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2012 IL App (4th) 111039-U

Filed 4/9/12

NO. 4-11-1039

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Keia. M. and Keim. M., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 08JA19
LUTECE JOHNSON,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that it is in the children's best interest to terminate respondent's parental rights is not against the manifest weight of the evidence.

¶ 2 Respondent, Lutece Johnson, is the mother of the two minors subject to this appeal.

In May 2011, the trial court found respondent was an unfit parent upon her stipulation to the allegations made in the State's petition. Following an October 2011, hearing, the court found it was in the minors' best interests to terminate respondent's parental rights. She appeals, claiming the court's order terminating her parental rights was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent and Keith M. are the parents of the two minors: Keim.M., born July 12, 2007, and Keia.M. born April 27, 2009. Though Keith M. was involved in the juvenile court

proceedings, he is not a party to this appeal. Before Keia.M. was born, on January 1, 2008, respondent and Keith were involved in a domestic-violence incident, resulting in respondent's arrest. As the couple had a history of similar incidents, the Illinois Department of Children and Family Services (DCFS) opened an intact-family-services case to assist them without having to remove Keim.M. from their custody. With the occurrence of two more similar incidents by March 2008, the State filed a petition for adjudication of neglect, alleging Keim.M. resided in an environment injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2006)) in that she was exposed to domestic violence when she resided with both parents (count I) and substance abuse when she resided with Keith (count II). On June 12, 2008, the trial court entered an adjudicatory order after both parents stipulated to count I. The State dismissed count II.

¶5 On September 10, 2008, the trial court entered a dispositional order, finding Keim.M. to be a neglected minor and made her a ward of the court. The court further found respondent to be fit, able, and willing to exercise custody of the minor and placed the child with respondent.

¶6 Respondent made some progress toward having the case closed. She gave birth to Keia.M. on April 27, 2009, and both children resided with her. She completed her domestic-violence counseling after her second attempt in September 2009, she had completed parenting classes in August 2008, and she was working toward maintaining employment and securing her own suitable housing. Until she was successful in attaining that goal, she and the children resided most often with respondent's mother. Respondent struggled with her individual-counseling task. She had difficulty participating in sessions, her attendance was sporadic, and her motivation was described as "poor." By September 2009, her counselor had resigned from her case due to respondent's poor progress.

¶ 7 On December 7, 2009, the police were called to respondent's house three times because of arguments between her and Keith. Respondent called police the first time. By the time the police arrived, Keith had fled. He returned a few hours later, questioning why respondent had called the police and threatened her with a gun. Respondent's friend called the police. Again, Keith had fled before police arrived. The final time the police were called that day, respondent informed them that Keith was no longer inside the house. However, after receiving permission to search, the police found him hiding in a bedroom closet under a blanket.

¶ 8 On December 10, 2009, the State filed a five-count supplemental petition for adjudication of neglect and shelter care. The petition alleged Keia.M. was neglected in that his environment was injurious to his welfare (705 ILCS 405/2-3(1)(b) (West 2008)) because (1) he was exposed to domestic violence (count I); (2) he was exposed to a risk of physical harm (count II); (3) his parents failed to protect him from the risk of physical harm (count III); (4) Keith had failed to correct conditions that result in a prior adjudication of parental unfitness to exercise guardianship and/or custody of Keia.M.'s siblings, Keim.M. (count IV) and J.S. (a minor not involved in this appeal) (count V). The same day, the trial court entered a temporary custody order, appointing DCFS as both minors' temporary custodian.

¶ 9 In February 2010, respondent stipulated to count I and the trial court entered an adjudicatory order as to Keia.M. Following a March 2010, hearing, the court entered a dispositional order, finding respondent unfit to care for the minor and making him a ward of the court. Both minors were placed in relative placement together with their maternal great-grandfather. By May 2010, respondent was participating in services and the court found she was making reasonable progress toward the return of the minors to her care. However, in June 2010, respondent was

arrested for burglary and theft by deception when she and a friend purchased items at Wal-Mart with stolen checks. She was convicted of theft, while the burglary charge was dismissed. She served 43 days in jail. Thereafter, the court found she had not made reasonable progress yet, the permanency goal remained "return home."

¶ 10 Beginning in May 2010, respondent participated in third-party visits with the minors at the foster parent's home for two hours three times a week. (The foster parent is also respondent's grandfather.) Respondent reportedly did not actively participate in visits, as she would often sleep or watch television and not take care of the children. DCFS decided to suspend third-party visits in November 2010 and implement weekly two-hour supervised visits. Respondent attended most visits, but her interaction with her children was minimal.

¶ 11 On March 16, 2011, the State filed a motion to terminate respondent's parental rights to Keim.M. and Keia.M. Counts I and V were directed solely at Keith's fitness. Counts II and III alleged respondent had failed to make reasonable progress during the nine-month periods of September 12, 2009, and June 12, 2010 (count II) and June 12, 2010, and March 12, 2011 (count III). See 750 ILCS 50/1(D)(m)(iii) (West 2010). Count IV alleged respondent had failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare. See 750 ILCS 50/1(D)(b) (West 2010).

¶ 12 On May 24, 2011, the trial court convened a fitness hearing on the State's motion to terminate. Respondent stipulated to the allegations set forth in count III in exchange for the dismissal of the remaining counts against her. The court entered an order finding respondent unfit for failing to make reasonable progress toward the return of the children between the nine-month period of June 12, 2010, and March 12, 2011.

¶ 13 On August 3, 2011, in preparation for the best-interest hearing, DCFS filed a best-interest report. According to the report, four-year-old Keim.M. and her brother, two-year-old Keia.M., had lived with their maternal great-grandfather for over a year (between December 2009 and April 2011). They were removed because of two hotline calls, one of which indicated that one of the children had second-degree burns. The record does not reveal the substance of the second call. DCFS investigated the complaints and found the reports "indicated." The children were placed in a traditional foster home together.

¶ 14 At the time the report was written, Keim.M. was doing well in her foster placement, although at first, she had some behavioral problems. She refused to do as she was told, she ate "items on the floor," she was aggressive, and she made herself throw up. These behaviors subsided as she became accustomed to the beneficial influences of a structured home and daycare. Keim.M. attended play therapy at ABC Counseling to assist her with processing the domestic violence to which she had been exposed. She was considered healthy, although she has mild hearing loss in both ears, more in her right ear than in her left. A doctor said this could affect her speech.

¶ 15 Keia.M. reportedly ate and slept well, and the foster parents had begun working with him on potty training. They reported he was sometimes clingy, becoming anxious and tearful when leaving daycare or the foster home. This behavior did not occur every day and, generally, he was a happy child. He has developmental speech disorder as well as delayed cognitive development. He was receiving services from Child and Family Connections for early intervention. He also has a mild hearing loss and a minor tantrum problem.

¶ 16 The foster parents were initially considering adopting both children but had later decided not to due to "recent personal issues." They were willing to keep the children until a suitable

home was found.

¶ 17 The report indicated that visits between the children and respondent generally did not go well. Although Keim.M. showed a bond with her mother, she demonstrated disobedient and disrespectful behavior toward her. Keia.M. likewise showed a bond with his mother, but he threw tantrums when he did not get his way or if respondent's attention was diverted from him. The children's behavioral problems tended to be strongly manifested after visits with respondent.

¶ 18 On August 9, 2011, the trial court began the best-interest hearing, first considering the best-interest report. The State presented no additional evidence. Respondent presented the testimony of Stephanie Deloney, respondent's regional planning case manager. Together they worked toward building respondent's self-sufficiency, finding housing and employment, and gaining educational training. Respondent obtained her general equivalency diploma (GED), was attending cosmetology school, was employed, and had obtained her own suitable housing.

¶ 19 Respondent's mother, Tina Mullins, testified that respondent, who was 22 years old at the time of the hearing, always acted appropriately at visits by providing snacks for, interacting with, and disciplining the children. Mullins said respondent wants her children returned to her care. Mullins was proud of respondent for getting a job, her own housing, and her GED.

¶ 20 Stephanie Reid, the Catholic Charities's caseworker, testified that she often attended visits between respondent and the children. She said visits "weren't going that well," so she and her supervisors decided to reduce the length of the visits from two hours to one hour weekly in July 2011 at respondent's home. Reid had to prohibit other family members from being present because it was a distraction for respondent. Respondent would spend time talking or arguing with others rather than spending time with or properly parenting the children.

¶ 21 Reid further testified that she regularly met with respondent's counselor, Nadia Berger, to discuss respondent's progress. Berger shared with Reid her concern that respondent was suffering from depression and possibly post-traumatic-stress disorder. Berger suggested to respondent that she seek medical attention for these issues, but she has not done so. Berger told Reid she thinks respondent's depression "may be preventing her from moving forward."

¶ 22 In Reid's opinion, Keim.M. shares a bond with her mother though some days she does not want to attend visits. However, once she gets there, Keim.M. "chipper[s] back up." Reid tried to describe whether she considered the visits to be positive for Keim.M. She stated:

"It's hard to say. I guess it's more based on how she is after the visits or prior to. The school and the foster home often report that she is very distraught after visits. She really struggles. The school has reported several problems once she returns to day care of her running out of the school building and being aggressive towards people, so to me that's saying that the visits are maybe not positive for her right now because of the effects on her afterwards."

¶ 23 Reid further explained that often respondent withdraws from interacting with her children. Respondent has tried to discipline her children using the time-out method but she fails to follow through. The children are familiar with the method as it is used in the day care and the foster home but respondent is unsuccessful.

¶ 24 Michelle Causey, respondent's friend, testified that respondent felt she was being treated unfairly by her caseworkers because evidently, they would tell respondent she was doing well and performing as expected but they would file documents or represent to the trial court the opposite.

¶ 25 Respondent testified on her own behalf. She said she has not had any contact with Keith since December 2009. She was required to "go to Cognition Works, parenting classes, visits, and counseling." She successfully completed Cognition Works (a domestic-violence class) and parenting. She said visits were "[s]ometimes *** good, but sometimes they are chaotic." Keim.M. sometimes needs discipline and respondent tells her "over and over" to sit in time out. She said "it takes most of the visit before she sits in time out." She said the kids cry and beg to go with her when visits are over. She has spoken with her caseworker and other professionals involved about wanting to regain custody of her children. She said: "Sometimes I hear one thing and sometimes I hear another thing, and I don't know what's going on." Respondent acknowledged that Berger had asked her to seek medical help to "get medicine to better cope with what [she's] going through" in terms of termination of her parental rights, but she has not done so. Respondent expressed her desire to parent her children.

¶ 26 The trial court continued the best-interest hearing on October 18, 2011, for recommendations and arguments only. First, the court indicated it had received the addendum to the best-interest report filed on October 12, 2011. According to that addendum, the children were returned to their maternal great-grandfather's home on August 12, 2011, as he had successfully appealed DCFS's decision regarding the earlier indicated reports. However, DCFS was again investigating complaints that the children had been spanked with a stick and threatened with a belt. DCFS had "valid concerns" regarding the children's placement in this home. Keim.M. continued to have behavioral problems such as hitting other children at daycare and using inappropriate language. She was still receiving counseling services at ABC Counseling. Keia.M. gets "very whiny" at visits when he does not get his way. According to this addendum, respondent's efforts at implementing

time outs work better for Keia.M. than for Keim.M., but after visits Keia.M. "can be very whiny and defiant."

¶ 27 The addendum also indicates that respondent has "still continued to miss some of her services." Respondent moved into her own residence in July 2011. However, she was to receive rental assistance through regional planning, but she failed to appear at her appointment and could not be reached, so the assistance was rescinded. Respondent was behind on her rent and will likely be evicted. She had a minimum-wage temporary job at ConAir in Rantoul but they had recently been sending her home due to a lack of work. She stopped going to work for that reason. She was to start school in August 2011 but she did not go because she had a job. At this point, she is unemployed but is expected to begin school sometime in October 2011.

¶ 28 Respondent has not followed through with receiving medical attention for her depression. Further, her probation officer reported respondent had failed to attend appointments with the probation department in July and August 2011 and was unable to be located until September 2011. The probation officer had requested the State file a petition to revoke probation, but the prosecutor decided to "hold off" since respondent had contacted the probation office in September 2011. Respondent has appeared for only five of the proposed eight random drug screens because she "got busy and she forgot to go." She has attended only four of seven scheduled counseling sessions since August 2011. Thus, her "progress has halted."

¶ 29 Respondent began individual parenting classes at Parkland Community College with Donna Tanner on September 13, 2011. Tanner has attended visits with the children and respondent and noted that the children view respondent as "a peer and not a parent." The children demonstrate a lack of respect for respondent and an "inability to listen." Tanner has witnessed Keim.M. tell

respondent "what she will and will not do and what her mother should do instead." According to the addendum, DCFS recommended termination of respondent's parental rights. The court appointed special advocate recommended "the children remain in custody of DCFS."

¶ 30 The trial court considered the arguments and recommendations of counsel and determined it was in the children's best interests to terminate respondent's parental rights. The court noted respondent had failed to make "significant progress toward return of care and custody" of the children since the last hearing and the children's interests in (1) obtaining permanence, (2) living in a safe environment, and (3) gaining stability supported termination. This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 Respondent stipulated to the trial court's finding that she was unfit and therefore, she does not challenge the outcome of the fitness hearing. Instead, she challenges the outcome of the best-interest hearing. She challenges the court's finding that it was in the best interests of Keim.M. and Keia.M. to terminate her parental rights.

¶ 33 We review the case under a deferential standard, asking whether the trial court's finding was against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005). The court's finding is against the manifest weight of the evidence only if it is clearly evident that the State failed to carry its burden of proving, by a preponderance of the evidence, that terminating respondent's parental rights would be in the children's best interests. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). In other words, we will not reverse unless the facts clearly demonstrate that the court should have reached the opposite result. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071 (2009).

¶ 34 Respondent maintains it is clearly evident that the State failed to carry this burden of proof because (1) at least two witnesses (Deloney of regional planning and Reid, the Catholic

Charities's caseworker) testified that respondent had made appropriate steps toward preserving her parental rights; (2) respondent received inconsistent feedback from Reid regarding her progress and parenting skills; and (3) the evidence indicated respondent never physically abused the children, yet the court made the finding that the "most persuasive" factor for termination was the physical safety and welfare of the children. We note the court stated this factor included respondent's ability to provide "food, shelter, health, and clothing" and did not emphasize physical abuse as respondent argues in this appeal.

¶ 35 Our focus is narrow because we are not asked to consider the propriety of respondent's fitness as a parent. As stated above, respondent stipulated to such a finding and she does not contest that stipulation here. However, respondent's three arguments tend to challenge the trial court's fitness determination. First, she relies on Deloney's and Reid's testimony that respondent (1) had made efforts toward regaining custody of the children by obtaining her GED and her own housing and (2) had never physically abused the children. Second, she claims Reid would tell her she did well with disciplining the children at visits but Reid would contradict herself in her reports. These challenges go more to respondent's fitness than to a consideration of the children's best interests. We find these arguments presented by respondent fail.

¶ 36 Analyzing the trial court's best-interest determination, we note the record indicates that respondent has been unable to maintain her own suitable housing due to a lack of stable employment and resulting financial difficulties. She has been unable to implement proper parenting skills as demonstrated by her inability to properly control Keim.M.'s misconduct, her failure to actively participate in her children's activities, and her failure to establish her authority and to demand respect from the children. Her participation in counseling has been sporadic and

noncompliant in terms of following the counselor's recommendation that she pursue medical treatment of her reported underlying depression. She has a criminal history and has been noncompliant with the terms of her probation. Though she insists she is working on these issues, the children remain in limbo.

¶ 37 The trial court found that because respondent had not moved any closer toward having the children returned to her care, the children deserved an immediate chance at permanency and stability. "[F]reeing the children for adoption gives the children a better opportunity to live in a permanent home than not doing that." Keim.M. has mixed feelings about visitation and tends to act out after visits conclude. Her daycare and foster home reported problematic behavior after visits with respondent. Likewise, Keia.M. was described as "whiny and defiant" after visits as well. The children deserve the opportunity to live in a stable, safe, permanent, and thriving environment. From the evidence in the record, respondent is unable to secure and maintain such an environment. Therefore, we find that, considering the statutory factors under section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2010)), in addition to other applicable factors, the children's need for permanency, security, and stability warranted termination of respondents' parental rights. Given our standard of review, we conclude that the court's finding that it was in the best interests of Keim.M. and Kiea.M. to terminate respondents' parental rights was not against the manifest weight of the evidence.

¶ 38

III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm the trial court's judgment.

¶ 40 Affirmed.