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2012 IL App (3d) 110805-U

Order filed February 14, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

<i>In re</i> A.H.,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
a Minor)	Rock Island County, Illinois,
)	
(The People of the State of Illinois,)	
)	Appeal No. 3-11-0805
Petitioner-Appellee,)	Circuit No. 10-JA-131
)	
v.)	
)	Honorable
David B.,)	Raymond J. Conklin,
)	Judge, Presiding.
Respondent-Appellant).)	

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Wright and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that a father was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to his infant daughter was not against the manifest weight of the evidence when the evidence showed that the father made little effort during the first nine month's of his daughter's life. Also, there was no manifest error in the finding that the termination of the father's parental rights was in the minor's best interest.

¶ 2 On the State's petition, the trial court found the respondent, David B., unfit to parent the minor, A.H. Following a best interest hearing, the trial court determined that it was in A.H.'s best interest to terminate David's parental rights. David appeals, arguing that: (1) the record contained no evidence that the trial court gave him the proper admonishments; (2) the State failed to prove that he was unfit; and (2) the trial court's finding that it was in the minor's best interest to terminate his parental rights was against the manifest weight of the evidence. We affirm.

¶ 3 **FACTS**

¶ 4 When A.H. was born on June 6, 2010, she tested positive for controlled substances. As a result, the State filed a petition alleging that A.H. was neglected, and it filed a petition for temporary custody. David was present at the temporary custody hearing on June 11, 2010. David and A.H.'s mother, Amy H., were informed of their rights, and admonished that, if the State proved its petition, the trial court had the authority to keep A.H. out of their custody and to require them to participate in services to correct the problems that brought the case to court. The trial court further admonished both that the failure to cooperate or to make progress in correcting the problems could result in a petition to terminate their parental rights. The trial court found that probable cause existed that A.H. was neglected, and it awarded temporary custody of the minor to the Department of Children and Family Services (DCFS). The trial court noted that A.H. could be placed with David, after additional investigation, if deemed appropriate by DCFS. A.H. was placed with in foster care with a relative.

¶ 5 A.H. was never placed with David, and, on July 13, 2010, Amy stipulated to the petition. The dispositional hearing was held on September 7, 2010, and A.H. was adjudicated neglected.

The transcript from the dispositional hearing is absent from the record on appeal. The dispositional order indicates that David was present for the hearing, and the order provides:

¶ 6 "The parents are admonished that they must cooperate with the Illinois Department of Children and Family Services. The parents must comply with the terms of the service plan and correct the conditions that require the minor to be in care or they risk termination of their parental rights."

¶ 7 A supplemental dispositional order provides that all the parties shall cooperate with services, and specifies that David shall complete a parenting class, obtain a substance abuse evaluation and follow any recommendations, obtain a psychological evaluation and follow through with any recommendations, obtain and maintain appropriate housing, and successfully complete domestic violence counseling or batterer's education. Those were the same tasks recommended by DCFS and identified for David in the service plan. The docket confirms that David was present in court, and indicates that copies of the orders were given to all parties present in court.

¶ 8 In October 2010, A.H. was removed from the relative placement and placed in traditional foster care. A permanency review hearing was held on March 11, 2011. As of that date, David had not completed any of the tasks in the service plan, and he had not visited with A.H. since she was about three weeks old, in early July 2010. The trial court found that neither parent was making satisfactory progress nor had shown much interest in A.H., and it changed the permanency goal to substitute care pending termination of parental rights.

¶ 9 On May 2, 2011, the State filed a supplemental petition to terminate the parental rights of both parents. Specific to David, the petition alleged that he: (1) failed to maintain a reasonable

degree or interest, concern, or responsibility as to the child's welfare; (2) exhibited continuous and repeated neglect of the child; and (3) failed to make reasonable efforts to correct the conditions that caused the removal.

¶ 10 The fitness hearing was held on June 28, 2011. David testified that he stopped visiting with A.H. in July 2010 because there was a question as to whether he was her father. After testing in August 2010 confirmed that he was the father, David claimed that he tried to visit with A.H., but could not reach A.H.'s caseworker. He also claimed that his school schedule prevented him from visiting with A.H. David admitted that he did not do any of the tasks from the service plan until after the March 11, 2011, court date. He admitted that it was possible that he was present in court for the fitness hearing, and that it was possible that he received a copy of the dispositional order. David testified that, between March and June 2011, he had completed essentially all of his service plan requirements, except that he had just started batterer's education the day before the hearing and he still needed a psychological evaluation. David had stable housing, had attended most of his visits with A.H. since the March 11 hearing, and had obtained a substance abuse evaluation. However, he was still unemployed. He had yet to give A.H. the Christmas present that he got for her. He had never attended a doctor's appointment with A.H. Also, he had one child who lived with him, and three others that he could not locate.

¶ 11 Laurie Johnson, A.H.'s caseworker, testified that David did not attend the administrative case review that was held on December 27, 2010. At that review, she rated David as unsatisfactory with respect to all of his service plan tasks because he had not completed any of them. Laurie testified that David had a visitation plan in place beginning in August 2010, through March 11, 2011, with specific times and days, but David failed to visit A.H. even one

time. After David began visiting A.H., after the March 11 court date, A.H. was upset by the visits and the visits had to be slowly increased in time.

¶ 12 The trial court found that the State had proven David unfit by clear and convincing evidence that he had failed to maintain a reasonable degree of interest, concern or responsibility as to A.H.'s welfare. The trial court acknowledged David's recent efforts, but focused on A.H.'s age, and David's utter lack of involvement for the first nine months of A.H.'s life.

¶ 13 A best interest hearing took place in August 2011. Evidence presented at the hearing established that A.H. had resided with her foster parents since October 2010 and had developed a bond with them and their other children. The foster parents provided a safe, secure, and nurturing environment for A.H., aided her progress to overcome developmental delays, and were willing to adopt her. A.H. called her foster parents “mommy” and “daddy.” She lit up when she saw her foster parents. When A.H. was sick, she only wanted to be with her foster mother. The trial court acknowledged that David had completed most of his tasks in the service plan, but not until after the permanency goal was changed to termination of his parental rights. The trial court gave little credence to David's excuses for not making any effort with respect to the newborn A.H., and it found that David's recent efforts were too little, too late. The trial court determined that it was in A.H.'s best interests to terminate David's parental rights. David appealed.

¶ 14

ANALYSIS

¶ 15 David argues that: (1) the record does not establish that the trial court admonished him in accordance with section 1-5(3) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-5(3) (West 2008); (2) the trial court's finding of unfitness was against the manifest weight of the evidence; and (3) the termination of David's parental rights was against the manifest

weight of the evidence.

¶ 16 We will first address David's argument that the record does not establish that he was properly admonished that he risked termination of his parental rights if he did not comply with the service plan and cooperate with DCFS. Section 1-5(3) of the Juvenile Court Act provides that if a child is alleged to be neglected, the trial court must admonish the parents that if the court declares the child to be a ward of the court and awards custody or guardianship to DCFS, the parents must cooperate with DCFS, comply with the terms of the service plans, and correct the conditions that require the child to be in care, or risk termination of their parental rights. 705 ILCS 405/1-5(3) (West 2000). David acknowledges that the admonishment is contained in the written dispositional order, although he claimed to have trouble reading. However, David did not seem to have any trouble reading parts of the order in open court. Also, the record reflects that David was verbally given the admonishments at the temporary custody hearing. Absent evidence to the contrary, we presume that the trial court gave the verbal admonishments in conjunction with its written admonishments. See *In re Kenneth F.*, 332 Ill. App. 3d 674 (2002) (appellant bears the burden of presenting a sufficient record on appeal to substantiate claims of error, so any doubts arising from such omissions must be resolved against appellant). We find that David was properly admonished in accordance with the Juvenile Court Act.

¶ 17 Next, David argues that the trial court's finding of unfitness was against the manifest weight of the evidence. Specifically, David contends that the sole basis upon which the trial court found him to be unfit was that he exhibited substantial neglect of A.H. that was continuous or repeated. David contends that his progress on his service plan tasks after March 11, 2011, established that he maintained a sufficient interest, concern, or responsibility to be deemed fit.

First, we must note that the trial court did not find David to be unfit on the grounds that he exhibited substantial neglect of the child that was continuous or repeated. Although that was one of the grounds alleged in the supplemental petition to terminate David's parental rights, the trial court only ruled that the first ground was proven, i.e., that David failed to maintain a reasonable degree of interest, concern, or responsibility as to A.H.'s welfare. Thus, our review will be limited to the ruling actually made by the trial court.

¶ 18 Section 1(D) of the Adoption Act defines an unfit person as "any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption." 750 ILCS 50/1(D) (West 2010). Pursuant to section 1(D)(b) of the Adoption Act, a parent can be found unfit for failing to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare. 750 ILCS 50/1(D)(b) (West 2008). The parent's interest, concern, or responsibility with regard to a child must be considered in the context of the parent's circumstances. *In re Adoption of Syck*, 138 Ill. 2d 255 (1990). Courts consider the parent's efforts, whether or not they were successful, but the efforts must be objectively reasonable. *In re Daphnie E.*, 368 Ill. App. 3d 1052 (2006). The completion of tasks in a service plan can be considered as evidence of concern, interest, and responsibility. *Daphnie E.*, 368 Ill. App. 3d at 1065.

¶ 19 A finding of unfitness must be by clear and convincing evidence. *In re D.F.*, 201 Ill. 2d 476 (2002). We review the trial court's unfitness determination under the manifest weight of the evidence standard. *Syck*, 138 Ill. 2d at 274. A trial court's decision is contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based upon the evidence presented. *D.F.*, 201 Ill. 2d at 498.

¶ 20 The trial court found that David's excuses for not visiting A.H., and for not even starting on the tasks in his service plan until A.H. was nine months old, were disingenuous. David's efforts to maintain a degree of interest, responsibility, or concern in A.H. prior to March 11, 2011, were not only unreasonable, but nonexistent. Although the trial court acknowledged David's efforts after the permanency goal was changed to termination of his parental rights, the trial court concluded that David had not maintained a reasonable degree of interest, concern or responsibility as to A.H., especially in light of A.H.'s age. We find that the trial court's conclusion that David was unfit was not against the manifest weight of the evidence.

¶ 21 David also contends that the trial court's finding that it was in A.H.'s interest to terminate his parental rights was against the manifest weight of the evidence. Once the trial court has found the parent to be unfit, all considerations must yield to the best interest of the minor. *In re D.T.*, 212 Ill. 2d 347 (2004). Accordingly, at the best interest hearing, the focus shifts from the parent to the child's interest in a stable, loving home life. *D.T.*, 212 Ill. 2d at 364. At the best interest stage, the State must prove by a preponderance of the evidence that termination of parental rights is in the minor's best interest. *D.T.*, 212 Ill. 2d at 365. In considering a minor's best interest, the trial court must consider certain statutory factors in light of the minor's age and developmental needs, including: (1) the physical safety and welfare of the minor; (2) the development of the minor's identity; (3) the familial, cultural and religious background of the minor; (4) the minor's sense of attachment, including love, security, familiarity, and continuity of relationships with his parental figures; (5) the wishes of the minor; (6) the minor's community ties; (7) the minor's need for permanence, including stability and continuity of relationships; and (8) the preferences of persons available to care for the minor. 705 ILCS 405/1-3(4.05) (West

2010). On appeal, a trial court's decision to terminate the rights of a parent to their child will not be disturbed unless it is contrary to the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31 (2005).

¶ 22 The evidence presented at the best interest hearing supported the trial court's termination finding. A.H. had been with her foster family since a few months after her birth and had established a bond with her foster parents and siblings. A.H. was integrated into the foster family's extended family and community. By all accounts, A.H. loved her foster family and "lit up" when she was with them. She felt comforted by them when she was sick or in distress. Her foster mother worked extensively with A.H. to address her developmental delays. Aside from a temporary placement with a relative, the only home A.H. had known was with her foster family. Her foster parents were interested in adopting A.H. and providing her with permanency. We find that the trial court did not err when it determined that termination of David's parental rights was in A.H.'s best interest.

CONCLUSION

¶ 23 The judgment of the circuit court of Rock Island County is affirmed.

¶ 24 Affirmed.