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2013 IL App (3d) 121036-U

Order filed May 10, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In re</i> D.H.,)	Appeal from the Circuit Court
a Minor)	of the 10th Judicial Circuit,
)	Tazewell County, Illinois,
(The People of the State)	
of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-12-1036
)	Circuit No. 09-JA-89
v.)	
)	
Randall H.,)	Honorable
)	Albert L. Purham,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice Carter concurred in the judgment.
Justice McDade dissented.

ORDER

- ¶ 1 *Held:* Where the record demonstrates that the minor lived in a stable and loving home, was well adjusted and had a strong bond with her foster parents, the trial court's finding that it was in the best interests of the minor to terminate respondent's parental rights was not against the manifest weight of the evidence.
- ¶ 2 Respondent, Randall H., appeals from an order terminating his parental rights to his child,

D.H. Respondent's sole claim on appeal is that the State failed to prove that it was in D.H.'s best interests to terminate respondent's parental rights. We affirm.

¶ 3 On August 7, 2009, the State filed a petition alleging that D.H. was neglected. As amended, the petition alleged the minor was neglected in that:

"a. Due to Mother's use of multiple prescribed medications due to multiple conditions, Mother's ability to parent was impaired when she had the child in her care.

b. On August 6, 2009, police responded to a domestic situation between mother and [respondent, Randy H.], mother took approximately 30 pain pills and mother had injuries to her face. Mother states that [respondent] head butted her and choked her. [Respondent] was arrested for domestic battery and transported to jail; and

c. Father had a DUI in Marshall County 09-DT-16."

D.H. was adjudicated neglected on November 19, 2009, and respondent was found dispositionally unfit on March 25, 2011.

¶ 4 In September of 2011, the State filed a petition to terminate respondent's parental rights, alleging that respondent was unfit for failing to make reasonable progress toward the return of D.H. from December 2, 2010, through September 2, 2011. At the parental unfitness hearing, respondent stipulated that the petition could be proven. Based on the stipulation, the trial court found respondent unfit and immediately proceeded to the best interests hearing.

¶ 5 Katie Riekema testified that she had been D.H.'s caseworker for about seven months. She visited D.H. in her foster home on a monthly basis. D.H. was three years old and lived with her maternal great-grandparents. Through her great-grandparents, D.H. had a strong connection to other

family members. D.H. was emotionally attached to both foster parents; she called them Mama and Papa.

¶ 6 Riekena stated that D.H. attended preschool and that she loved school. D.H. had her own pink bedroom at her foster parent's house. The house was clean, and D.H. felt safe in her foster parent's home.

¶ 7 D.H. did not talk to Riekena about respondent. According to Riekena, D.H. had no bond with him. A June visit between D.H. and respondent ended early when D.H. became upset because she did not know her father and felt uncomfortable around him. D.H. did not feel comfortable around respondent unless her foster mother was present. Riekena further testified that respondent never sent D.H. cards or letters and missed several visits with D.H.

¶ 8 Riekena noted that D.H. had been in foster care for more than two years and needed permanency. D.H.'s foster parents were willing to adopt her. The foster parents were over 60 years old and had a grandchild who was willing to serve as the backup caregiver, if needed. Riekena did not believe that the age of the foster parents prevented them from continuing to care for D.H.

¶ 9 The best interests report indicated that D.H. had been with her foster parents since May of 2010. All of her needs were being met, and the foster parents viewed D.H. as their own child. D.H. had a strong bond with her foster parents, and they were willing to adopt her.

¶ 10 The report also indicated that respondent failed to complete his court ordered services or stay in contact with Lutheran Social Services. He had been ordered to complete counseling and do at least two random urine tests each month. Riekena testified that respondent's drops had been sporadic and that he had not completed any since May or June of 2012. The report also revealed that respondent had missed five out of nine visits during the past nine months.

¶ 11 At the conclusion of the hearing, the guardian *ad litem* and the Department of Children and Family Services attorney both argued that the best interests factors favored termination. The trial court agreed and found that it was in the best interests of D.H. to terminate respondent's parental rights.

¶ 12 ANALYSIS

¶ 13 Respondent argues that the trial court's finding that it was in D.H.'s best interests to terminate his parental rights was against the manifest weight of the evidence.

¶ 14 The involuntary termination of parental rights is a two-step process. In the first stage of the proceedings, the State must prove by clear and convincing evidence that the parent is an "unfit person" as defined in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (2010). Once the trial court finds that a parent is unfit, the trial court must then determine, pursuant to the Juvenile Court Act of 1987, whether it is in the minor's best interests to terminate parental rights. See 705 ILCS 405/2-29(2) (West 2010); *In re Tiffany M.*, 353 Ill. App. 3d 883 (2004).

¶ 15 In a best interests hearing, the focus of the termination proceeding shifts to the child, and the parent's interest in maintaining the parent-child relationship must yield to the child's interest in having a stable and loving home life. *In re D. T.*, 212 Ill.2d 347 (2004). The issue is no longer whether parental rights can be terminated, but whether in the child's best interests parental rights should be terminated. *D.T.*, 212 Ill. 2d at 364. In making a best interests determination, the trial court must consider, in the context of the child's age and developmental needs, the numerous statutory factors listed in section 1-3 (4.05) of the Juvenile Court Act. See 705 ILCS 405/1-3(4.05) (West 2010). Some of those factors include the child's physical safety and welfare, the development of the child's identity, the child's sense of attachment, and the child's need for permanence and

stability. 705 ILCS 405/1-3(4.05) (West 2010). The trial court may also consider the nature and length of the child's relationship with the current caretaker and the effect that a change in placement would have on the child's emotional and psychological well-being. *Tiffany M.*, 353 Ill. App. 3d at 893. Although the trial court is required to consider the statutory factors in making its best interests determination, it is not required to articulate specific reasons for its decision. *Id.*

¶ 16 On review, a trial court's best interests determination will not be reversed unless it is against the manifest weight of the evidence. *Tiffany M.*, 353 Ill. App. 3d at 892. A trial court's ruling is against the manifest weight of the evidence only where the opposite conclusion is clearly evident. *In re Gwynne P.*, 215 Ill. 2d 340 (2005).

¶ 17 Here, the record contains ample evidence to support the trial court's finding that it was in the best interests of D.H. to terminate respondent's parental rights. The evidence presented at the hearing indicated that D.H. was three years old and had lived with her foster family, her maternal great-grandparents, for two years. She lived in a stable, secure, and loving home. She was well adjusted and enjoyed attending preschool. She had consistent contact with other family members and had a strong attachment to both foster parents. On the other hand, D.H. had no bond with her father. She often became distraught during visitation with respondent and did not feel comfortable around him unless her foster mother was present. In addition, the best interest report demonstrated that all of D.H.'s needs were being met in the foster home, and it was the opinion of the caseworker that it was in D.H.'s best interests to terminate respondent's parental rights. Based on the record presented, we find that the trial court's best interests determination was not against the manifest weight of the evidence. See *Tiffany M.*, 353 Ill. App. 3d at 892-93.

¶ 18

CONCLUSION

¶ 19 The judgment of the circuit court of Tazewell County is affirmed.

¶ 20 Affirmed.

¶ 21 JUSTICE McDADE, dissenting.

¶ 22 I respectfully dissent. The majority finds it was in D.H.'s best interests to terminate respondent's parental rights. I would not yet consider this issue on appeal. Instead, I would strike respondent's brief for failure to comply with Illinois Supreme Court Rule 341(h) (eff. July 1, 2008) and require submission of a compliant brief.

¶ 23 Respondent's "statement of facts" is quoted below in its entirety.

“On September 16, 2011, the State filed a Petition for Termination of Parental Rights alleging in Count II that [respondent], father of the minor, is an unfit person as that term is defined in Illinois Compiled Statutes, [citation] for failure to make reasonable progress towards the return of the minor in [sic] his care within nine (9) months of the jurisdiction [sic] of neglect under Section 2.-3 of the Juvenile Court Act of 1987. On October 18, 2012, [respondent] filed a stipulation to the petition neither admitting nor denying such, stating said Petition could be proven. Said matter was continued for a November 20, 2012 Best Interest Hearing. [Sic] The Best Interest Hearing held on November 30, 2012, the trial court considered the testimony of the case worker, Kelly Rekena. After arguments, the trial court found it is in the best interest of the minor to terminate [respondent's] parental rights. A notice of appeal was filed appealing

the Formal Termination Order of December 4, 2012.”

¶ 24 Respondent argues that the State failed to prove by a preponderance of the evidence that it is in D.H.’s best interests to terminate his parental rights. After setting out the applicable statutory factors that are to be considered at the best interest hearing, respondent’s “analysis” is quoted below in its entirety.

“[Respondent] respectfully submits that the evidence produced at the Best Interest Hearing was insufficient to find it was in the minor’s best interest to terminate her [sic] parental rights.

It should be note[sic] that at one time, [respondent] had the [sic] visited the child after the filing of the Juvenile Petition and visited four times since May 4, 2012. This did indicate that the [respondent] had the ability and commitment to raise his child and the capacity related thereto. The record indicates that there was an attachment between [respondent] and the child and that [respondent] had attended visitations with the child during the periods indicated. Visits took place at Lutheran Social Services for March 2012. [Respondent] acted appropriately at said visits and minor was comfortable at said visits.

While [respondent] did not contend that it was [in] the best interest that the child be returned to him immediately, given the stage of the proceeding, but [sic] it was [respondent’s] argument that the termination of his parental rights was in error and not in the best

interest of the minor. The preferred and more appropriate result under the Juvenile Court Act is that the child remain in the custody of the parent. [Citation.]”

¶ 25 Rule 341 provides that all briefs should contain a statement containing “the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment” (Rule 341(h)(6) (eff. July 1, 2008)) and an argument “which shall contain the contentions of the appellant and reasons therefor” (Rule 341(h)(7) (eff. July 1, 2008)). Where an appellant’s brief violates the requirements of our supreme court rules, the appellate court has the discretion to strike the appellant’s brief and dismiss an appeal. See *Carter v. Carter*, 2012 IL App (1st) 110855 ¶ 12, *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001), *Buckner v. Causey*, 311 Ill. App. 3d 139, 142 (1999).

¶ 26 Respondent’s brief grossly violates Rule 341(h).¹ Both the “statement of facts” and the “analysis” are devoid of *any* explanation regarding what evidence was presented to the trial court at the best interest hearing. Respondent’s brief also provides no information about the factual background relating to the predicate unfitness and neglect findings. It was respondent’s burden on appeal to present us with such information – a burden he has fallen far short of meeting.

¶ 27 Respondent was represented by counsel on appeal. Although counsel attached a certificate of compliance to respondent’s brief, the only *facts* I am able to discern from respondent’s brief are: (1) respondent’s parental rights were terminated, and (2) respondent visited D.H. four times and behaved appropriately. Respondent’s brief is not remotely compliant with the unequivocal language of Rule 341(h). If respondent has any viable arguments in support of his appeal, they have not been

¹ Respondent did not file a reply brief.

presented to us. Because I believe he is being deprived of a meaningful review, I would strike respondent's brief and require his counsel to submit a new brief that complies with the requirements of Rule 341(h) and permits meaningful review of the trial court's decision to terminate his parental rights.