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2012 IL App (3d) 120332-U

Order filed August 17, 2012

IN THE
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

<i>In re C.S.,</i>)	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. 3-12-0332
)	Circuit No. 09-JA-40
v.)	
)	
M.S.,)	
)	Honorable Albert L. Purham, Jr.,
Respondent-Appellant).)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence. Affirmed.

¶ 2 Respondent, M.S., appeals from an order terminating his parental rights entered by the circuit court of Tazewell County. Respondent's sole claim is that the trial court's finding that it was in the best interest of minor, C.S., to terminate his parental rights is against the manifest weight of the evidence. We affirm.

¶ 3 **BACKGROUND**

¶ 4 The State filed a petition on April 2, 2009, alleging C.S. to be a neglected minor. Specifically, the petition alleges that C.S. is the child of M.S., the respondent father, and S.D., the minor's mother. The petition claims S.D. had unresolved substance and alcohol abuse issues, that on March 9, 2009, M.S. was in possession of 8.2 grams of cannabis and that the parents have unresolved domestic violence issues.

¶ 5 After respondent stipulated that the allegations in the petition could be proven by a preponderance of the evidence, the trial court found C.S. to be a neglected minor. Nevertheless, following a dispositional hearing, the minor's parents retained custody and respondent was ordered to perform drug drops, complete substance abuse treatment and take part in domestic violence and parenting courses.

¶ 6 In July of 2010, the State removed the minor from his parents' custody. The trial court held periodic permanency review hearings. Ultimately, the trial court found the parents dispositionally unfit for failure to make reasonable progress toward the return of their son. On August 15, 2011, the State filed a petition seeking termination of parental rights. The petition alleges that respondent failed to make reasonable progress toward the return of the minor to his

care within nine months after the adjudication of neglect.

¶ 7 Respondent filed an answer to the petition which "stipulates that the petition can be proven *** by clean and convincing proof as presented by the State ***." After the stipulation was read into the record, the trial court found that the State had proved the allegations in the petition. The trial court then set the matter for a best interest hearing.

¶ 8 In anticipation of the best interest hearing, a social services agency filed a best interest report. The case manager who prepared the report, as well as the former case manager involved with the family from July 2010 until February 2012, testified at the hearing. The evidence reflected that C.S. was four years old at the time of the hearing. C.S. resided with experienced foster parents, who worked with him to improve any behavioral issues. The foster parents were willing to provide a permanent home for C.S. and had previously adopted one child.

¶ 9 While he enjoyed visiting with his natural mother, C.S. did not ask about his father. Respondent "maintained sporadic contact with [C.S.]." Respondent initially visited fairly consistently with C.S. He attended parenting classes and completed in-patient substance abuse treatment but failed to follow through on discharge recommendations. Following discharge from in-patient treatment, respondent provided drug drops for a couple of months, then stopped. Respondent's drug issues were never resolved, and he never completed his individual counseling to address the issues of domestic violence.

¶ 10 On August 9, 2011, the caseworker asked respondent to take a rapid drug screen prior to a visitation with C.S. as she had reason to believe respondent used cocaine. Respondent refused

the drug screen and refused to speak to the caseworker; cutting off all communication.

Respondent did not see C.S. from August of 2011 until December of 2011. Respondent finally contacted the caseworker, leading to one visit with C.S. in December of 2011 and one visit in February of 2012. During both visits, C.S. seemed confused and a bit surprised to see respondent. C.S. knew respondent as his father but stopped talking about respondent as visits decreased. Respondent had no visits with C.S. from February of 2012 until the time of the hearing on April 19, 2012.

¶ 11 Testimony from the caseworkers indicated that C.S. was settled into his foster home and "incredibly bonded" to his foster family. Each showed love and attachment toward the other. His physical safety, health and welfare were provided for by the foster family. C.S.'s sense of security and familiarity was met with the foster family as was his need for stability, permanence and continuity of relationships with parental figures. Caseworkers opined that the least disruptive placement alternative for C.S. is with his foster family.

¶ 12 Following arguments, the trial court noted that C.S.'s mother signed a final and irrevocable surrender of parental rights. The court found the State proved by clear and convincing evidence allegations sufficient to terminate the mother's parental rights.

¶ 13 The court further "found by a preponderance of the evidence that it is in the best interest of the minor, C.S., to terminate the parental rights of M.S.***." The court discussed the statutory best interest factors in open court particularly focusing on the minor's need for permanence, which included the need for stability and continuity of relationships with parental figures,

siblings and relatives. The trial court noted the testimony regarding the anxiety shown by the minor at the arrival of a caseworker for fear that he would again be moved. The trial judge contrasted that fact with testimony indicating C.S. now views his foster brother and parents as his family.

¶ 14 Noting that respondent had only visited with C.S. three times in the previous eight months and that all statutory factors favored termination of parental rights, the trial court ultimately terminated respondent's parental rights by order dated April 19, 2012. Five days later, respondent filed his notice of appeal.

¶ 15 ANALYSIS

¶ 16 Before beginning our analysis, we note that respondent does not challenge the finding that he is an unfit parent or that the minor's environment was injurious when the minor lived with his natural parents. The sole issue on appeal is whether the trial court erred when terminating respondent's parental rights.

¶ 17 The Juvenile Court Act of 1987 (the Act) (705 ILCS 405/1-1 *et seq.* (West 2010)) provides a two-step process for the involuntary termination of parental rights. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). First, the State must prove that the parents are unfit as defined in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2010); *C.W.*, 199 Ill. 2d at 210. As the termination of parental rights constitutes a complete severance of the parent-child relationship, proof of parental unfitness must be clear and convincing. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). Only if the court makes a finding of unfitness will the court go on to the second stage and

consider whether it is in the best interest of the child to terminate parental rights. 705 ILCS 405/2-29(2) (West 2010); *C.W.*, 199 Ill. 2d at 210. Once a trial court finds a parent unfit, the next step in an involuntary termination proceeding requires the court to consider whether it is in the best interest of the child to terminate parental rights pursuant to section 1-3(4.05) of the Act. 705 ILCS 405/1-3(4.05) (West 2010).

¶ 18 The factors that a trial court should consider in making its best-interest determination include: (1) the physical safety and welfare of the child, including food, shelter, health and clothing; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural and religious; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school and friends; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preference of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2010); *In re A.F.*, 2012 ILL. App. (2d) 111079, ¶ 45.

¶ 19 A trial court's decision to terminate parental rights will not be reversed unless it is against the manifest weight of the evidence. *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Id.*

¶ 20 Respondent testified during the best interest hearing, acknowledging that he failed to take part in all recommended counseling services as he "wasn't going to play their games" so he told

the caseworker he "wasn't doing it anymore." Respondent informed the court, "I smoke pot, but take care of my kid." He acknowledged that while he had the opportunity to see his son every month, he had only seen C.S. two or three times between August of 2011 and the April 19, 2012, hearing.

¶ 21 Following respondent's testimony at the best interest hearing, the guardian ad litem (GAL) testified that she met with the foster mother and C.S. finding the two to be "extremely bonded." The minor "seemed extremely happy." The GAL indicated that the foster mother "is willing to provide a permanent stable residence for him and displays complete love for this child. The like I have never seen actually." The GAL concluded that the minor "finally achieved some permanency [which] he deserves" and recommended termination of respondent's parental rights.

¶ 22 At the conclusion of the hearing, the trial court stated that it felt "the most important best interest factors" in this case were the physical safety and welfare of the child, the development of the child's identity, the child's background and ties, the child's sense of attachments, the child's community ties and the child's need for permanence. The court then "focused" on the child's need for permanence.

¶ 23 The court noted this child is four years of age "in his third placement" and suffered anxiety "when the caseworker shows up, thinking he is going to be moved again." The court noted the child refers to the other child in his foster home "as brother, he thinks of that home as being his." While not spending as much time discussing other statutory factors to the extent it did permanency, the court carefully analyzed the evidence in light of many of the other factors.

The trial court also addressed respondent, noting it "had a hard time understanding" respondent's emotional pleas to deny the petition to terminate when "in 8 months you only visited 3 times."

¶ 24 Ultimately, the trial court terminated respondent's parental rights finding it was in the minor's best interest to do so. We cannot say, given the evidence detailed above when analyzed pursuant to the statutory factors, that the opposite conclusion is readily apparent. As such, we affirm the trial court's order terminating respondent's parental rights.

¶ 25 **CONCLUSION**

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

¶ 27 Affirmed.