable
	)	Mark E. Gilles,
		Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Schmidt concurred in the judgement.
Justice McDade specially concurred.

ORDER

¶ 1 *Held*: The trial court's determination, by a preponderance of the evidence, to terminate the respondent's parental rights, as being in the best interest of the minors, was not against the manifest weight of the evidence.

¶ 2 On April 1, 2011, the State filed petitions for termination of the respondent's parental rights in five juvenile cases, alleging that the respondent was an unfit person due to her failure to make reasonable progress during the nine-month period from June 3, 2010, to March 3, 2011. The time period was subsequently amended to July 5, 2010, to April 5, 2011. On August 14, 2011, the trial court found that the allegations of unfitness, as to each of the five minors, had been proven. A best interest hearing was held on September 13, 2011, after which the trial court found that it was in the best interest of each of the five minors to terminate respondent's parental rights. The respondent has chosen not to contest the trial court's finding of unfitness but does appeal from the trial court's finding that it was in the best interest of each of the five minors to terminate her parental rights.

¶ 3 BACKGROUND

¶ 4 The present appeal concerns the termination of the respondent's parental rights to five minors. In case numbers 05-JA-45 and 05-JA-159, the minors, D.F. and D.T., were adjudicated neglected on November 9, 2005, due to being in an environment injurious to their welfare in that their mother, the respondent, was 16 years old, on juvenile probation, a chronic runaway (having run away both with and without the minors), and a victim, herself, of domestic violence committed by the respondent's father. On December 14, 2005, dispostitional orders were entered ordering the respondent to cooperate fully with the Department of Children and Family Services (DCFS), execute all authorizations for release of information from third parties requested by DCFS, participate in and successfully complete counseling (including domestic violence counseling), complete a parenting class and a domestic violence class, obtain and maintain stable housing, obey orders of protection, provide updated address and contact information to her

caseworker, as well as provide updated information regarding any relationships with individuals that would affect the children, adhere to a visitation schedule, stay in school and use best efforts to graduate, and not run away.

¶ 5 In case number 06-JA-203, the minor, D.T., was adjudicated neglected on November 15, 2006, due to being in an environment injurious to his welfare in that respondent mother was previously found unfit with no subsequent finding of fitness, was involved in an ongoing pattern of domestic violence perpetrated against the respondent by D.T.'s father, and was found not to be making reasonable efforts at the most recent permanency review hearing in the siblings' cases, and having run away from her foster home with one of the other children. A dispositional order was entered on April 18, 2007, which ordered the respondent to complete tasks very similar to those assigned in the prior dispositional orders and also to refrain from any illegal activities.

¶ 6 In case number 08-JA-01, the minor, A.G., was adjudicated neglected on April 9, 2008, due to being in an environment injurious to her welfare similar to the facts adjudicated in the case of D.T. (case number 06-JA-203). A dispositional order was entered on May 14, 2008, which ordered the respondent to complete tasks similar to the three dispositional orders regarding the other minors and to inform the court of the last name of the father of A.G.

¶ 7 In case number 08-JA-256, the minor, D.G., was adjudicated neglected on April 15, 2009, due to being in an environment injurious to his welfare in that the respondent mother was previously found unfit in the four prior cases with no subsequent finding of fitness and in that the respondent was present in a car with her boyfriend while the boyfriend was dealing drugs out of the car. A dispositional order was entered on May 13, 2009, in which the respondent was ordered to complete similar tasks to those of the previous four dispositional orders, including

refraining from engaging in illegal activities and cooperating with domestic violence counseling and support.

¶ 8 On April 1, 2011, the State filed petitions to terminate the respondent's parental rights in all five cases. Count I of each petition alleged that the respondent was unfit due to her failure to make reasonable progress toward the return of the minors during the nine-month period from June 3, 2010, to March 3, 2011. The time period was subsequently amended to July 5, 2010, to April 5, 2011.

¶ 9 The adjudication hearing was held on August 17, 2011. At the adjudication hearing, the court admitted evidence of the respondent's conviction for retail theft for a crime committed on April 4, 2011. Also admitted were certified counseling records for the respondent, which showed that she had missed several counseling appointments.

¶ 10 Stacey Valentin and Lynzie Davis, the respondent's caseworkers during the nine-month period, each testified to the respondent's failure to comply with the reunification plan. Testimony included the fact that the respondent's house had several safety issues. Additionally, the respondent would not cooperate with requests for documentation and information regarding her search for employment. Davis testified that the respondent had been discharged from her counseling program in December 2010 for failure to attend scheduled appointments with her therapist. Davis also testified that she tried to refer the respondent to another counseling program, but the respondent told Davis that she did not believe she was in need of therapy.

¶ 11 In January 2011, the respondent's car was involved in an accident. Davis testified that the respondent was not truthful in discussing the identity of the driver. Davis also testified that she observed the respondent telling the children that they did not need to listen to their foster parents.

¶ 12 At the conclusion of the adjudication hearing, the trial court found that State had proven that the respondent was unfit.

¶ 13 The best interest hearing was held on September 14, 2011. In addition to the evidence concerning the respondent's inability to provide stable housing for the children, and her lack of cooperation with the plan, the evidence presented at the best interest hearing included information that the respondent was currently involved in criminal activity. Additionally, the evidence included a report on the current situation of each of the five children. Three of the children, D.F., D.T., and A.G., were in one foster home, and the other two, D.T. and D.G., were in another foster home.

¶ 14 D.F. (05-JA-045), who was seven years old at the time, had been in the same foster home since he was two years old, and the foster parents were willing and able to adopt him. Moreover, the evidence established that D.F. was in a stable and secure home environment, was doing well in school, and was very attached to the foster parents, referring to them as "mom" and "dad." D.F. was completely integrated into the foster family, and it was the recommendation of caseworkers that it was in the best interest of D.F. to be adopted by his foster family, with which he had lived for nearly six years.

¶ 15 The evidence presented at the hearing regarding D.T. (05-JA-159) indicated that he was six years old, had been in his current foster home since he was six months old, and his foster parents were willing and able to adopt him. D.T. was enrolled in first grade but was having behavioral issues for which he was receiving counseling. He was attached to his foster parents, referring to them as "mom" and "dad," while referring to the respondent as "Monica." The evidence also established that D.T. was well integrated and accepted into his foster family.

¶ 16 The evidence presented at the hearing regarding A.G. (08-JA-01) indicated that she was three years old, had been in her current foster home since she was an infant, and the foster parents were willing and able to adopt her. She was enrolled in preschool, where she did not exhibit any behavioral or emotional issues. A.G. demonstrated developmental skills appropriate for her age; however, she did have some speech and fine motor skill issues, which were being addressed by the school. A.G. had bonded with the foster family, referring to them as "mom" and "dad," and the foster parents had likewise accepted A.G. as a full member of the family.

¶ 17 D.F., D.T., and A.G. were all under the foster care of the same couple, who had expressed their intention to adopt all three children, having signed a permanency commitment statement stating that they would seek to adopt each of the three children.

¶ 18 The evidence presented at the hearing regarding D.T. (06-JA-203) indicated that he was five years old, had been in the current foster care home since he was an infant, and the foster parents were willing and able to adopt him. D.T. was enrolled in kindergarten, where he had exhibited several behavioral issues. The foster parents were working with school staff, caseworkers, and therapists during the school and had a behavioral intervention plan in place. D.T. referred to his foster parents as "mom" and "dad" and was attached to them. The foster parents viewed D.T. as a member of their family. During visitations with the respondent, D.T. interacted far more with his siblings than with the respondent.

¶ 19 The evidence presented at the hearing regarding D.G. (08-DA-256) indicated that he was two years old and had lived in his current foster home for a year. D.G. referred to his foster parents as "mommy" and "daddy," was very well adapted, and bonded to his foster parents. D.G. interacted with his siblings during visitations but had little interaction with the respondent.

¶ 20 D.T. and D.G. were in the care of the same foster parents who had indicated a strong desire to adopt the two children, having signed a permanency commitment statement stating that they would seek to adopt each of the two children.

¶ 21 Caseworkers reported that the children were placed in two foster homes due to the negative behavior exhibited by the three older siblings when they were together. It was also reported that the two sets of foster parents were facilitating a meeting of all the children twice per month. The caseworkers recommended that the placement in two homes be permanent as being in the best interest of all children. Additionally, it was the recommendation of caseworkers that the parental rights of the respondent be terminated as in the best interest of the children.

¶ 22 The court found, at the close of the hearing, that it was in the best interest of each of the children that the respondent's parental rights be terminated and granted DCFS the power to consent to adoption. The respondent filed a timely appeal.

¶ 23 ANALYSIS

¶ 24 The respondent appeals only from the trial court's determination that it was in the best interest of each of the minors to terminate her parental rights. The involuntary termination of parental rights involves a two-step process. *In re D.T.*, 212 Ill. 2d 347, 363 (2004). Once the State has proven parental unfitness, the trial court must then consider whether it is in the best interest of the minors to terminate parental rights. *Id*. At the best interest stage of these proceedings, the parent's rights must yield to the best interest of the child. *In re L.W.*, 383 Ill. App. 3d 1011, 1024 (2008). The decision to terminate parental rights in the best interest of the child must be supported by the preponderance of the evidence. *In re D.T.*, 212 Ill. 2d at 365 (2004). When reviewing the trial court's determination that it is in the best interest of the child to

terminate parental rights, we will not overturn the trial court's determination unless it is against the manifest weight of the evidence. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the determination is unreasonable, arbitrary, or not based on the evidence. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 25 Here, as we have previously noted, the respondent does not challenge the trial court's finding of parental unfitness. She does challenge, however, the trial court's determination to terminate her parental rights as to each of the five children. The respondent maintains that the trial court failed to properly consider that she had completed a parenting class and had completed domestic violence training. She also maintained that the trial court had failed to consider that the finding of unfitness did not predict her future ability to be an appropriate mother to the children. In addition, she challenged the fact that the five children had been placed with two separate foster families.

¶ 26 First, we note that a respondent's efforts or progress are irrelevant at the best interest stage of the proceedings since, following a finding of unfitness, the focus shifts to the children and whether, in light of their needs, parental rights should be terminated. *In re D.T.*, 212 Ill. 2d at 364. After a parent is found unfit, all of the parental rights must yield to the best interest of the children, and the parent's interest in maintaining the parent/child relationship must yield to the children's interest in a stable home life. *In re Allen*, 172 Ill. App. 3d 950, 959 (1988).

¶ 27 The statutory factors to be considered by the trial court prior to termination of parental rights include: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural and religious background; (4) the child's sense of

attachment, including love, security, familiarity, and continuity of relationships with parent figures; (5) the child's wishes and goals: (6) community ties; (7) the child's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the person available to care for the child. *In re B.B.*, 386 Ill. App. 3d at 698; 705 ILCS 405/1-3(4.04) (West 2008). However, in issuing a decision, the trial court is not required to expressly address each of the statutory factors (*In re Janira T.*, 368 Ill. App. 3d 883, 894 (2006)), nor does the trial court need to articulate any specific rationale in support of its determination. *In re Jaron Z.*, 348 Ill. App. 3d 239, 262-63 (2004).

¶ 28 Here, the record supports, by a preponderance of the evidence, the trial court's determination to terminate the respondent's parental rights as being in the best interest of each of the five children. There was a preponderance of the evidence to support a finding that the respondent was not able to provide a physically safe home, while the foster parents were able to provide such a safe environment. The record further supports termination of the respondent's parental rights as being in the best interest of these minors, as each of the children had bonded with the foster parents and had integrated with their foster families and the community. Moreover, the need for permanence for these children, each of whom had been in foster care, either for several years or for what amounted to their entire lives, was not being served by maintaining the respondent's parental rights in light of the fact that two foster families were ready, willing, and able to adopt them and make their current home environment permanent. We find that the manifest weight of the evidence fully supports the trial court's determination.

¶ 29 Regarding the children being placed in two separate homes, the record established that the separation was necessary due to the negative behavior of the three older boys. Moreover, the

record established that the two sets of foster parents were committed to maintaining contact among the five children. Given these facts, the record supports the trial court's determination to terminate the respondent's parental rights .

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we affirm the judgement of the circuit court of Peoria County.

¶ 32 Affirmed.

¶ 33 JUSTICE McDADE, specially concurring:

¶ 34 I agree with the majority decision affirming the finding of the circuit court in Peoria County that the termination of respondent’s parental rights was in the best interests of her five young children.

¶ 35 Those children range in age from three to eight years. Evidently the respondent was about 14 or 15 years old at the time she gave birth to the oldest, D.J. Although it is not totally clear, it seems that her second son, D.T. resided with her only a couple of months before both boys were removed. It does not appear that the three younger children, the second D.T., A.G., and D.G., ever resided with respondent but have lived solely in foster care.

¶ 36 Respondent was, herself, the victim of domestic abuse by her father and the fathers of her children, and was a repeat runaway. When these behaviors resulted in multiple findings that her children were neglected and in their consequent removal, various tasks were imposed upon her by the court. Some she was successful in fulfilling; others she failed to complete. However, since she has elected not to challenge the court’s finding of unfitness, the propriety of the court’s balancing of those successes and failures is not before us.

¶ 37 The sole issue for our determination is whether the trial court was correct in deciding that it is best for her children that they be adopted into the two families that have cared for them virtually all of their lives. That determination is not grounded in whether or not she loves them or whether or not she hopes that they could at some uncertain time in the future become an intact family.

¶ 38 Nor is the question whether the people charged by the State and by professional responsibilities – particularly the agencies and the attorneys appointed to represent her and her children and others officers of the court – have fairly, diligently and effectively discharged those responsibilities. I do not know if they have done so in this case; far too often they do not, and their derelictions result in the failure of families and in frustration of one of the legislature's expressed statutory purposes – that of healing, supporting, and maintaining original family units.

¶ 39 Rather, the only question for us in this appeal is whether, over the last seven years, this mother has taken the necessary steps to give herself a fighting chance to provide her five children with a safe, secure and stable environment – one in which she has developed and begun to use basic skills for protecting herself and them from physical and emotional abuse by others and in which she can nurture their growth and development so they can reach their full potential. She has chosen not to do that. She has not availed herself of counseling and has forgone the opportunity to acquire techniques for avoiding or dealing with domestic violence.

¶ 40 This young mother's personal obstacles may simply have been too great, too complex, and too overwhelming to overcome in a timely fashion. I ache for that reality. It is, however, another part of the statutory purpose to eliminate or alleviate such obstacles for her children and

to give them the meaningful opportunity to soar that she was denied. Their best hope for that appears, on the record before us, to be with their adoptive families.