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2012 IL App (3d) 120586-U

Order filed November 19, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

IN THE INTEREST OF)	Appeal from the Circuit Court
A.H. and A.H., Minors.)	of the 13th Judicial Circuit,
)	LaSalle County, Illinois,
(THE PEOPLE OF THE STATE OF ILLINOIS,)	
)	Appeal No. 3-12-0586
Petitioner-Appellee,)	Circuit Nos. 08-JA-39
)	08-JA-40
v.)	
)	
JASON H.,)	Honorable
)	Cynthia M. Raccuglia
Respondent-Appellant).)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Schmidt and Justice McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's termination of father's parental rights was not against the manifest weight of the evidence where termination was in the best interests of the children.
- ¶ 2 The State filed a petition to terminate the parental rights of respondent Jason H. to his children, Aut. and Aus. Following hearings, the trial court found that Jason was unfit and it was in the best interests of Aut. and Aus. that his parental rights be terminated. He appealed. We affirm.

¶ 3

FACTS

¶ 4 Respondent Jason H. is the father of Aut. H., born November 6, 2002, and Aus. H., born April 29, 2005. In June 2008, the State filed petitions for adjudication of wardship of the children, alleging that their environment was injurious to their welfare. 705 ILCS 405/2-3(1)(b) (West 2008). The petition alleged that the children's mother, Jessica, with whom the children lived, overdosed on prescription pills while in the presence of the children, that the mother and father admitted to a history of domestic violence, and that the father refused to accept services without a court order. The petition also stated that Jessica was indicated for striking one of Jason's children from another relationship and that Jessica and Jason had a history of involvement with social services in another state.

¶ 5 On July 16, 2008, Jason and the children's mother were ordered to cooperate with any services recommended by the Department of Children and Family Services (DCFS); to cooperate with DCFS; to obtain substance abuse assessments and follow all resulting recommendations; and to successfully complete family counseling. A court-appointed special advocate (CASA) was appointed for the children. Custody of Aut. and Aus. remained with Jessica. In October 2008, Jason and Jessica were ordered to engage in domestic violence services and to cooperate with DCFS, including participating in counseling and other services. In December 2008, the State filed a supplemental petition to find Jessica in violation of the conditions of the supervision order. In the petition, the State requested that a neglect finding be entered and that DCFS be given guardianship and custody of Aut. and Aus. The trial court granted the petition. In January 2009, the children were returned to Jessica's care but their great grandmother was required to supervise all contact between Jessica and the children.

¶ 6 In February 2009, the court issued an adjudicatory order, finding Aut. and Aus. abused or neglected based on an environment injurious to the children's welfare. 705 ILCS 405/2-3(1)(b) (West 2008). In a dispositional order, the trial court found Jason unfit based on his involvement in domestic violence. Aut. and Aus. remained in the physical custody of their mother. In May 2009, Jason was permitted only supervised visits with the children and ordered to submit to drug screenings. Also in May 2009, the children were placed in foster care. In August 2009, Jason was incarcerated in the county jail. When released in mid-to-late August, he met with the children's caseworker. Per her report, Jason stated he did not need to participate in services because the children were not taken from his care. He denied drug use or past domestic violence incidents with Jessica. Jason continued to participate in visitation with the children. In September 2009, an order of protection was entered against Jason prohibiting him from having contact with Jessica. A November 2009 report from the caseworker indicated that Jason had participated in a drug and alcohol assessment but that he admitted drug use and involvement with Jessica, despite the order of protection. The order of protection was dropped in November.

¶ 7 Jason was indicated by DCFS for his other children who lived with him. Jason's drug and alcohol assessment recommended that he participate in a 40-hour outpatient program, which he had not started, and he tested positive for cannabis twice, had two diluted drops and again admitted drug use. Permanency reports indicated that Jason was inconsistent in his efforts at counseling and parenting education, that he had not learned positive coping skills, but that he maintained regular visits with Aus. and Aut. and shared a bond with them. Jason's two older children were found to be minors requiring authoritative intervention after they ran away from Jason's home in May 2010 and were placed in residential facilities. Jason participated in an inpatient rehabilitation program in

November 2010 but did not follow through with the recommended outpatient treatment. Permanency reports throughout the proceedings rated Jason's progress as unsatisfactory.

¶ 8 Aut. and Aus. were moved to a new foster home in March 2011 and then to the adoptive placement in June 2011. In November 2011, Jessica surrendered her parental rights to both children. The same month, Jason was arrested on heroin charges. He was sentenced to the Department of Corrections in March 2012 with a projected release date of March 2014. The State filed a motion to terminate his parental rights in April 2012. A hearing took place on the motion. Jason testified that he declined services because he had no involvement in the situation that lead to DCFS involvement. He failed to follow through with his rehabilitation recommendations because DCFS did not grant him more visitation with his children as a result of his efforts. He did not know his children were in DCFS custody in May 2009 until September or October 2009 because Jessica said she would call the police if he contacted her. Following the hearing, the trial court found Jason unfit.

¶ 9 A best interest hearing took place in July 2012. The caseworker testified that Aut. and Aus. had become part of their foster family, the foster parents were willing to adopt the children, and the children wanted to be adopted. The foster parents lived in a clean and appropriate home with their three biological children in a neighborhood with other children. The father was employed full-time and the mother was able to stay at home with the couple's children. The foster parents were able to provide financially for Aut. and Aus. The foster family treated Aut. and Aus. as their natural children and their extended families did so as well. The children were integrated into the foster family, spending holidays, birthdays and vacations with their foster parents' extended families. Aus. and Aut. called their foster parents mom and dad. Aus. and Aut. did not know Jason well or what it was like to live with him. They did not have a close and consistent relationship with their father.

Jason did not create a nurturing environment for the children. When visitation was moved to the agency's offices in September 2011 because of concerns a case aide had about being in Jason's home, Jason discontinued visitation, stating that he did not want to visit Aut. and Aus. Jason resumed visitation the following month and participated in two visits with Aut. and Aus. before he was arrested. The caseworker described Aus. and Aut. as thriving in their foster placement and recommended termination of Jason's parental rights and adoption by the foster parents. Jason testified that he loved his children, had always provided for them, and wanted to parent them on his release from prison. The date projected for Jason's release from prison was March 2014. He stated that he would have immediate housing upon his release and that his former employer would likely rehire him. Jason suggested that a transition period between his release and gaining custody of the children would be beneficial to them and to him.

¶ 10 The trial court also considered the caseworker's reports, which echoed her testimony and reports from the children's CASA representative. The reports stated that the children's relationship with Jason was not healthy and that they experienced anger, anxiety and depression when considering their previous lives with Jessica and Jason. Aus. expressed concern that Jason would kidnap him on Jason's release from prison. Aut. wrote Jason to express her anger at his refusal to surrender his parental rights. Aut. described that Jason had not parented her. Both children had witnessed incidents of domestic violence between Jason and Jessica and themselves acted out physically when upset. The children were engaged in and benefitting from counseling and family therapy. The CASA reports emphasized the importance of permanency for Aut. and Aus. and recommended termination of Jason's parental rights and adoption by the foster parents. The trial court, noting the need of Aut. and Aus. for permanency, found it was in the children's best interests

that Jason's parental rights be terminated. He appealed.

¶ 11

ANALYSIS

¶ 12 The issue on appeal is whether the trial court erred when it found that it was in the best interests of Aut. and Aus. that Jason's parental rights be terminated. Jason argues that the trial court failed to consider the progress he was making toward the return of his children, noting that he was participating in drug and alcohol treatment, parenting classes, and domestic violence counseling in the DOC.

¶ 13 Under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2008)), there is a two-step process for the involuntary termination of parental rights. *In re Joshua K.*, 405 Ill. App. 3d 569, 580 (2010). The State must first prove the parent is unfit. *Joshua K.*, 405 Ill. App. 3d at 580. If unfitness is proven, the court must then consider whether it is in the child's best interest to terminate parental rights. *Joshua K.*, 405 Ill. App. 3d at 580; 705 ILCS 405/2-29(2) (West 2008). When determining whether the child's best interests are served by termination of parental rights, the trial court uses the following factors: the child's physical safety and welfare, including food, shelter, health and clothing; development of the child's identity; the child's background and ties, including familial, cultural and religious background and ties; the child's sense of attachments, including where he "actually feels love, attachment, and a sense of being valued," his senses of security and familiarity, continuity of affection for the child and the least disruptive placement alternative; the child's wishes and long-term goals; his community ties, including school, church, and friends; the child's need for permanence, including his need for stability and continuity of relationships; the uniqueness of every family and child; the risks of substitute care; and preferences of persons available to care for the child. 705 ILCS 405/1-3(4.05)(a)-(j) (West 2008). A trial court may also

consider the nature and length of the child's relationship with his current caretaker and the effect a change in placement would have on his emotional and psychological well-being. *In re Jaron Z.*, 348 Ill. App. 3d 239, 262 (2004).

¶ 14 The child's interest in a stable and loving home life is paramount and the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable home environment. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). A child must not be allowed to live indefinitely in foster care with its attendant lack of permanence. *In re A.H.*, 215 Ill. App. 3d 522, 530 (1991). The State must prove by a preponderance of the evidence that termination is in the child's best interests. *Joshua K.*, 405 Ill. App. 3d at 582. This court will not reverse a trial court's determination on termination unless it was against the manifest weight of the evidence or an abuse of discretion. *Joshua K.*, 405 Ill. App. 3d at 582-83.

¶ 15 The evidence presented to the trial court was sufficient to prove that termination of Jason's parental rights was in the best interests of Aut. and Aus. At the best-interests hearing, the family's caseworker testified that the children were established in their foster family and were considered and treated like the biological children of the foster parents. Their foster siblings treated Aut. and Aus. like their biological siblings. Although there were some adjustment issues with one of the biological children, the placement was considered beneficial for Aut. and Aus. The foster family owned a single family home in a residential subdivision. Aut. had her own bedroom in the foster home and Aus. shared a room with his foster brother. There were other children in the neighborhood with whom Aut. and Aus. and their foster siblings played. Aut. and Aus. were integrated into the foster parents' extended families, celebrating birthdays, holidays and other special occasions with them. They had been with the foster family since June 2011. According to the caseworker, the children were thriving

in the adoptive placement and had also become a part of their school, neighborhood and church communities. Aut. and Aus. wished to be adopted by the foster parents.

¶ 16 According to the reports from the children's CASA representative, both Aut. and Aus. were involved in therapy as well as family counseling with the foster family and that counseling appeared to be helpful. The CASA representative recommended that Jason's parental rights be terminated so the children could have permanency through adoption. The CASA report noted that the children were "currently in a home that allows them to thrive and would provide a great permanent place." In contrast, the children did not know Jason well or have a close or consistent relationship with him. He did not create a nurturing environment for them, and Aut. and Aus. expressed anger, anxiety and depression about their lives with him. Both children witnessed domestic violence between Jason and their mother, which they modeled when upset. Moreover, Jason is currently incarcerated with a projected release date in 2014. We acknowledge Jason's efforts during incarceration to improve his life. However, the evidence supports the trial court's finding that termination was in the best interests of Aut. and Aus. We find that the trial court's termination of Jason's parental rights to Aut. and Aus. was not against the manifest weight of the evidence or an abuse of discretion.

¶ 17 For the foregoing reasons, the judgment of the circuit court of LaSalle County is affirmed.

¶ 18 Affirmed.