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2013 IL App (3d) 130473-U

Order filed November 20, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In re</i> B.H.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-13-0473
)	Circuit No. 10-JA-312
v.)	
)	
Erin H.,)	Honorable
)	Chris L. Fredericksen,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that it was in the minor's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 The trial court found respondent, Erin H., to be an unfit parent, and, following the best interest hearing, terminated her parental rights. On appeal, respondent argues that the trial court's decision was against the manifest weight of the evidence. We affirm.

FACTS

¶ 3

¶ 4 On October 28, 2010, the State filed a juvenile petition, alleging that B.H. was neglected as a result of an injurious environment. The petition, alleged, in part, that B.H. was neglected because: (1) respondent has a substance abuse problem with alcohol and cannabis; (2) respondent has left rehab two times and could not enter the third time because she had to detox first; (3) respondent has been suffering seizures from drinking; (4) respondent had not completed services which could lead to the return home of B.H.; and (5) respondent had two convictions of possession of cannabis. Respondent stipulated to these allegations.

¶ 5 At the subsequent dispositional hearing on January 7, 2011, B.H. was found to be neglected, respondent was found dispositionally unfit, and B.H. was made a ward of the court. Respondent was ordered, in part, to perform random drug drops and/or breathalyzers three times per month, attend individual counseling, attend supervised visitations with B.H., and complete inpatient drug and alcohol treatment. At respondent's permanency review hearings on January 1, 2012, and December 14, 2012, the trial court found that respondent remained unfit by failing to make reasonable efforts. Respondent had not completed substance abuse treatment or drug drops, and had been discharged from counseling due to excessive absences.

¶ 6 On October 31, 2012, the State filed a petition for termination of parental rights, alleging that respondent was an unfit parent in that she failed to make reasonable progress toward the return of B.H. during the nine-month period from January 10, 2012, through October 10, 2012. 750 ILCS 50/1(D)(m)(iii) (West 2010). On April 17, 2013, respondent stipulated that the State could prove the allegations contained in the petition. The case proceeded to a best interest hearing.

¶ 7 Prior to the best interest hearing, the Lutheran Social Services of Illinois filed a best interest

report. The report stated that B.H. was four years old and that he had been placed in foster care with his maternal aunt and uncle for two years. The foster care parents met all of B.H.'s needs of food, shelter, health and clothing. B.H. had been tested and found to be progressing developmentally as expected. B.H. considered the foster home his home, and was bonded to his foster parents and the entire family. The foster parents treated B.H. like a member of the family, and were ready and willing to adopt B.H.. The report also noted that during visitations, B.H. indicated that he did not want to stay with respondent and needed reassurance that he would be going back to his foster parents. During phone calls with respondent, B.H. often did not want to talk and, if he talked, he did so for a limited time and said he had nothing to say.

¶ 8 Respondent testified at the hearing that she did not want her parental rights terminated because her son loves her. Respondent admitted that she was not making reasonable progress to manage her alcoholism during the nine-month period, but she stated that she would be able to remain sober and indicated her willingness to complete services if her rights were not terminated. After reviewing all the evidence and arguments, the trial court found that it was in B.H.'s best interest to terminate respondent's parental rights.

¶ 9

ANALYSIS

¶ 10 Respondent argues that the trial court's decision was against the manifest weight of the evidence because it did not consider all the statutory best interest factors.

¶ 11 We review a trial court's termination of a parent's rights under the manifest weight of the evidence standard. *In re B.B.*, 386 Ill. App. 3d 686 (2008). A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *Id* at 697.

¶ 12 At the best interest hearing, all considerations must yield to the best interest of the minor. *In*

re G.L., 329 Ill. App. 3d 18 (2002). The burden of proof is upon the State to 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). The trial court must consider several factors for termination, including: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2010).

¶ 13 Our review of the record indicates that the State proved by a preponderance of the evidence that it was in B.H.'s best interest to terminate respondent's parental rights. Respondent contends that she attempted to deal with her alcoholism and maintain her sobriety. However, the record shows that respondent had not completed the court-ordered treatment or drug drops, and that she had been discharged from counseling. There is no substantive evidence to show that respondent remained sober and drop free.

¶ 14 Respondent also contends that the State did not present any evidence about the child's wishes. However, the record shows that, at each visitation, B.H. indicated he did not want to stay with respondent and expressed his concern that he would not be returned to his foster home. It is clear that B.H. is bonded with the foster family and wishes to stay with them. Furthermore, given the fact that B.H. had been in the foster family's care since he was two years old, it would be unreasonable to believe that he would wish to live with respondent.

¶ 15 It should be noted that B.H. had been placed in the foster family for two years. He is very integrated and bonded with the foster family. His development of identity does not come from

respondent but from the foster family. The foster family has provided B.H. with all his basic needs, and they are committed to permanency. By contrast, respondent's failure to cooperate with the court-ordered tasks such as random drug testing, as well as her inconsistency with phone calls and visitation for over a year, show she is unable to provide a safe and stable environment for B.H. Accordingly, the trial court's ruling to terminate respondent's parental right was not against the manifest weight of the evidence.

¶ 16

CONCLUSION

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

¶ 18 Affirmed.