

NOTICE
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2012 IL App (4th) 120656-U

NO. 4-12-0656

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 1, 2012
Carla Bender
4th District Appellate
Court, IL

In re: U.M., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 11JA19
BYRON McCLAIN,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where it was in the minor's best interest that respondent's parental rights be terminated, the trial court's decision on termination was not against the manifest weight of the evidence.
- ¶ 2 In April 2011, the State filed a petition for adjudication of neglect with respect to U.M., the minor child of respondent, Byron McClain. The trial court adjudicated the minor a ward of the court and placed custody and guardianship with the Illinois Department of Children and Family Services (DCFS). In February 2012, the State filed a motion to terminate respondent's parental rights. In June 2012, the court found respondent unfit. In July 2012, the court found it in the minor's best interest that respondent's parental rights be terminated.
- ¶ 3 On appeal, respondent argues the trial court erred in terminating his parental rights. We affirm.

¶ 4

I. BACKGROUND

¶ 5 In April 2011, the State filed a petition for adjudication of neglect and shelter care with respect to U.M., born in September 2002, and L.M., born in March 2011. The petition listed respondent as the putative father of U.M. The petition listed Nicole McClain as the mother of U.M. and L.M. and Keith Robinson as the putative father of L.M. This appeal concerns only respondent and U.M.

¶ 6 The State alleged L.M. was a neglected minor pursuant to section 2-3(1)(c) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(c) (West 2010)) by reason of being a newborn infant who was born with meconium containing cocaine and marijuana, the presence of which was not the result of medical treatment administered to the mother or the infant. The State also alleged U.M. and L.M. were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2010)) based on an injurious environment when they resided with Nicole McClain and/or Keith Robinson because the environment exposed them to substance abuse and domestic violence.

¶ 7 The shelter care report indicated respondent had two prior convictions for burglary, two convictions for assault, and three convictions for larceny. The report indicated respondent was incarcerated at Pinckneyville Correctional Center. The trial court found probable cause to believe the minors were neglected and ordered they be placed in shelter care.

¶ 8 In May 2011, the trial court found the minors were neglected based on an injurious environment. In its June 2011 dispositional order, the court found respondent unfit. The court also found it in the minors' best interest that they be made wards of the court and placed in custody and guardianship with DCFS.

¶ 9 In February 2012, the State filed a motion to terminate the parental rights of respondent, Nicole McClain, Keith Robinson, and any unknown fathers of the minors. The State alleged the parents were unfit because (1) they failed to make reasonable efforts to correct the conditions that were the basis of the removal of the minors from them (count I) (750 ILCS 50/1(D)(m)(i) (West 2010)); (2) they failed to make reasonable progress toward the minors' return within the initial nine months after the adjudication of neglect or abuse (count II) (750 ILCS 50/1(D)(m)(ii) (West 2010)); (3) they failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (count III) (750 ILCS 50/1(D)(b) (West 2010)); and (4) respondent was incarcerated at the time the motion was filed, had repeatedly been incarcerated as a result of criminal convictions, and his repeated incarceration prevented him from discharging his parental responsibilities for U.M. (count IV) (750 ILCS 50/1(D)(s) (West 2010)).

¶ 10 In April 2012, the State filed a request for respondent to admit facts. Therein, the State asked respondent to admit or deny that since June 10, 2011, he was incarcerated, his projected parole date is April 9, 2014, he was unemployed, his visitation with U.M. had been suspended, and he had not engaged in any treatment or counseling.

¶ 11 In June 2012, the trial court conducted the hearing on unfitness. The State indicated it had not received a response to the request to admit facts and asked they be deemed admitted. Hearing no objection, the court deemed the facts admitted. The court also took judicial notice of respondent's convictions for residential burglary, attempt (residential burglary), and possession of a controlled substance.

¶ 12 Respondent testified he went into custody in October 2010 and he was serving a

sentence of seven years in prison. His expected release date was in April 2014. He also stated he was on a waiting list to participate in parenting classes.

¶ 13 The trial court found respondent unfit on counts II, III, and IV. In its written order, the court found respondent had been incarcerated for the majority of U.M.'s life, respondent had engaged in no remedial services, and he had made no progress toward the return of the minor. The court found in favor of respondent on count I.

¶ 14 In July 2012, the trial court conducted the best-interest hearing. The best-interest report indicated U.M. has resided with her maternal grandfather and step-grandmother since coming into care in April 2011. U.M. appeared to be doing well in the home, and her foster parents have reported no concerns. The report indicated U.M.'s foster parents were capable of providing a safe and stable home for her.

¶ 15 Respondent's counsel informed the trial court that respondent's release date was in April 2014 but he hoped to receive good time that would allow him to be released in November 2013.

¶ 16 The trial court found U.M. was in a safe and stable environment. On the other hand, the court noted respondent has been incarcerated for a substantial portion of U.M.'s life and would not be able to be immediately reunited with U.M. after his release from prison. The court concluded it was in U.M.'s best interest that respondent's parental rights be terminated. This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Respondent argues the trial court's decision to terminate his parental rights was against the manifest weight of the evidence. We disagree.

¶ 19 Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights. *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001). Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2010). These include the following:

"(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child."

In re Daphnie E., 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

See also 705 ILCS 405/1-3(4.05)(a) to (4.05)(j) (West 2010).

¶ 20 A trial court's finding that termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re*

Anaya J.G., 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against the manifest weight of the evidence in cases "where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008).

¶ 21 In this case, the best-interest report indicated U.M. was nine years old and had resided in a relative foster care home since April 2011. She appeared to be doing well in the home, and her foster parents reported no concerns. The report stated U.M.'s foster parents were capable of providing a safe and stable home, they were able to redirect U.M. as necessary, and U.M. appeared safe and free from harm in the home. The report also indicated U.M. had developed several attachments and community ties in the placement. She understood she was going to be living with her grandparents and has done well with that adjustment. The report indicated respondent has been incarcerated for the life of the case. Also, the caseworker was not aware of any services respondent had completed while in prison.

¶ 22 Here, the evidence indicated U.M. had resided in her foster placement for over a year at the time of the best-interest hearing. She was doing well in the placement, had developed attachments and ties to her community, and had developed friendships in her neighborhood. Her foster parents were capable of providing a safe and stable home. On the contrary, there was no evidence of any relationship between U.M. and respondent. Further, respondent has been incarcerated for much of U.M.'s life. Respondent's criminal history and continued residence in the Department of Corrections indicate he cannot provide the stability U.M. needs for the foreseeable future. Based on the evidence presented, we find the trial court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 23

III. CONCLUSION

¶ 24

For the reasons stated, we affirm the trial court's judgment.

¶ 25

Affirmed.