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2013 IL App (3d) 130192

Order filed August 7, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

In re H.M.,)	Appeal from the Circuit Court
a Minor)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-13-0192
)	Circuit No. 11-JA-94
v.)	
)	
Latisha T.,)	Honorable
)	Mark E. Gilles,
Respondent-Appellant).)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The trial court erred in finding that termination of mother's parental rights was in the child's best interest but did not err in concluding that continued visitation was in the child's best interest.

¶ 2 On the State's petition filed against Harold M. and respondent Latisha T., the trial court found H.M. to be neglected. Harold was found to be a fit parent and H.M. was placed in his custody. Latisha was found unfit and granted supervised visitation with H.M. The State filed a petition to

terminate Latisha's parental rights, which the trial court granted. It also ordered that the one-hour monthly visitation between Latisha and H.M. continue. We reverse the termination order and affirm the visitation finding.

¶ 3

FACTS

¶ 4 In April 2011, the State filed a neglect petition against Harold M. and Latisha T., alleging, in part, that their daughter, H.M., born April 13, 2011, was in an injurious environment due to Latisha's previous unfitness finding and criminal history, and Harold's criminal history. The petition also alleged Harold unlawfully used Latisha's LINK card. H.M. was placed in temporary shelter care, and in June 2011, was placed with her paternal grandparents. Both Harold and Latisha answered the State's petition, admitting the allegations regarding their criminal histories and offering mixed answers regarding the other allegations. Latisha later amended her answer to stipulate to the State's allegations but challenged the conclusion that H.M. was a neglected minor. Following a hearing in July 2011, the trial court adjudicated H.M. neglected. In September 2011, the trial court found Latisha unfit and Harold M. fit. Because there was a pending issue regarding Harold's paternity, H.M. remained with her grandparents. Harold was found to be H.M.'s father on October 26, 2011.

¶ 5 Latisha appealed her unfitness finding and this court affirmed. *In re E.M.*, 2012 IL App (3d) 110744-U. The State filed a petition to terminate her parental rights in October 2012. The petition alleged that Latisha was a depraved person based on the following convictions: battery (720 ILCS 5/12-3(a)(2) (West 1998)) in 1999; deceptive practices (720 ILCS 5/17-1(B)(d) (West 2000)) in 2001; unlawful use of the credit card of another (720 ILCS 250/4 (West 2006)) in 2007; unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2008)) in 2008; theft (720 ILCS 5/16-1(a)(1) (West 2010)), resisting a peace officer (720 ILCS 5/31-1(a) (West 2010)), and aggravated assault of

a correctional institution employee in 2011 (720 ILCS 5/12-2(b)(6) (West 2010)); and unlawful possession of cannabis (720 ILCS 550/4(a) (West 2012)) in 2012. The petition further alleged that Latisha was an unfit person for failing to make reasonable progress toward the return of H.M. within nine months of the neglect finding. Latisha answered and denied both counts in the petition.

¶ 6 On October 29, 2012, H.M. was returned home to her father. Permanency review reports establish that Harold was employed full-time, lived in stable housing, and enjoyed extensive family support. He was involved in a committed relationship and H.M. was bonded with his partner. Latisha continued to participate in supervised visitation. She engaged in play and provided appropriate supervision for H.M, displaying effective parenting techniques. Latisha supplied snacks and drinks. H.M. appeared happy to see her mother and the two enjoyed a strong attachment. Latisha filed an amended answer to the termination petition in January 2013, stipulating to the unfitness allegations but denying it was in H.M.'s best interest that her parental rights be terminated. The State presented a factual basis and the trial court found Latisha unfit based on both counts in the petition to terminate.

¶ 7 A best interest report was prepared on February 7, 2013. It provided that H.M. was developmentally on target and doing well. She was bonded to her father, who meets her physical, emotional and safety needs. H.M. had limited bonding with her mother due to Latisha's sporadic contact during the prior year, including missed visits and periods of incarceration. The caseworker stated H.M. needed a stable environment and a home free from violence and drugs. The report concluded that it was in H.M.'s best interest that Latisha's parental rights be terminated. A best interest hearing took place. The caseworker, who had been assigned the file in November 2012, testified that Harold "feels strongly about wanting to have [H.M.'s] mom involved in her life as she grows up." Although the caseworker had not witnessed a visit between Latisha and H.M., the

visitation reports indicated that the visits went well. There were no safety concerns regarding H.M.'s welfare during the visits. A Peoria police officer testified to a domestic violence incident to which he responded that occurred on December 24, 2012, between Latisha and her then-boyfriend, who was arrested.

¶ 8 Latisha testified that she had been living at a women's shelter since late January or early February 2013 to avoid her boyfriend, with whom she was no longer involved. She was under the care of the Human Services Center, where she was assigned a caseworker, wellness coach and psychiatrist. She sought assistance there for memory problems and depression. She also suffered from a seizure disorder. Things were improving for her with treatment. During her visits with H.M., they play, read and enjoy quality time together. H.M. calls her mom and looks to her when she is hungry or needs her diaper changed during the visit. H.M. is excited to see her and cries when the visit is over. She and Harold are able to regularly communicate about H.M., despite their previously volatile relationship. Harold was a good father and she was happy with him having custody of H.M. She was not seeking custody of H.M. and would not do so in the future unless it was necessary.

¶ 9 The State offered updates to records that were used as trial exhibits, including Latisha's medical, counseling, and arrest records. It argued that the records reflect that Latisha was impulsive and dishonest; that she would not put the needs of her children first; and that neither H.M. nor Harold should be subjected to Latisha's ongoing drama and chaos. Latisha's attorney argued that most of the best interest factors were not applicable under the circumstances due to H.M.'s age and because she had achieved permanence in her father's custody. According to counsel, factors such as the child's background and community ties would not be affected by Latisha retaining her parental rights to visitation, and the remaining applicable factors weigh in favor of not terminating her rights. Counsel

pointed to Harold's preference that Latisha remains H.M.'s mother; the bond developed between Latisha and H.M. through visitation and the positive interactions during visits; H.M.'s attachment to her mother; and the role Latisha could play in the development of H.M.'s identity, particularly in regard her unique experiences with physical, mental health and criminal issues. Finally, counsel argued that there are no concerns for H.M.'s physical safety and welfare while with Latisha, pointing to the issue-free visitations, which he urged the trial court to continue by not terminating Latisha's rights. The guardian *ad litem* (GAL) argued that Latisha's parenting behavior was "woeful" and that it would not be in H.M.'s best interest to have a continued relationship with Latisha. The State argued that safety was a concern, pointing to Latisha's background of domestic violence. It further argued that after the case was closed, there would be no one supervising visitation and able to ensure H.M.'s safety.

¶ 10 The trial court ruled that the case would remain open for the trial court's determination as to whether it was in H.M.'s best interest to eliminate contact with Latisha. It emphasized the positive visitations and Latisha's seeming progress toward "getting things straightened out" for herself. It stated, "Right now[,] at least while this case remains open[,] I am not making the decision to eliminate contact between [Latisha] and [H.M.]. I can't find it's in the best interest." The trial court further found that it was "definitely in the child's best interest that [Latisha] not have parental decision-making power and ability with respect to this child." The trial court ordered supervised visitation of one hour per month continue and terminated Latisha's parental rights. The State objected to the continuation of visitation, to which the court responded, "You may show it over it, and you can put it in capital letters, but I'm not finding it's in the best interest to eliminate [Latisha] from the child's life." A dispositional order terminating Latisha's rights was issued on March 5, 2013.

¶ 11

ANALYSIS

¶ 12 The issue is whether the trial court erred in finding that it was in H.M.'s best interest that Latisha's parental rights be terminated. Latisha argues the evidence was insufficient to establish that it was in H.M.'s best interest to terminate her parental rights. Latisha submits that H.M. enjoys a stable environment in her father's custody and that maintaining her parental rights, particularly visitation, does not disrupt H.M.'s permanency.

¶ 13 At the best interest stage in a termination proceeding, the focus is on the child's best interest and welfare. *In re T.G.*, 147 Ill. App. 3d 484, 488 (1986). To determine whether a child's best interest is served by termination of parental rights, the trial court uses the following factors: the child's physical safety and welfare, including food, shelter, health and clothing; the development of the child's identity; the child's background and ties, including familial, cultural and religious; the child's sense of attachments, including where she "actually feels love, attachment, and a sense of being valued," her senses of security and familiarity, continuity of affection for the child and the least disruptive placement alternative; the child's wishes and long-term goals; her community ties, including school, church, and friends; the child's need for permanence, including his need for stability and continuity of relationships; the uniqueness of every family and child; the risks of substitute care; and preferences of persons available to care for the child. 705 ILCS 405/1-3(4.05)(a)-(j) (West 2010).

¶ 14 A parent has a fundamental interest in the control custody and care of her children, which should not be terminated lightly. *In re M.H.*, 196 Ill. 2d 356, 365 (2001). A parent may be unfit to have custody of her children but that fact does not mean that she cannot remain the children's legal parent with parental rights and privileges. *In re B.C.*, 247 Ill. App. 3d 803, 806 (1993). However, while a noncustodial parent enjoys residual parental rights and responsibilities, those rights and

responsibilities cease to exist when the parent is found unfit and his or her parental rights are terminated. *T.G.*, 147 Ill. App. 3d at 489. At the best interest stage of termination proceedings, the child's interest in a stable and loving home life is paramount and the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable home environment. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The State must prove by a preponderance of the evidence that termination is in the child's best interest. *In re Joshua K.*, 405 Ill. App. 3d 569, 582 (2010). This court will not reverse a trial court's decision to terminate parental rights unless it was against the manifest weight of the evidence. *Joshua K.*, 405 Ill. App. 3d at 582-83.

¶ 15 The trial court found that it was in H.M.'s best interest that Latisha's parental rights be terminated and that Latisha continue monthly visitation with H.M. In order to terminate Latisha's parental rights, the trial court needed to determine that it was not in H.M.'s best interest to have any relationship or contact of any kind with Latisha. This is because a termination of parental rights means a parent loses her "entire bundle of parental rights," including visitation. *T.G.*, 147 Ill. App. 3d at 488. Once a trial court terminates a parent's rights, "the parent-child relationship is permanently and completely severed." *D.T.*, 212 Ill. 2d at 356. Here, the trial court did not find that it would be in H.M.'s best interest for Latisha to lose all her parental rights. Rather, the court found that it would be in H.M.'s best interest to have continued contact with Latisha. Based on that finding, termination is improper.

¶ 16 The facts support the trial court's determination that H.M.'s best interest is served by maintaining contact with Latisha. In response to the State's objection that visitation continue, the trial court expressly found, "[Y]ou can put it in capital letters, but I'm not finding it's in the best interest to eliminate [Latisha] from the child's life." The trial court pointed to the successful visitations and

Latisha's efforts to straighten out her life as support for its determination. The caseworker's reports describe a positive attachment and developed bond between H.M. and her mother. Latisha demonstrated appropriate parenting and tended to H.M.'s needs during visits. There were no safety concerns. Latisha testified that H.M. called her "mom" and expressed affection for her during visitation. Harold believes H.M. would benefit from a relationship with her mother and Latisha's continued involvement in H.M.'s life. H.M.'s physical, emotional, safety and other needs are met by Harold, with whom she lives. H.M. shares a bond with her paternal grandparents, who initially cared for her and continue to do so when Harold is working. H.M. is also bonded with Harold's girlfriend. By all accounts, H.M. is a happy and well-adjusted child. The trial court specifically found that it was in H.M.'s best interest that Latisha not be allowed any parental decision-making power or ability. She remains in Harold's sole custody and Latisha is only afforded supervised visitation. None of these circumstances change with the retention of Latisha's parental rights and the continuation of her visitation privileges.

¶ 17 The trial court found that it was in H.M.'s best interest that she and Latisha remain in contact. The trial court unequivocally determined H.M.'s best interest would not be served by severing contact with Latisha. It stated, "Right now[,] at least while this case remains open[,] I am not making the decision to eliminate contact between [Latisha] and [H.M.]. I can't find it's in the best interest." This finding, which is supported by the evidence, precludes the termination of Latisha's parental rights. Accordingly, we find the trial court erred in terminating Latisha's parental rights. We thus affirm that portion of the trial court's order granting Latisha continued visitation and reverse its termination of Latisha's parental rights.

¶ 18 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed in

part and reversed in part.

¶ 19 Affirmed in part and reversed in part.