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2013 IL App (3d) 120795-U

Order filed February 7, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

In re J.P., a Minor,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
(The People of the State of Illinois,)	Peoria County, Illinois,
)	
Petitioner-Appellee)	Appeal No. 3-12-0795
)	Circuit No. 10-JA-329
v.)	
)	
Anthony P.,)	Honorable
)	Chris L. Fredericksen,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's finding that it was in minor's best interests that father's parental rights be terminated was not against the manifest weight of the evidence.

¶ 2 After respondent Anthony P. was found unfit, the trial court determined that it was in the best interest of Anthony's son, J.P. that Anthony's parental rights be terminated. Anthony appealed the best interest finding and termination. We affirm.

¶ 3 **FACTS**

¶ 4 The State filed a neglect petition on November 17, 2010, alleging that J.P., respondent Anthony P.'s son, lived in an injurious environment. Jaclyn M., J.P.'s mother, was also named in the petition. The petition alleged, in part: J.P. tested positive for cocaine when he was born on November 2, 2010; Anthony had a substance abuse problem with alcohol and a criminal history; Anthony and Jaclyn engaged in incidents of domestic violence while she was pregnant with J.P.; and Anthony and Jaclyn lived together. Anthony answered the petition, stipulating to all counts except he challenged the allegation that he currently suffered from substance abuse. J.P. was placed with Jaclyn's father and stepmother.

¶ 5 On February 28, 2011, the trial court entered an adjudication of neglect per the allegations in the petition. In March 2011, J.P. was removed from his grandparents' care because of violations of the parents' visitation restrictions. The same month, an incident of domestic violence took place involving Anthony, Jaclyn, and Anthony's father, who lived with the couple. On March 28, 2011, the trial court found Anthony to be an unfit parent based on the petition and domestic violence. Anthony was assigned various tasks under a service plan that identified unification as its goal, including: cooperate with the Department of Children and Family Services (DCFS); obtain a drug assessment and complete any recommended treatment; perform random drug tests; participate in counseling, parenting classes and domestic violence classes; maintain stable housing; and visit J.P. in accordance with the visitation plan.

¶ 6 On April 4, 2011, Anthony and Jaclyn were involved in another incident of domestic violence. The police report indicated both Anthony and Jaclyn were intoxicated and that Jaclyn was arrested. On May 30, 2011, Anthony was arrested for battery after an incident in a tavern parking lot. On July 4, 2011, Anthony was arrested for domestic battery after another altercation with Jaclyn. The police

reported indicated that Anthony appeared to be very intoxicated. The State filed a petition to terminate Anthony's parental rights in December 2011, alleging that Anthony failed to make reasonable progress toward the return of J.P. within nine months of the neglect adjudication in February 2011. 750 ILCS 50/1(D)(m)(ii) (West 2010).

¶ 7 Anthony was arrested in April 2012 and charged with two counts of unlawful delivery of a controlled substance - heroin and one count of unlawful delivery of a look-alike substance. The arrest was based on undercover drug purchases made from Anthony and Jaclyn in January and March 2012. Anthony answered the petition to terminate in June 2012 and denied its allegations. A trial took place on the termination petition in July 2012. The trial court found that Anthony abused alcohol, had been discharged from substance abuse treatment for his failure to attend classes, failed to attend counseling, and had been arrested for domestic battery in July 2012. Finding that Anthony had not completed any services, the trial court held the State had proven by clear and convincing evidence that Anthony was unfit based on his failure to make reasonable progress toward J.P.'s return within nine months after the February 2011 neglect adjudication. 750 ILCS 50/1(D)(m)(ii) (West 2010).

¶ 8 A best interest report prepared in July 2012 stated that J.P. was an active and happy child who had been in his foster home since he was four months old. He was bonded with his foster family, including three siblings, and members of their extended family. His foster parents were willing to adopt him. The caseworker qualified the foster home as safe and adequate. The foster parents met J.P.'s food, shelter, health and clothing needs, provided him age appropriate toys and learning materials, and were attentive to his developmental needs. The caseworker stated that Anthony had a minimal relationship with J.P., that Anthony had last visited J.P. in September 2011, and that Anthony had left the visit early. The report's addendum stated that Anthony had been released from

jail in August 2012 and was interested in participating in services. Anthony had undergone a substance abuse evaluation and been referred for outpatient services. Anthony and Jaclyn visited J.P. on August 22, 2012.

¶ 9 A best interest hearing took place on August 29, 2012. The State argued the evidence supported Anthony's failure to make reasonable progress during the nine-month period from February 2011 to November 2011. Anthony testified that he had been working for three weeks since his release from jail on or about August 12, 2012 and was participating in an intensive probation program, substance abuse treatment, and religious activities. Anthony stated he was committed to his sobriety and to performing the steps necessary to parent J.P. The guardian *ad litem* (GAL) testified that termination was in J.P.'s best interest and that J.P. had established permanency in the foster home.

¶ 10 Following the hearing, the trial court found it was in J.P.'s best interest that Anthony's parental rights be terminated. It noted the "significant substance abuse by the parents and domestic violence between the parents" and the parents' failure to complete any drug treatment or domestic violence programs in the initial nine-month period. The trial court also noted that Anthony did not visit J.P. on a regular basis. The trial court acknowledged the parents' recent efforts to improve their situations but questioned whether Anthony and Jaclyn could provide a safe environment for J.P. It determined that J.P. was in a safe and secure environment with his foster family; J.P. developed his identity with his foster family, not through Anthony and Jaclyn; J.P. had been in the same foster home since March 2011; J.P. was bonded with his foster parents; and the foster parents were willing and able to adopt J.P. The trial court entered an order terminating Anthony's parental rights. Anthony appealed.

¶ 11

ANALYSIS

¶ 12 The issue on appeal is whether the trial court erred in terminating Anthony's parental rights. Anthony argues the evidence was insufficient to support the trial court's finding that it was in J.P.'s best interests to terminate his parental rights.

¶ 13 To establish the involuntary termination of parental rights, the State must show by clear and convincing evidence that the parent is unfit and that it is in the best interest of the child that parental rights be terminated. *In re D.F.*, 201 Ill. 2d 476, 494-95 (2002).

Once an unfitness finding has been made, all considerations must yield to the child's best interests. *In re D.H.*, 323 Ill. App. 3d 1, 13 (2001). In determining whether termination of a parent's rights is in a minor's best interest, the trial court considers the following factors: (1) the minor's physical safety and welfare; (2) development of his identity; (3) his background and ties, including familial, cultural, and religious; (4) the minor's sense of attachments; (5) the minor's wishes; (6) the minor's ties to his community; (7) the minor's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8), the uniqueness of every child; (9) risks related to substitute care; and (10); the preferences of individuals available to care for the minor. 705 ILCS 405/1-3(4.05)(a)-(j) (West 2010). The State must prove by a preponderance of the evidence that termination is in the child's best interest. *In re D.T.*, 212 Ill. 2d 347, 367 (2004). We will not reverse a trial court's finding that termination of parental rights is in the child's best interest unless it is against the manifest weight of the evidence. *In re E.M.*, 328 Ill. App. 3d 633, 640 (2002).

¶ 14 Anthony does not challenge the unfitness finding but maintains it does not necessitate that his parental rights should be terminated. He points to his recent sobriety and efforts to undertake the services available to him as support that termination was in error. As additional reasons that termination was in error, Anthony also points to what J.P. could gain from maintaining a relationship

with him and his extended family, particularly knowledge of Anthony's experience with drugs, alcohol and criminal acts.

¶ 15 We find that the trial court's termination of Anthony's parental rights was supported by evidence. Anthony and Jaclyn, who had a history of domestic violence incidents, continued to maintain a relationship, although at the time of the best interest hearing, arguably both parents were anticipating improving their relationship. During the initial nine-month period, both parents were arrested for domestic violence. Anthony had not participated in domestic violence counseling and his abusive behavior threatened J.P.'s physical safety and welfare. The trial court also pointed to Anthony's 2012 conviction for unlawful delivery as further evidence of Anthony's inability to provide a safe and secure environment for J.P. J.P. had been with his foster family since March 2011 when he was four months old and had established permanency there. He had established a bond with his foster family and extended family members. J.P. looked to his foster parents for his needs and they were consistent in meeting them. He was described as an active and happy child, who enjoyed his foster siblings and was accepted by them. J.P.'s first placement with relatives was terminated due to visitation violations and safety concerns. His foster parents were willing to adopt him. Based on the above factors, we find that the trial court's finding that termination was in J.P.'s best interest was not against the manifest weight of the evidence.

¶ 16 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 17 Affirmed.