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2012 IL App (3d) 110838-U

Order filed April 27, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

<i>In re</i> A.S.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit
a Minor)	Peoria County, Illinois
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-11-0838
)	Circuit No. 08-JA-225
v.)	
)	
James S.,)	Honorable
)	Mark E. Gilles,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice Carter concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding that it was in minor's best interest to terminate father's parental rights was not against the manifest weight of the evidence where father had limited involvement in minor's life, minor had lived with her foster parent since birth, and minor's foster parent was willing to adopt.
- ¶ 2 James S. is the father of A.S. The trial court found James S. to be an unfit parent and determined that it was in the best interest of A.S. to terminate James S.'s parental rights. On appeal,

James S. argues that the trial court erred when it found that it was in A.S.'s best interest to terminate his parental rights. We affirm.

¶ 3

FACTS

¶ 4 On November 14, 2008, the State filed a juvenile petition, alleging that A.S., who was five days old, was neglected because her environment was injurious to her welfare. Specifically, the petition alleged, in part, that A.S. was neglected because her father, James S., had a criminal history that included convictions for DUI, murder and armed robbery.

¶ 5 James S. stipulated that the State could prove the allegations against him. Following an adjudicatory hearing, the court found A.S. neglected based, in part, on the criminal histories of both of her parents, Kristy L. and James S. Following the dispositional hearing, A.S. was made a ward of the court, and both of her parents were found fit. The permanency goal for A.S. was to return home.

¶ 6 A permanency review hearing was held in August 2009. At the hearing, the trial court revoked Kristy L.'s fitness after she tested positive for drugs. The court reserved James S.'s fitness. In November 2009, both James S. and Kristy L. were arrested for domestic violence. At a permanency review hearing in December 2009, James S.'s fitness was revoked due, in part, to his arrest for domestic violence.

¶ 7 In April 2010, James S. was again charged with domestic violence against Kristy L. and taken to the county jail. At a permanency review hearing in June 2010, the trial court found that James S. had not made reasonable efforts toward the permanency goal of A.S. returning home because of the domestic violence charges against him.

¶ 8 On July 30, 2010, the State filed a petition for termination of James S.'s parental rights.

Count II of the petition alleged that James S. was unfit in that he failed to make reasonable progress toward the return of A.S. from October 26, 2009, to July 26, 2010. On February 22, 2011, the State filed a supplemental petition for termination of rights. It added a third count, which alleged that James S. was unfit in that he is a depraved person because he committed first degree murder and armed robbery in 1992, two counts of DUI in 2008, and aggravated battery in 2010. The State later amended the supplemental petition to reflect that James S.'s conviction in 2010 was for attempted aggravated battery. James S. filed an answer, denying the allegations against him.

¶ 9 On August 24, 2011, the State moved to dismiss count II of the petition for termination of parental rights and elected to proceed against James S. only on count III of the supplemental petition. Following a hearing, the court found that the State had proven the allegations set forth in count III of the supplemental petition.

¶ 10 On October 5, 2011, A.S.'s caseworker, Sheila Devall, prepared a best interest report. According to the report, A.S. has lived with her paternal aunt, Anna Zollicoffer, since five days after her birth. Zollicoffer also has custody of one of A.S.'s half-siblings and another foster child. Zollicoffer is meeting A.S.'s needs of food, shelter, clothing and health care. According to Devall, A.S. demonstrates developmental abilities that are at or above age level and has progressed through the developmental milestones as expected. A.S. has excellent verbal skills for a two-year-old and noticeable gross and fine motor skills.

¶ 11 A.S. refers to Zollicoffer as "Mamma" and has developed a strong bond with Zollicoffer and the other children in Zollicoffer's home. Zollicoffer told Devall that the whole family is very attached to and fond of A.S. Zollicoffer treats A.S. as if she is her own child and refers to A.S. as "my baby." A.S. has a large extended family that makes up a good portion of A.S.'s social and

support network. Devall has observed A.S. make mock cell phone calls to various aunts and cousins.

¶ 12 According to Devall, James S. was released from prison on April 4, 2011, after being incarcerated for approximately one year. During his incarceration, James S. completed three bible courses. James S. became employed soon after his release and is still employed. In May 2011, he secured his own apartment. Devall noted that while James S. calls her weekly to report his accomplishments, he neglected to tell her that a woman is living in his apartment.

¶ 13 James S. has had regular monthly visits with A.S. since his release from prison. Devall noted that A.S. "demonstrates a bond with [James S.] in spite of his year long incarceration and her young age." Devall recommended that James S.'s parental rights not be terminated. Devall believed that termination of James S.'s parental rights was not in A.S.'s best interest because A.S. "would benefit from having him in her life, with caregiver supervision, should he be able to remain in the same community and continue the safe and stable lifestyle he is now developing." Devall recommended that James S. remain unfit.

¶ 14 A bonding assessment of James S. and A.S. was performed by Jonna Tyler on October 5 and 6, 2011. Tyler noted that A.S. was initially excited when she saw James S. but appeared "anxious and unsettled throughout the remainder of the assessment" and repeatedly asked to go home and see "Mommy." Tyler found that while James S. demonstrated adequate skill in the areas of structure and challenge, he showed weakness in the areas of "nurturance and engagement." According to Tyler, James S. demonstrated limited insight and empathy into A.S.'s emotional struggle. Tyler found that James S. "was not observed as emotionally attuned to [A.S.]." Tyler concluded that A.S. and James S. "do not hold a healthy parent-child bond."

¶ 15 On October 26, 2011, a best interest hearing was held. At the time of the hearing, A.S. was

2 years and 11 months old. The court considered Devall's report, as well as Tyler's bonding assessment. Anna Zollicoffer testified at the hearing. She stated that she would adopt A.S. if James S.'s parental rights were terminated. However, she stated that she would prefer to be A.S.'s guardian until James S. could take care of A.S. himself. She believed that if James S. were to become fit in the future, it would be in A.S.'s best interest to be in his custody. Based on her observations, she believes that A.S. and James S. have bonded. Zollicoffer plans to adopt A.S.'s half sister who lives with her.

¶ 16 At the hearing, the State argued that it would be improper to wait around to "see if dad is going to come around." The State argued that James S.'s parental rights should be terminated to establish permanence for A.S., so that Zollicoffer could adopt her. James S.'s attorney responded that James S. is "putting his life back together," as he has a job and "safe and stable housing." He argued that guardianship would be the best option for A.S. The guardian *ad litem* acknowledged that both sides made good arguments but stated that she recommended termination of James S.'s parental rights "because that would provide permanence for this child."

¶ 17 After considering the evidence and arguments, the trial court found that it was in A.S.'s best interest to terminate James S.'s parental rights. The court explained that it based its decision on the need for permanency for A.S. The court encouraged James S. to continue to have a relationship with A.S.

¶ 18 ANALYSIS

¶ 19 On appeal, James S. argues that the trial court's finding that it was in the best interest of A.S. to terminate his parental rights was against the manifest weight of the evidence. Specifically, he argues that the court placed too much weight on A.S.'s need for permanence and ignored his "strong

bond" with A.S.

¶ 20 On review, we will not disturb the trial court's best interest ruling unless it is contrary to the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31, 51-52 (2005). A finding is against the manifest weight of the evidence where a review of the record demonstrates that the opposite conclusion is clearly evident. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008).

¶ 21 At a best interest hearing, all parental rights must yield to the best interests of the child. *In re A.H., T.E.H. & A.H.*, 215 Ill. App. 3d 522, 531 (1991). The parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Courts must not allow a child to live indefinitely with a lack of permanence inherent in a foster home. *In re A.H.*, 215 Ill. App. 3d at 530. When children are more bonded with their foster parent than their natural parent, and the foster parent wants to adopt the children, it is not against the manifest weight of the evidence to terminate a parent's rights so that the children can "move on with their lives." See *In re J.L.*, 236 Ill. 2d 329, 344 (2010).

¶ 22 It is the State's burden to prove by a preponderance of the evidence that terminating parental rights is in the minor's best interest. *In re D.T.*, 212 Ill. 2d at 367. The trial court must consider several statutory factors, including: (1) the minor's physical safety and welfare; (2) the development of the minor's identity; (3) the minor's familial, cultural, and religious background and ties; (4) the minor's sense of attachment and continuity of relationships with parental figures; (5) the minor's wishes; (6) the minor's community ties; (7) the minor's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of persons available to care for the minors. 705 ILCS 405/1-3(4.05) (West 2010). A court may also consider the nature and length of the child's relationship with his present caretaker and the effect that a change

in placement would have upon her emotional and psychological well-being. *Austin W.*, 214 Ill.2d at 50.

¶ 23 Our review of the record indicates that the State proved by a preponderance of the evidence that it was in A.S.'s best interest to terminate James S.'s parental rights. A.S. was only five days old when she was placed into foster care with Zollicoffer. Zollicoffer's home is the only home A.S. has ever known and is also the home of A.S.'s half sibling, whom Zollicoffer plans to adopt. Zollicoffer is meeting A.S.'s needs of food, shelter, clothing and health care. A.S. is thriving in Zollicoffer's home and demonstrates developmental abilities that are at or above age level. A.S. refers to Zollicoffer as "Mamma" and has developed a strong bond with Zollicoffer and the other children in Zollicoffer's home. Zollicoffer's entire family is very attached to and fond of A.S., and Zollicoffer is willing and able to adopt A.S.

¶ 24 Despite this evidence, James S. argues that he could become fit in a short period of time and provide the permanence that A.S. needs. However, his position is not supported by the record. Since one day after her birth, A.S. has been in the custody of DCFS. A.S. has never lived with her father. When A.S. was only 11 months old, James S.'s fitness was revoked because of a domestic violence dispute with A.S.'s mother. When A.S. was 21 months old, James S. was found unfit and has never regained fitness. James S. was released from prison just six months before the best interest hearing. Just prior to the best interest hearing, A.S.'s caseworker, Devall, recommended that James S. remain unfit and have supervised visitation with A.S. if he "continue[s] the safe and stable lifestyle he is now developing." While James S. was completing some of the tasks required of him by DCFS, the record does not support his assertion that he will be found fit in the near future and able to provide A.S. the permanence that she deserves.

¶ 25 Finally, James S.'s assertion that the trial court ignored his "strong bond" with A.S. is not supported by the record. The record shows that James S. has spent minimal time with A.S. throughout her short life. When A.S. was 16 months old, James S. was arrested. For an entire year, James S. was incarcerated and had no visits with A.S. After he was released from prison, James S. saw A.S. once a month for six months. According to the bonding assessment, A.S. and James S. "do not hold a healthy parent-child bond." While Zollicoffer and Devall believe that A.S. and James S. are bonded, there is no dispute that A.S.'s bond with Zollicoffer is much stronger. Zollicoffer is the only stable parental figure A.S. has ever known. A.S. refers to Zollicoffer as her "Mamma" and asks for her when she is not present. Likewise, Zollicoffer treats A.S. as her own child and refers to A.S. as "my baby."

¶ 26 In light of the evidence presented, it was not against the manifest weight of the evidence for the court to terminate James S.'s parental rights so that Zollicoffer could adopt A.S. and provide her a safe and stable home.

¶ 27

CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the trial court of Peoria County is affirmed.

¶ 29 Affirmed.