NOTICE
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2012 IL App (4th) 120676-U

NO. 4-12-0676

FILED
December 11, 2012
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: En. M. and El. M., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 11JA14
LEONARD MANN,	)	
Respondent-Appellant.	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in terminating respondent's parental rights where the State sufficiently proved termination was in the minors' best interest.

¶ 2 In July 2012, the trial court terminated the parental rights of respondent, Leonard Mann, to En. M. (born April 29, 2009) and El. M. (born November 7, 2010). Respondent appeals, arguing the court's best-interest finding is against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 According to the February 25, 2011, shelter-care report, police conducted a drug raid on respondent's residence on February 23, 2011, because of "suspicion of drugs being sold out of the home." The report indicated police found, En. M., El. M., and their mother, Genisha Dorsey, watching television in respondent's and Dorsey's bedroom. We note Dorsey is not a

party to this appeal. Police found a bag lying in plain sight on the floor at the foot of the bed. The bag contained 57 rocks of crack cocaine. Police also discovered a loaded .38-caliber revolver and a bag of cannabis on the television stand. The report indicated the State charged respondent with armed violence and trafficking of a controlled substance. The report also indicated police had previously conducted a drug raid on the home in August 2009. Thereafter, the Department of Children and Family Services (DCFS) investigated respondent and Dorsey. According to the report, DCFS warned them En. M. could be removed if the drug activity continued.

¶ 5 On February 28, 2011, the State filed a petition for adjudication of neglect and shelter care, alleging respondent's children, En. M. and El. M., were neglected in that they were exposed to substance abuse and criminal activity while living with respondent.

¶ 6 During the April 19, 2011, adjudicatory hearing on the State's petition, both respondent and Dorsey stipulated they exposed En. M. and El. M. to criminal activity. The court accepted the parties' stipulations and set the matter for a May 19, 2011, dispositional hearing. The court ordered DCFS to prepare a detailed report regarding, *inter alia*, the physical and mental history of the minors.

¶ 7 In its May 21, 2011, dispositional order, the trial court adjudicated the minors neglected, made them wards of the court, and placed their custody and guardianship with DCFS. The court also suspended respondent's visitation with the minors.

¶ 8 On October 24, 2011, respondent pleaded guilty to unlawful possession of a controlled substance with intent to deliver. On November 28, 2011, respondent was sentenced to eight years' imprisonment.

¶ 9 On November 30, 2011, the trial court entered a permanency order finding respondent had not made reasonable and substantial progress, nor reasonable efforts, toward returning the minors home. The court noted respondent had been sentenced to eight years' imprisonment.

¶ 10 On February 23, 2012, the State filed a petition seeking a finding of unfitness and termination of respondent's parental rights. The petition alleged respondent and Dorsey were unfit (1) pursuant to section 1(D)(m)(i) of the Adoption Act (Act) (750 ILCS 50/1(D)(m)(i) (West 2010)) because they failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors (count I), (2) pursuant to section 1(D)(m)(ii) of the Act (750 ILCS 50/1(D)(m)(ii) (West 2010)) because they failed to make reasonable progress toward the return of the minors within the initial 9 months of the adjudication of neglect or abuse (count II), and (3) pursuant to section 1(D)(b) of the Act (750 ILCS 50/1(D)(b) (West 2010)) because they failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minors (count III).

¶ 11 On February 27, 2012, the trial court entered a permanency order finding respondent had not made reasonable and substantial progress, nor reasonable efforts, toward returning the minors home.

¶ 12 On May 30, 2012, the State filed a supplemental petition seeking the termination of respondent's parental rights. The single-count petition alleged respondent was unfit pursuant to section 1(D)(s) of the Act (750 ILCS 50/1(D)(s) (West 2010)) because he was incarcerated at the time the motion for termination of parental rights was filed, had repeatedly been incarcerated as a result of criminal convictions, and his repeated incarceration had prevented him from discharging

his parental responsibilities for En. M. and El. M.

¶ 13 During the May 31, 2012, hearing on the State's petition, respondent testified he had not seen his children in approximately a year and a half. Respondent testified while he had not regularly paid child support, he had from time to time purchased clothes, diapers, and shoes for the minors. He also testified he sometimes provided money for food. According to respondent, his anticipated out-date was March 7, 2014. At the conclusion of the hearing, the trial court adjudicated respondent unfit "as to all counts of the petition and the supplemental petition."

¶ 14 According to the best-interest report filed on July 13, 2012, En. M. and El. M. had been residing together in a relative placement since September 2011 and were doing well. The report indicated both children were bonded to their foster families and were thriving in their foster home. The report also indicated the minors' foster parents were willing to provide permanency to the minors through adoption. According to the report, respondent was incarcerated in the Department of Corrections (DOC), and his "anticipated parole date is January 10, 2015, and [his] projected discharge date is January 10, 2017." Respondent did not keep in contact with the caseworker. As a result, the caseworker could not verify respondent was participating in any services. The report also indicated the minors did not appear affected by the court's suspension of visitation with respondent. The report recommended the termination of respondent's parental rights.

¶ 15 During the July 18, 2012, best-interest hearing, the trial court stated it considered counsels' arguments, the prior orders in the case, and the best-interest report. Respondent, who was incarcerated in DOC, did not attend the hearing. The court concluded it was in the minors'

best interests to terminate respondent's parental rights.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, respondent argues the trial court's best-interest finding is against the manifest weight of the evidence. We note respondent does not challenge the court's unfitness finding. Instead, respondent challenges *only* the court's best-interest determination.

¶ 19 Once a parent has been found unfit for termination purposes, the focus changes to whether it is in the best interest of the child to terminate parental rights. 705 ILCS 405/2-29(2) (West 2010); *In re D.F.*, 201 Ill. 2d 476, 494-95, 777 N.E.2d 930, 940 (2002). The trial court conducts the best-interest hearing using a preponderance of the evidence standard of proof. *In re D.T.*, 212 Ill. 2d 347, 367, 818 N.E.2d 1214, 1228 (2004). 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:

¶ 20 "(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, 1071-72, 859 N.E.2d 123, 141 (2006).

¶ 21 The trial court's best-interest determination is reviewed under the manifest weight of the evidence standard. *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). A decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 22 In this case, En. M. and El. M. had been residing together in a relative placement since September 2011. The best-interest report indicated both children were bonded to their foster families and were thriving in their foster home. The report also indicated the minors' foster parents were able to care for their needs and were willing to provide permanency to the minors through adoption. By comparison, at the time of the July 18, 2012, best-interest hearing, respondent was incarcerated in DOC. According to the report, respondent's "anticipated parole date is January 10, 2015, and [his] projected discharge date is January 10, 2017." Moreover, the trial court found respondent was not bonded to En. M. or El. M. Our review of the record does not reveal any indication to the contrary. Based on the evidence presented, we hold the court's orders finding termination of respondent's parental rights was in the minors' best interest was not against the manifest weight of the evidence.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's judgment with regard to the termination of respondent's parental rights.

¶ 25 Affirmed.