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2013 IL App (3d) 120967-U

Order filed March 20, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

<i>In Re</i> K.H.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	Appeal No. 3-12-0967
	)	Circuit No. 12-JA-36
Petitioner-Appellee,	)	
	)	Honorable
v.	)	Mark E. Gilles,
	)	Judges, Presiding.
Tara W.,	)	
	)	
Respondent-Appellant).	)	

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Wright and Justice Holdridge concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court's conclusion that it was in the best interest of the minor to terminate the mother's parental rights was not against the manifest weight of the evidence where it was clear that the minor had been physically abused and the mother refused to acknowledge that such abuse occurred, making the minor's safety and welfare the determinative factor.
- ¶ 2 Respondent mother, Tara W., was adjudged to be unfit on the grounds that she failed to

protect the minor, K.H., from conditions in her environment injurious to his welfare and failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare. 750 ILCS 50/1(D)(b), (g) (West 2010). After a best interest hearing, the trial court terminated the mother's parental rights as to K.H. The mother appealed the termination. We affirm.

¶ 3

### FACTS

¶ 4 The State filed a petition on February 8, 2012, alleging that K.H., who was three years old, was an abused and neglected minor after he was seen at a hospital with lacerations, bruises, and multiple healing fractures. The minor was taken into temporary custody by the Department of Children and Family Services (DCFS) and placed with a foster family.

¶ 5 Two months later, the State filed a petition to terminate the mother's parental rights. The petition alleged that the mother was unfit on the grounds of extreme or repeated cruelty to K.H. (750 ILCS 50/1(D)(e) (West 2010)); other neglect of or misconduct toward the minor (750 ILCS 50/1(D)(h) (West 2010)); failure to protect the minor from conditions in her environment injurious to his welfare (750 ILCS 50/1(D)(g) (West 2010)); and, failure to show a reasonable degree of interest, concern or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2010)). After the fitness hearing, the trial court found that the last two counts were proven by clear and convincing evidence, and it adjudicated the mother unfit.

¶ 6 At the best interest hearing, which occurred on October 31, 2012, the mother testified that she was no longer in a dating relationship with Justin G., the father of her younger child. However, she and Justin G. had a history of domestic violence, including a recent incident in September 2012. The mother testified that she was attending domestic violence classes, and that she had begun individual counseling. She had an appointment to begin parenting classes. She

denied that K.H. was ever physically abused. Justin G. also testified that he did not believe that K.H. was physically abused. He stated that he was hopeful that he could reestablish a relationship with the mother after K.H. and the younger child were returned to them.

¶ 7 The best interest report indicated that K.H. had been with the same foster parents since he was discharged from the hospital and taken into DCFS custody. The foster parents had signed a permanency commitment and were not ruling out the possibility of adoption. K.H.'s basic needs of food, shelter, health, and clothing were being met by the foster parents. K.H.'s younger half-brother resided in the same foster home. K.H. was enrolled at a local daycare, and early behavioral issues were improving. Also, food and behavioral issues that K.H. initially displayed upon being placed with the foster parents were also improving greatly. Although K.H. was initially guarded with the foster father, he was beginning to socialize with him. K.H. continued to have visits with the mother, and it appeared that K.H. had a bond with the mother.

¶ 8 The trial court considered the statutory best interest factors, and determined that it was in the best interest of K.H. that the mother's parental rights be terminated. The trial court found that the statutory factor regarding the minor's safety and welfare weighed in favor of termination. Not only did both the mother and Justin G. refuse to acknowledge that K.H. had been physically abused, the trial court concluded that they had a plan to reunite. The trial court found that K.H. was afraid of men, and the development of his identity would be aided by being in an environment where he was not afraid of men.

¶ 9 ANALYSIS

¶ 10 The mother contends that the trial court's finding that it was in K.H.'s best interest to terminate her parental rights was against the manifest weight of the evidence. The mother

acknowledges that the finding that she was unfit was not against the manifest weight of the evidence. The State contends that the trial court's decision to terminate the mother's parental rights as to K.H. was overwhelmingly supported by the evidence.

¶ 11 After a parent has been found unfit, the trial court determines whether to terminate the parent's rights based on the child's best interest. *In re D.H.*, 323 Ill. App. 3d 1 (2001). In making a best interest determination, the trial court focuses on the child's welfare and whether termination would improve the child's future, including his financial, social, and emotional well-being. *In re Daphnie E.*, 368 Ill. App. 3d 1052 (2006). In determining whether termination of a parent's rights is in a minor's best interest, the trial court must consider and balance a number of factors, including the minor's physical safety and welfare, the minor's sense of attachments, the minor's need for permanence, and the preferences of individuals available to care for the minor. 705 ILCS 405/1-3(4.05)(a) through (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 (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 Austin W.*, 214 Ill. 2d 31 (2005).

¶ 12 The mother argues that the trial court, in choosing not to terminate the mother's parental rights as to her younger child, but terminating as to K.H., did not appropriately consider K.H.'s sense of attachments or identity. The mother also argues that the trial court did not address or consider the services in which the mother had already engaged, and the affect of those services on K.H.'s physical safety and welfare.

¶ 13 Although the trial court did not specifically address each best interest factor, it stated that

it considered all of the statutory factors, in light of the evidence presented. The evidence showed that K.H. had been physically abused, and he had multiple healing, untreated fractures. The mother refused to acknowledge that K.H. had ever been physically abused, and the trial court found her not to be credible in denying her intent to reconnect with Justin G., who was the other adult in the home during the period of abuse. The court also heard testimony that K.H.'s behavior had improved since being with the foster family as well as his sense of security in the presence of the foster father. In light of all of the evidence presented, we hold that the trial court's finding that it was in the best interest of K.H. to terminate the mother's parental rights was not against the manifest weight of the evidence.

¶ 14

#### CONCLUSION

¶ 15 The judgment of the circuit court of Rock Island County is affirmed.

¶ 16 Affirmed.