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2013 IL App (3d) 120898-U

Order filed February 15, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD JUDICIAL DISTRICT

A.D., 2013

In re M.M. & C.M.,	)	Appeal from the Circuit Court
	)	of the10th Judicial Circuit,
Minor,	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	Appeal No. 3-12-0898
Petitioner-Appellee,	)	Circuit Nos. 08-JA-247, 08-JA-248
	)	
v.	)	
	)	
Caleb M.,	)	Honorable
	)	Chris Frederickson,
Respondent-Appellant).	)	Judge Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The court's finding that it was in the best interests of the minors to terminate father's parental rights was not against the manifest weight of the evidence. Father had been found unfit by clear and convincing evidence; the children shared a close bond with their foster family who provided a safe, secure, and happy environment for the children; and the children did not share a close bond with father who would be incarcerated in DOC for at least four more years.

¶ 2 On May 15, 2012, the State filed a three-count "Petition for Termination of Parental Rights" on behalf of M.M. and C.M. against respondent-appellant Caleb M. (father) alleging father was an unfit parent, pursuant to the Adoption Act (750 ILCS 50/1 *et seq.* (West 2010)), based on one count of depravity, due to three felony convictions, and two counts of failure to make reasonable progress toward the return of M.M. and C.M. to his care during any nine-month period after the adjudication of neglect, specifically between June 1, 2010, through March 1, 2011, and March 1, 2011, through December 1, 2011.

¶ 3 After a bifurcated fitness hearing, on September 5, 2012, the court found the State proved the allegations in all three counts of the termination petition by clear and convincing evidence and set the matter for a best interests hearing. On October 10, 2012, the court found it was in the best interest of the minor children to terminate father's parental rights. Father appeals the court's decision that it was in the best interests of the minors to terminate his parental rights. We affirm.

¶ 4 BACKGROUND

¶ 5 Respondent Caleb M., is the biological father of M.M., born May 3, 2003, and C.M., born November 28, 2004. On December 18, 2008, the State originally filed a neglect petition alleging the children's environment was injurious to their welfare while living with mother. On June 3, 2009, at the dispositional hearing on the underlying neglect petition against mother, the court found father fit to care for the children. The court named the Department of Children and Family Services (DCFS) guardian of these two children, with authorization to place the children with father provided father performed two "random drug drops" each month, cooperated with DCFS, and required mother's visitation with the children to be supervised. The court granted guardianship to father on March 3, 2010.

¶ 6 Shortly thereafter, the State filed a petition to find father unfit to care for the children, on April 19, 2010, based on: father's arrest for domestic battery between father and his live-in paramour on April 7, 2010; father's incarceration from April 9 through April 11, 2010; and father's failure to report his whereabouts after his release from jail on April 11, 2010. Around that same time, mother voluntary surrendered her parental rights to M.M. and C.M. Additionally, father was arrested on June 30, 2010 for being intoxicated in public with a handgun and was charged with unlawful possession of a weapon as a felon and aggravated unlawful possession of a weapon. On August 25, 2010, the court found father dispositionally unfit to continue to care for the children and renamed DCFS the guardian of the minors.

¶ 7 On May 15, 2012, the State filed a three-count "Petition for Termination of Parental Rights" on behalf of M.M. and C.M. alleging father was an unfit parent and asking the court to terminate father's parental rights. Count I alleged father was depraved, pursuant to section 1(D)(I) of the Adoption Act (750 ILCS 50/1(D)(I) (West 2010)), in that he was convicted of three felonies between 1997 and 2010. Count II alleged father was unfit, pursuant to section 1(D)(m)(iii) of the Adoption Act (750 ILCS 50/1(D)(m)(iii) (West 2010)), because he failed to make reasonable progress toward the return of M.M. and C.M. to his care during any nine-month period after the adjudication of neglect, specifically between June 1, 2010, through March 1. 2011. Count III alleged father was unfit, pursuant to section 1(D)(m)(iii) of the Adoption Act (750 ILCS 50/1(D)(m)(iii) (West 2010)), because he failed to make reasonable progress toward the return of M.M. and C.M. to his care during any nine-month period after the adjudication of neglect, specifically between March 1, 2011, through December 1, 2011.

¶ 8 On September 5, 2012, the court held a fitness hearing on the petition to terminate

father's parental rights. Father was present at this hearing in the custody of the Department of Corrections.[1] At the close of the contested hearing, the court found the State had proven all three counts of the termination petition by clear and convincing evidence and set the matter for a "best interests" hearing and ordered DCFS or its agents to prepare a report for this hearing.

¶ 9 On October 10, 2012, the court held the best interests hearing regarding the minor children. Without objection from father, the State admitted certified copies of father's convictions, as well as certified records from the Center for Prevention of Abuse regarding father and certified records from Proctor First Care regarding father's drug and breathalyzer testing. Additionally, the court considered the reports prepared by the Center for Youth and Family Solutions, dated September 25, 2012. In addition, the court took judicial notice of all the pleadings and records in the pending juvenile cases for these minors revealing M.M. and C.M. had been residing in the home of relative foster parents since January 5, 2012, who were willing and able to provide permanent guardianship for the minor children. Further, the reports stated that the minor children had bonded well with their foster family, and that each child stated they enjoyed living with their foster parents, their aunt and uncle. The children attended church weekly and regularly attended school and played with other children in the neighborhood. According to the reports, the foster parents were working with the school to address the minors' schoolwork and behavioral issues and were making progress on these issues.

¶ 10 These reports noted that mother's parental rights were terminated on June 2, 2010. The

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[1] The record reflects that father was sentenced to 10 years' imprisonment in the Department of Corrections, in February 2012, after a jury found father guilty of aggravated unlawful use of a weapon and unlawful use of a weapon by a felon, with an expected released date from prison of October 30, 2016.

reports provided that the children had not seen their father since October 2011 and visits, thereafter, were suspended due to father's incarceration. Prior to that, the reports reflect that father did not consistently participate in services; did not regularly attend scheduled visits with the children or interact appropriately with the children during the visits he did attend; tested positive for cocaine in his system; and failed to maintain contact with the family caseworker.

¶ 11 The caseworker, Ms. Swinford, testified at the best interests hearing. She testified that the children and father exchanged one set of letters, in July 2012, since father's incarceration and those letters were appropriate. When asked whether the children inquire about their father, Ms. Swinford said the children do not initiate conversations about their father. Even when asked by Swinford, the children did not say they missed father.

¶ 12 Father did not present any evidence or testimony at this hearing. Father's attorney merely argued father should be allowed to maintain contact with the children since the foster parents sought permanent guardianship rather than adoption. The State and the guardian *ad litem* both argued that it was in the best interests of the minors to terminate father's parental rights and allow the children to know that their current placement is permanent.

¶ 13 At the close of the hearing, the court said it considered all of the statutory best interest factors. The court found the children were currently in a very safe and secure environment and shared a bond with the foster parents. The court noted the children had not been in father's care for a long period of time, did not inquire about their biological father, and did not exhibit a strong bond with him. The court observed that the children enjoyed their present placement and were progressing well while their past behavior and school problems seemed to be diminishing.

¶ 14 The court further found that father would be incarcerated for at least four or more years,

therefore, it was not in the best interests of the children to maintain a relationship with father under these circumstances. Father's last face-to-face contact with the children was October 2011. The court entered a "Best Interest Order," on October 10, 2012, terminating father's parental rights to M.M. and C.M.

¶ 15 Father filed a timely notice of appeal challenging the trial court's finding that it was in the best interests of the children to terminate his parental rights.

¶ 16 ANALYSIS

¶ 17 Proceedings on a petition for termination of parental rights involve a two-step, bifurcated approach where the court first holds an "unfitness hearing" (705 ILCS 405/2-29 (West 2010); 750 ILCS 50/1(D) (West 2010)) and, if the parent is found unfit, conducts a subsequent "best interests hearing." 705 ILCS 405/2-29(2) (West 2010); *In re D.T.*, 212 Ill. 2d 347, 352 (2004). In the instant case, father does not challenge the court's order finding father unfit but only challenges the court's finding that it was in the best interests of the children to terminate father's parental rights and allow DCFS to place the children under a permanent guardianship and/or consent to adoption. The State contends that the court's best interests order was not against the manifest weight of the evidence.

¶ 18 Once a court finds a parent unfit by clear and convincing evidence under the Adoption Act, the burden is on the State to prove, by a preponderance of the evidence, that it is in the child's best interests to terminate the parental rights. *In re D.T.*, 212 Ill. 2d 347, 365-66 (2004). During the best interest hearing, the focus shifts from the parent's interest in maintaining the parent-child relationship and yields to the child's needs and best interests to live in a stable, permanent, loving home. *D.T.*, 212 Ill. 2d at 364; *In re Allen*, 172 Ill. App. 3d 950, 959 (1988).

It is well-established that courts must not allow children to live indefinitely with a lack of permanence inherent in foster placements. *In re A.H.*, 215 Ill. App. 3d 522, 530 (1991) (citing *In re C.P.,*191 Ill. App. 3d 237, 243 (1989)).

¶ 19 When determining the best interests of a child for purposes of a termination petition, the court is required to consider a number of statutory factors "in the context of the child's age and developmental needs." 705 ILCS 405/1-3 (4.05) (West 2010). On review, we will not reverse a trial court's finding that termination of a parent's rights is in the child's best interests unless it is against the manifest weight of the evidence. *In re Tiffany M.*, 353 Ill. App. 3d 883, 892 (2004); see also *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). A trial court's decision is against the manifest weight of the evidence and subject to reversal if the facts clearly demonstrate that the court should have reached the opposite result. *In re D.M.,* 336 Ill. App. 3d 766, 773 (2002) (citing *In re N.B.,* 191 Ill. 2d 338, 346 (2000)).

¶ 20 On appeal, father argues termination was not in order because the children's current foster parents sought a permanent guardianship rather than adoption. Father contends guardianship can continue, as preferred by the foster parents without terminating his parental rights, and therefore, termination was improper. The *D.M.* court addressed this issue holding that the circuit court could properly conclude that the children's need for a long-term, stable relationship outweighed the necessity of an available adoptive home immediately upon termination of respondent's parental rights, and it was not necessary to have an adoptive home available when the court terminated a party's parental rights. *D.M.*, 336 Ill. App. 3d at 775 (quoting *In re B.S.*, 317 Ill. App. 3d 650, 665 (2000)). The *D.M.* court held that it may be just as important to free children from continued involvement with a parent whose chaotic and disruptive lifestyle is a detriment to

their welfare. *Id.*

¶ 21 Here, the record shows the children were happy living in their current environment, had bonded with their foster family, and had improved their behavior and schoolwork since that placement. Further, the foster parents agreed to provide a permanent guardianship for the minors. Father's incarceration was to last at least four more years, he had not seen the children since October 2011, and the children did not have a good bond with father or indicate that they missed him. Based on the facts in this case, the court found it was not in the best interests of the children to maintain a relationship with father and entered an order, on October 10, 2012, terminating father's parental rights to M.M. and C.M. We conclude that the court's decision was not against the manifest weight of the evidence.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we affirm the decision of the trial court finding it was in the best interests of the minors to terminate father's parental rights.

¶ 24 Affirmed.