

2013IL App (1st) 130684-U

SIXTH DIVISION
August 2, 2013

No. 1-13-0684

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IN THE
APPELLATE COURT
FIRST DISTRICT

<i>In re</i>)	Appeal from the
)	Circuit Court of
ALAYIANA W., ANNAYA W.,)	Cook County.
ADRIANNA W. and ADRIAN W.,)	
)	
Minors-Respondents-Appellees)	Nos. 09 JA 851
)	09 JA 852
(The People of the State of Illinois,)	09 JA 853
)	09 JA 854
Petitioner-Appellee,)	
)	
v.)	Honorable
)	Robert Balanoff,
Ashawnte G.,)	Judge Presiding.
)	
Respondent-Appellant).)	

JUSTICE HALL delivered the judgment of the court.

Presiding Justice Lampkin and Justice Reyes concurred in the judgment.

ORDER

¶ 1 **Held:** The circuit court's finding that the best interest of the children required that the mother's parental rights be terminated was not against the manifest weight of the evidence.

¶ 2 Respondent, Ashawnte G. (Ashawnte), appeals from an order of the circuit court of Cook County terminating her parental rights to four of her children.¹ On appeal, Ashawnte contends that the court erred when it ruled that the best interest of the respondent minors required that her parental rights be terminated. We affirm the order of the circuit court.

¶ 3 **BACKGROUND**

¶ 4 Ashawnte is the biological mother of Alayiana W. (Alayiana), Annaya W. (Annaya), Adrianna W. and Adrian W. (collectively the minors). The case originated in Kane County where Ashawnte and the minors, then ages seven, six, two and one, were residing.

¶ 5 **I. Procedural Background**

¶ 6 On September 24, 2008, the minors were taken into protective custody by the Department of Children and Family Services (DCFS), after they were left unsupervised in an apartment that was both unsafe and unsanitary. On November 21, 2008, an adjudicatory hearing was held. The minors were found to be neglected by their parents, Ashawnte and Antonio W. (Antonio). The minors were placed with Patricia B. (Patricia), their paternal grandmother.

¶ 7 A dispositional hearing was held on December 15, 2008. The court found that Ashawnte was unable to care for the minors because of her mental health issues and that they were at risk if

¹During these proceedings, Ashawnte gave birth to two more children. They are not respondents in this case.

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they were returned home. The minors were made wards of the court, and their guardianship was placed with DCFS. The minors continued to reside with Patricia. Ashawnte was granted supervised visitation.

¶ 8 Beginning in 2008, DCFS developed service plans for Ashawnte. Under the plans, she was required to obtain and maintain a clean residence, to complete job training and to obtain a mental health assessment. At the June 1, 2009 permanency hearing, the court found that Ashawnte was making reasonable progress and efforts toward the goal of returning the minors home within 12 months. As of the August 31, 2009 permanency hearing, Ashawnte was continuing to make reasonable progress toward the goal of returning the minors home. The case was then transferred to Cook County.

¶ 9 On October 13, 2009, the circuit court of Cook County appointed the public defender to represent Ashawnte and appointed the public guardian as attorney and guardian *ad litem* for the minors. The court entered an order allowing Ashawnte unsupervised day visitation with the minors and supervised overnight visitation. Ashawnte continued to make satisfactory progress and was granted unsupervised overnight visitation. On August 30, 2010, the circuit court entered an order finding Ashawnte fit and able to care for the minors and returned their custody to her. The minors' return home was dependant on certain conditions in Ashawnte's residence being remedied. The order further provided that a caseworker would make weekly unannounced visits to observe Ashawnte and the minors.

¶ 10 For the next several months, the case was continued for status. On February 14, 2011, due to safety concerns and Ashawnte's inability to maintain a clean home despite the services of a

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homemaker, the circuit court found Ashawnte unable to care for the minors and returned them to the guardianship of DCFS, who placed them with Patricia. On February 24, 2011, the court granted Ashawnte limited visitation, both supervised and unsupervised, with the minors, but specified that the visits could not take place at Ashawnte's residence. Subsequently, Ashawnte violated the visitation order on one occasion by taking the minors to her residence. On another occasion, she failed to report to Patricia that she had taken one of the minors to the emergency room to be treated for an allergic reaction and returned the minors four hours after the designated return time. On behalf of the minors, the public guardian filed a motion to vacate the order for unsupervised visits but withdrew the motion after the court admonished Ashawnte.

¶ 11 At the May 16, 2011 permanency hearing, a DCFS caseworker reported to the court that she observed Ashawnte leaving with the minors for a visit without placing them in safety seats or securing them with seat belts. The court ordered that all visitation be supervised and that the visitation could not take place at Ashawnte's residence. Only DCFS was permitted to transport the minors. On June 29, 2011, the court changed the goal from return home of the minors within 12 months to substitute care pending a determination on the termination of parental rights. At the January 18, 2012 permanency hearing, the court ruled out the goal of a return home and continued the goal of substitute care pending a determination on the termination of parental rights. The minors were placed with Patricia and Gordy C. (Gordy), their paternal grandparents, who wished to adopt them.

¶ 12 On February 29, 2012, the State filed a motion to terminate the parental rights of Ashawnte and Antonio and to appoint a guardian with the power to consent to adoption. See 705

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ILCS 405/2-29 (West 2010). The motion alleged that Ashawnte and Antonio were unfit in that they failed to maintain a reasonable degree of interest, concern or responsibility for the minors' welfare. 750 ILCS 50/1(D)(b) (West 2010). The motion further alleged that Ashawnte and Antonio failed to make reasonable efforts to correct the conditions which were the basis for the minors' removal from them and failed to make reasonable progress toward the return of the children within nine months after the adjudication of neglect or within any nine month period after that finding. See 750 ILCS 50/1(D)(m) (West 2010).

¶ 13 II. Termination of Parental Rights

¶ 14 On November 26, 2012, Antonio executed consents for his parents, Patricia and Gordy C. (Gordy) to adopt the minors.²

¶ 15 A. *Unfitness Hearing*

¶ 16 On January 16, 2013, the circuit court heard evidence as to Ashawnte's fitness to parent the minors. The witnesses for the State included the social workers who testified as to the services Ashawnte received in order for her to achieve the goal of the return of the minors to her and her lack of progress in obtaining consistent employment, housing, keeping a clean home for the minors and improving her parenting. Seven DCFS service plans for Ashawnte were admitted into evidence. Witnesses for Ashawnte included her counselors who testified as to Ashawnte's efforts to improve her parenting skills. Reports from Ashawnte's counselors were admitted into evidence.

²Antonio did not appeal from the termination of his parental rights, and he is not a party to this appeal.

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¶ 17 At the conclusion of the fitness portion of the termination hearing, the circuit court found Ashawnte unfit by clear and convincing evidence under section D(b) and under section D(m), for the 9-month period between February 14, 2011, and September 18, 2012. See 750 ILCS 50/1D(b)(m) (West 2010). The court noted that between August 2010 and February 2011, it had found that Ashawnte was making progress, and the minors were returned to her. However, on February 14, 2011, the minors again were removed from her care. The court found that four years after the case began, Ashawnte remained in need of the same services recommended for her at the beginning of the case. Ashawnte's visitation remained supervised, and she still did not have appropriate housing. Even when she had appropriate housing, she was overwhelmed with caring for the minors and had not enrolled them in the services they needed. Ashawnte continued to receive parenting coaching but appeared unable to put what she learned into practice with the minors. Even though she had therapy three or four times, she continued to require it. The court concluded as follows:

"This case has been in our system for over four years and these children need permanency. And, the mother as stated earlier has repeated opportunities to correct the conditions which brought this case into our system and has failed at it.

Based upon this, the mother will be found to be unfit."

¶ 18 *B. Best Interest Hearing*

¶ 19 Patricia, the paternal grandmother, testified as follows. The minors had lived with Gordy and she from September 2008 to August 2010, and then from February 14, 2011 to the present. Patricia was employed at Home Depot as a customer service manager. All four of the minors

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were enrolled in school. Patricia described the minors' morning routine for getting ready for school and the activities the minors participated in after school. Her daughter, Jessica, assisted with getting the minors ready for school in the morning if Patricia was at work; Patricia was responsible for them when they return from school. The minors did homework until dinner time and were in bed by 8:30 pm. The weekend activities with the minors included movie nights, bowling, skating and shopping together. The minors had made friends in the neighborhood, and Alayiana and Annaya attended the Chicago Park District summer camp. The grandparents and the minors attend church together and the minors are included in all the family gatherings. Should it become necessary, Jessica would care for the minors.

¶ 20 If the parental rights are terminated, Patricia wished to adopt the minors, but she would allow continued contact between the minors and their parents. She acknowledged that there was a bond between the minors and Ashawnte and their maternal grandmother, Joyce I.(Joyce). The minors could receive cards, letters and gifts and visits from Ashawnte, even though she would have no legal right to continued contact with the minors. Patricia acknowledged that Alayiana and Annaya were having problems with the separation from their mother.

¶ 21 Patricia described her relationship with Ashawnte as "bittersweet." In the past, Ashawnte was present for holidays; in the last four years she came once for one of the minors birthdays.

¶ 22 Wyonella Rux, a therapist with CLO Psychological Services, testified as follows. Ms. Rux had been the therapist for Alayiana and Annaya since March 2012. Her sessions with them took place both at their school and at Patricia's residence. Both Alayiana and Annaya had issues with separating from Ashawnte. Initially, Alayiana did not want to discuss Ashawnte and was

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very protective of her, while Annaya made excuses for Ashawnte when she did not follow through with visits or other promises to her. Alayiana talked about returning to Ashawnte. Recently, Ms. Rux discussed the court proceedings with Alayiana and Annaya. They indicated that remaining with their paternal grandparents would be alright with them since Patricia allowed them to see Ashawnte. Ms. Rux acknowledged that Alayiana and Annaya did not understand what an adoption was.

¶ 23 Ms. Rux visited the paternal grandparents' residence every other month and described it as warm, receptive and well-organized. Alayiana and Annaya had bonded with both grandparents and were doing very well in their care. While the grandparents believed in "tough love," there was no evidence of corporal punishment.

¶ 24 Alayiana and Annaya were not afraid of Ashawnte and had a close relationship with her. Initially, the girls were extremely worried about losing Ashawnte, but their extreme anxiety was reduced. Ms. Rux did not know if the fact that they could continue to see Ashawnte reduced their anxiety. Ms. Rux believed that continued but controlled contact with Ashawnte was in the best interest of Alayiana and Annaya. They were not afraid of returning to Ashawnte, but now they talked about the activities and trips they took with the paternal grandparents.

¶ 25 Craig Gogins, a child welfare specialist with DCFS, testified as follows. Mr. Gogins was assigned to the case in April 2012. He visited the paternal grandparents' residence once or twice a month and found it to be safe and appropriate with no signs of abuse or neglect. The minors are bonded with the paternal grandparents and Jessica, who oversaw them when Patricia was not available. The grandparents were responsive to the minors' school, therapy and medical and

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dental needs. There was plan for the minors in the event something happened to the paternal grandparents. It was DCFS's position that it was in the minors' best interest to terminate Ashawnte's parental rights so the minors could have the stability in their lives they needed and their grandparents provided. If the parental rights are terminated, Mr. Gogins would recommend that the goal be adoption.

¶ 26 Mr. Gogins acknowledged Alayiana and Annaya had difficulty with the separation from Ashawnte. They also had a relationship with Joyce, their maternal grandmother. Alayiana and Annaya told Mr. Gogins that they wanted to continue their relationship with Ashawnte. Mr. Gogins agreed that the minors needed to have a relationship with their biological mother because they loved her.

¶ 27 John Bedalow, a parenting coach, had worked with Ashawnte since August 2012, to help her develop basic parental skills. The sessions consisted of teaching Ashawnte the purpose and function of parental skills and then helping her implement the techniques with the minors. The sessions were attended by Ashawnte, Joyce and the minors.

¶ 28 According to Mr. Bedalow, Ashawnte had made definite progress. Her acknowledgment and correction of the minors was consistent. Except for her continued tardiness, her role-modeling was good, and her daily skills, such as hygiene and personal appearance, were satisfactory. Mr. Bedalow agreed that there was a bond between Ashawnte and the minors; the minors were happy to see her and were very comfortable around Ashawnte and Joyce. Ashawnte helped Annaya to resolve problems she was having at school. She maintained a consistent level of emotional and behavioral stability when she was with the minors. Ashawnte's continued

tardiness did cause anxiety for the minors. Mr. Bedalow felt that contact between Ashawnte and the minors would be important as both she and the minors wanted the relationship to continue.

¶ 29 Following closing arguments, the circuit court ruled that it was in the best interest of the minors that Ashawnte's paternal rights be terminated. The court found the paternal grandparents to be excellent foster parents and that the minors had thrived since being placed with them. The minors had bonded with both the paternal grandparents and Jessica, the backup caregiver. While agreeing in theory that the minors should continue to have contact with Ashawnte, the court observed that the grandparents were deeply concerned about the minors. If it was in the minors' best interest, the grandparents would allow them to have continued contact with Ashawnte. That decision would be made by the grandparents at the appropriate time.

¶ 30 The circuit court concluded as follows:

"These children deserve a safe, stable, and permanent home. They should be able to grow up with parents who are committed to them for the long-term.

Therefore, my finding will be that the parents have failed at reunification. That it's in their best interest that parental rights be terminated ***."

Pursuant to Illinois Supreme Court Rule 311(a) (eff. Feb. 26, 2010), this expedited appeal followed.

¶ 31 ANALYSIS

¶ 32 I. Standard of Review

¶ 33 A court reviews a best-interest determination under the manifest weight of the evidence standard. *In re Austin W.*, 214 Ill. 2d 31, 51-52 (2005). "A finding is against the manifest weight

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of the evidence where the opposite conclusion is clearly evident." *In re C.N.*, 196 Ill. 2d 181, 208 (2001).

¶ 34

II. Discussion

¶ 35 Ashawnte does not challenge the circuit court's finding that she was unfit. Her sole contention on appeal is that the circuit court's finding that the best interest of the minors required that her paternal rights be terminated was against the manifest weight of the evidence.

¶ 36 Following a finding of unfitness, the issue is no longer whether parental rights can be terminated but, focusing on the needs of the child, whether the parental rights should be terminated. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *D.T.*, 212 Ill. 2d at 364. A child's best interest is superior to all other factors, including the interests of the biological parents. *In re V.M.*, 352 Ill. App. 3d 391, 398, 816 N.E.2d 776 (2005). "A child's best interest is not part of an equation. It is not to be balanced against any other interest. In custody cases, a child's best interest is and must remain inviolate and impregnable from all other factors ***." *Austin W.*, 214 Ill. 2d at 49 (quoting *In re Ashley K.*, 212 Ill. App. 3d 849, 879 (1991)).

¶ 37 Nonetheless, a parent's unfitness to have custody of her children does not automatically result in the termination of her legal relationship with them. *In re M.F.*, 326 Ill. App. 3d 1110, 1115 (2002). The State must prove by a preponderance of the evidence that termination of Ashawnte's parental rights was in the minors' best interest. See *D.T.*, 212 Ill. 2d at 366. "Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than

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not." *People v. Houar*, 365 Ill. App. 3d 682, 686 (2006).

¶ 38 Section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2010)) provides that "[w]henever a 'best interest' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:

- (a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
- (b) the development of the child's identity;
- (c) the child's background and ties, including familial, cultural, and religious;
- (d) the child's sense of attachments, including:
 - (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);
 - (ii) the child's sense of security;
 - (iii) the child's sense of familiarity;
 - (iv) continuity of affection for the child;
 - (v) the least disruptive placement alternative for the child;
- (e) the child's wishes and long-term goals;
- (f) the child's community ties, including church, school, and friends;
- (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
- (h) the uniqueness of every family and child;

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(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2012).

"Other important considerations when deciding a child's best interests are 'the nature and length of the child's relationship with the present caretaker' and the effect a change of placement would have upon the emotional and psychological well-being of the child.'" *Austin W.*, 214 Ill. 2d at 50 (quoting *In re Violetta B.*, 210 Ill. App. 3d 521, 534(1991)). The court must consider all of the statutory factors, but no factor is dispositive. *Austin W.*, 214 Ill. 2d at 50.

¶ 39 Ashawnte contends that it was error to terminate her parental rights where the evidence established that the minors were bonded to her and that Alayiana and Annaya did not understand adoption meant that Ashawnte would have no legal right to contact them. The relationship between parent and child is but one of the factors the court considers in a best interest determination. The record reflects that in making the best interest determination, the circuit court considered all the relevant factors in light of the evidence presented.

¶ 40 The evidence established that, except for a six-month period when they returned home, the minors resided with the paternal grandparents since September 2008. During that time, the minors bonded with their grandparents and their Aunt Jessica. In contrast with their life with Ashawnte, the grandparents provided a home for the minors that provided stability as well as love and where their physical, medical, educational and emotional needs were met on a consistent basis. The minors had thrived living with their grandparents. The paternal grandparents wished to continue to provide a stable and loving home life for the minors by

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adopting them. While the separation anxiety Alayiana and Annaya experienced was not completely resolved, it was not as acute as it had been initially.

¶ 41 It is undisputed that Ashawnte and the minors were bonded and that Alayiana and Annaya had expressed their love for her and desired their relationship with her continued. Nonetheless, there was no evidence that termination would be harmful to the minors. While acknowledging the existence of the relationship, Mr. Gogins maintained that it was in the best interest of the minors that Ashawnte's parental rights be terminated so as to provide the minors the stable home life they required.

¶ 42 Ashawnte's reliance on *In re M.F.* is misplaced. In that case, the reviewing court found that termination of the mother's parental rights was not in the best interest of her daughter, T.R. Termination would not afford T.R. any greater stability; she already lived in a somewhat unstable environment with her father who had full custody and guardianship of her. T.R. enjoyed visiting her mother, and there was no risk of harm to T.R., since the visits were supervised. The only result would be to deprive T.R. of her relationship with her mother. *M.F.*, 326 Ill. App. 3d at 1118.

¶ 43 In contrast to *M.F.*, while a bond existed between the minors and Ashawnte, the minors had bonded with their paternal grandparents and Jessica. The minors had been in foster care, albeit with their grandparents, for four years. During that time, the minors were returned to Ashawnte but removed again because she still was not able to deal with the problems that led to the original removal of minors from her care. The evidence established that she was still dealing with those same problems at the time of the best-interest hearing. Whereas there was no benefit

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to T.R. by terminating her mother's parental rights, termination of Ashawnte's parental rights would benefit the minors in that they would no longer experience the uncertainty of foster care. The minors would benefit in having a permanent place to live, and would continue to benefit from the stable and loving environment provided by their grandparents and potential adoptive parents where they have thrived for the past four years.

¶ 44 Ashawnte argues that the evidence did not support the circuit court's finding that the paternal grandparents had a backup care plan in the event they could not care for the minors. She maintains that Jessica told caseworkers she wished to return to school. Ashawnte questioned whether Jessica would be a proper person to care for the minors as she expressed feeling "overwhelmed" by caring for them, just as Ashawnte was portrayed as being by the caseworkers.

¶ 45 Ashawnte did not provide a citation to the record where Jessica's statement could be located. In his brief on behalf of the minors, the public guardian maintained that the statement was made in a 2008 report. A 2009 report noted that, while Jessica had provided most of the daily care for the minors while Patricia was at work, the minors were now in school or pre-school and were gone for much of the day. Moreover, nothing in the record indicates that the circuit court's best interest determination was dependent solely upon Jessica's availability or willingness to care for the minors in the event the grandparents were unable to do so.

¶ 46 This court has held that the existence of a bond between a parent and child, standing alone, does not compel the conclusion that termination of parental rights is against the manifest weight of the evidence. *In re Angela D.*, 2012 IL App (1st) 112887, ¶ 39. While there was some evidence that Ashawnte was beginning to make progress with her parenting skills and that

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separation anxiety still existed on the part of Alayiana and Annaya, it is the fundamental purpose of the Act is to secure permanency for the minors as early as possible. *Angela D.*, 2012 IL App (1st) 112887, ¶ 40 (citing 705 ILCS 405/1-2(1) (West 2010)). We note that Ashawnte was late to court on the first day of the best interest hearing; she explained she had injured her foot at work. Then, without explanation, she failed to appear at the second day of the hearing. The circuit court's determination that the best interest of the minors was better served by the stability and support provided by the paternal grandparents, even at the risk of their losing contact with Ashawnte, was not against the manifest weight of the evidence.

¶ 47 Moreover, evidence that the potential adoptive parents would allow the child to maintain a relationship with his or her biological family is relevant when making a best-interest determination. *Angela D.*, 2012 IL App (1st) 112887, ¶ 41. Here, the evidence established that the grandparents allowed and would continue to allow Ashawnte to have contact with the minors, so long as it was in the minors' best interest.

¶ 48 **CONCLUSION**

¶ 49 Based on the record before us, we conclude that the State established by a preponderance of the evidence that it was in the best interest of the minors to terminate Ashawnte's parental rights. Therefore, the circuit court's decision to terminate Ashawnte's parental rights was not against the manifest weight of the evidence.

¶ 50 The judgment of the circuit court is affirmed.

¶ 51 Affirmed.

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