

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 130013-U
NOS. 4-13-0013, 4-13-0014 cons.

FILED
May 29, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

In re: N.S., a Minor,)
THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from
Petitioner-Appellee,) Circuit Court of
v. (No. 4-13-0013)) Macon County
TERRY SMITH,) No. 10JA36
Respondent-Appellant.)

-----)
In re: T.S., a Minor,) No. 10JA25
THE PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner-Appellee,)
v. (No. 4-13-0014)) Honorable
TERRY SMITH,) Thomas E. Little,
Respondent-Appellant.) Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding that the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.
- ¶ 2 In October 2012, the State filed petitions to terminate the parental rights of respondent, Terry Smith, as to his children, N.S. (born June 6, 2007) (Macon County case No. 10-JA-36; this court's case No. 4-13-0013) and T.S. (born April 20, 2005) (Macon County case No. 10-JA-25; this court's case No. 4-13-0014). Following a December 2012 fitness hearing, the trial court entered a written order finding respondent unfit. Later that same month, the court conducted a best-interest hearing that resulted in the termination of respondent's parental rights.

¶ 3 Respondent appeals, arguing that the trial court's fitness and best-interest findings were against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Circumstances Preceding the State's Petition
To Terminate Respondent's Parental Rights

¶ 6 1. *The Adjudicatory and Dispositional Hearings Concerning T.S.*

¶ 7 On February 16, 2010, the State filed a petition for adjudication of wardship, alleging that T.S. was an abused and neglected minor under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 to 1-18 (West 2010)). At the March 31, 2010, adjudicatory hearing on the State's petition—at which respondent appeared with counsel—the trial court accepted the admission of T.S.'s biological mother, Ebonie Neylon, that T.S. was neglected because she had unresolved substance-abuse, mental-health, and domestic-violence issues. (The domestic-violence issues did not involve respondent.) The court thereafter entered an adjudicatory order, finding that (1) T.S. was in an environment injurious to his welfare (705 ILCS 405/2-3(1)(b) (West 2010)) and (2) respondent was not involved in T.S.'s life. Following a dispositional hearing conducted that same day, the court adjudicated T.S. a ward of the court and appointed the Department of Children and Family Service (DCFS) as his guardian.

¶ 8 2. *The Adjudicatory and Dispositional Hearings Concerning N.S.*

¶ 9 On March 12, 2010, the State filed a petition for adjudication of wardship, alleging that N.S. was a neglected minor under the Juvenile Court Act. At an April 14, 2010, adjudicatory hearing on that petition—at which respondent appeared with counsel—the trial court accepted Neylon's admission that N.S. was neglected because she was incarcerated and

N.S.'s location was unknown at that time. The court later entered an adjudicatory order, finding, in part, that (1) N.S. was in an environment injurious to her welfare and (2) respondent was not involved in N.S.'s life. Following a May 2010 dispositional hearing, the court adjudicated N.S. a ward of the court and appointed DCFS as her guardian.

¶ 10 B. The State's Petition To Terminate Respondent's Parental Rights

¶ 11 In October 2012, the State filed two petitions to terminate respondent's parental rights pursuant to the Adoption Act (750 ILCS 50/1 to 24 (West 2010)), claiming that he was unable to discharge his parental responsibilities. In particular, each petition alleged that respondent was unfit because of his mental impairment, mental illness, or mental retardation as defined by section 1-116 of the Mental Health and Developmental Disabilities Code (Disabilities Code) (405 ILCS 5/1-116 (West 2010)), which was supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist. 750 ILCS 50/1(D)(p) (West 2010).

¶ 12 C. Respondent's Fitness Hearing

¶ 13 A summary of the evidence presented at respondent's December 2012 fitness hearing showed the following.

¶ 14 1. *The State's Evidence*

¶ 15 In August 2012, Michael Scott Trieger, a clinical psychologist, performed a psychological evaluation of respondent to assess his ability to care independently for his children. DCFS had concerns about respondent's ability to parent T.S. and N.S. because he had suffered brain trauma, and respondent's mother was withdrawing the child-rearing assistance she had been providing. Trieger tested respondent's cognitive ability to determine his decision-making and

judgment, as well as his "academic achievement skills." Trieger also observed respondent's interaction with T.S. and N.S. during a 45-minute supervised visitation.

¶ 16 During Trieger's evaluation, respondent informed him that he had been shot in the head when he was 15 years old. Trieger doubted that respondent had a "mental disorder," but he explained that the injury to respondent's brain impaired his balance and speech, which caused "a general kind of slowing of his overall motor abilities." Trieger also noted that respondent's academic testing results placed him in the "borderline to low" range.

¶ 17 During respondent's supervised visit with T.S. and N.S., Trieger observed that although respondent "demonstrated a genuine concern and love for his children," his interaction with T.S. and N.S. was negatively impacted by his motor skill deficiencies. Trieger added that respondent did not attempt to redirect T.S. and N.S. when circumstances warranted, commenting that respondent "seemed to get engrossed in *** playing with some of [the] play objects in the room as opposed to attending to the children."

¶ 18 In his August 2012 written report, Trieger provided the following conclusion:
"Although [respondent] says he is motivated to prove he has the necessary parenting knowledge to independently meet the needs of his children, his cognitive deficits and motor impairments present some formidable obstacles to this objective. [Respondent] does not seem to suffer from a mental illness, but his impairments limit his creativity, problem-solving, capacity for anticipating his children's needs and his mobility. It is unlikely that [respondent] is able to cook a real meal for his children, assist with their hygiene

and grooming, help them with homework beyond the third grade level[,] or run a household without considerable assistance."

Trieger added that respondent's cognitive functioning was in the "borderline to mildly mentally impaired range," which he classified as a permanent disability. Trieger opined that despite respondent's efforts, it was "highly unlikely" he could provide safety, guidance, and support to T.S. and N.S. without assistance.

¶ 19 Trieger acknowledged that he (1) could not be certain that respondent's mental condition would not improve over time and (2) did not have direct knowledge of respondent's overall capabilities.

¶ 20 Terri Barnett, a DCFS-contracted caseworker, testified that she had managed the case involving T.S. and N.S. from November 2010 until May 2012. Respondent's client-service plan required him to complete parenting classes, anger-management counseling, and visit regularly with T.S. and N.S. Although respondent complied with all of his client-service plan goals in a timely manner, Barnett explained that during her tenure, she observed respondent interact with his children monthly and noticed a persistent unwillingness to provide instruction to T.S. and N.S., describing respondent's demeanor as "easily frustrated," and "overwhelmed." Barnett added that respondent's interaction with T.S. and N.S. at his home was better because respondent's mother was assisting him. Barnett, however, became concerned when respondent's mother decided to withdraw her daily assistance. Barnett stated that she did not see any improvement in respondent's parenting skills throughout her 18-month tenure, and opined that additional time would not improve respondent's parenting abilities.

¶ 21 Phyllis Jones, a DCFS-contracted case assistant, testified that she assisted in the

case involving T.S. and N.S. for nine months, which ended in September 2012. During that time, she observed weekly visits respondent had with T.S. and N.S. Jones opined that respondent was attentive to his children and appropriately disciplined them when the situation warranted.

(Chalanda Woods, a DCFS-contracted case assistant who provided assistance after Jones's involvement ended, testified consistently with Jones's account.)

¶ 22 Lyndsey Sites, a DCFS-contracted foster care supervisor, testified that she referred respondent for a psychological evaluation based on her concerns regarding his ability to parent T.S. and N.S. Sites explained that T.S. has been classified as a "specialized foster child" because of his inability to "build rapport with other kids" and his physical altercations with other children, including N.S. T.S.'s condition required medication, follow-up treatment, and ongoing therapy. Although Sites acknowledged the testimony provided by Jones and Woods, her brief observations of respondent with his children revealed that respondent was content to just sit back and watch T.S. and N.S. instead of actively engaging with them. Although respondent complied with his client-service plan goals, Sites noted that supervised visitations continued despite the length of time DCFS had managed the case. Sites opined that respondent would not be ready to have unsupervised visitation with T.S. and N.S. in the near future.

¶ 23 *2. Respondent's Evidence*

¶ 24 Respondent—who was 29 years old at that time—testified that before DCFS's involvement, he cared for T.S. and N.S. without any trouble. After DCFS's involvement, he completed all his client-service plan goals, which he acknowledged were beneficial. Respondent explained that he had supervised, weekly visitation with T.S. and N.S., which occurred after their school day ended. Respondent noted that during those visits, he would talk, watch television,

play games, or occasionally cook meals for T.S. and N.S. Respondent acknowledged T.S.'s behavioral problems but stated that he tells T.S. to stop the behavior and then explains to T.S. why the behavior was wrong, which usually resolves the problem. Respondent explained that he would be able to transport his children to their medical appointments and school activities through the assistance of his mother—who was still living with him—or his cousins. Although respondent was unemployed, he had been employed in the recent past and was currently receiving social security disability benefits because of his brain injury.

¶ 25

3. The Trial Court's Fitness Finding

¶ 26

Following the presentation of evidence and argument at respondent's December 2012 fitness hearing, the trial court commented that the evidence presented showed that respondent (1) obviously loved T.S. and N.S. and (2) was genuinely concerned about their welfare. The court noted, however, that respondent's feelings toward his children was not the issue before the court. Instead, the issue the court was to resolve was whether respondent was unable to discharge his parental responsibilities as alleged by the State, which was required to be supported by competent evidence. In finding that the State had proved—by clear and convincing evidence—that respondent was unable to parent T.S. and N.S. because of his mental impairment as defined by section 1-116 of the Disabilities Code, the court found Trieger's report and corresponding testimony credible and persuasive.

¶ 27

D. Respondent's Best-Interest Hearing

¶ 28

A summary of the evidence presented at respondents' December 2012 best interest hearing showed the following.

¶ 29

1. The State's Evidence

¶ 30 Testimony provided by Tiona Farrington, the assigned DCFS-contracted case-worker, and Sites, Farrington's supervisor, showed that T.S. and N.S. had been living together with their half-sibling in the same foster family for 3 years and 2 1/2 years, respectively. Sites explained that the foster family was adequately providing for their needs, noting that although T.S.'s behavior had improved, "there's still a struggle from time to time." Sites explained that medical professionals were still attempting to determine the correct combination of medicines and dosages to "stabilize" T.S. Despite these struggles, the foster parents remained actively involved with T.S. and N.S. and had stated their interest in adopting them.

¶ 31 In summary, Sites stated as follows:

"[A]s I have mentioned in the termination hearing, [T.S. and N.S.] have been in care for a long time so I believe that they really need permanency at this point. *** [S]ince we have not been able to move forward [with respondent], we really just need to establish that permanency and fulfill it."

¶ 32

2. Respondent's Evidence

¶ 33 Respondent rested without providing any evidence.

¶ 34

3. The Trial Court's Best-Interest Finding

¶ 35 After considering this evidence and counsel's arguments, the trial court terminated respondents' parental rights as to T.S. and N.S. In so doing, the court noted that the children's (1) sense of security, familiarity, continuity, and least disruptive placement (705 ILCS 405/1-3(4.05)(d)(ii), (iii), (iv), (v) (West 2010)) and (2) need for permanence and stability (705 ILCS

405/1-3(4.05)(g) (West 2010)) were the important factors in this case.

¶ 36 This appeal followed.

¶ 37 II. ANALYSIS

¶ 38 A. Termination of Respondent's Parental Rights

¶ 39 1. *The Trial Court's Fitness Finding*

¶ 40 a. The Applicable Statute, Reasonable Progress,
and the Standard of Review

¶ 41 Section 1(D)(p) of the Adoption Act provides, in pertinent part, as follows:

"D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following, except that a person shall not be considered an unfit person for the sole reason that the person has relinquished a child in accordance with the Abandoned Newborn Infant Protection Act:

* * *

(p) Inability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or a mental retardation as defined in Section 1-116 of the Mental Health and Developmental

Disabilities Code, or developmental disability as defined in Section 1-106 of that Code, and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period." 750 ILCS 50/1(D)(p) (West 2010).

¶ 42 "The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011), quoting *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). "A reviewing court will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129.

¶ 43 b. Respondent's Claim That the Trial Court's Fitness Finding Was Against the Manifest Weight of the Evidence

¶ 44 Respondent argues that the trial court's fitness finding was against the manifest weight of the evidence. We disagree.

¶ 45 Evidence of a mental impairment without more is insufficient to prove a parent unfit under section 1(D)(p) of the Adoption Act. *In re S.L.*, 2012 IL App (5th) 120271, ¶ 49, 980 N.E.2d 796, 808. In addition, the State must prove that the mental impairment (1) rendered the parent unable to perform his parental responsibilities and (2) will extend beyond a reasonable period of time. *Id.*

¶ 46 In his brief to this court, respondent essentially contends that the trial court erred because the State did not present sufficient evidence to satisfy either of the requisite prongs. With regard to the first prong, respondent asserts that the evidence showed he was able to perform his parental responsibilities because he (1) took care of T.S. and N.S. prior to DCFS's involvement, (2) acquitted himself appropriately during his supervised visits with T.S. and N.S. as Jones and Woods noted, and (3) completed all his client-service plan goals. With regard to the second prong, respondent posits that Trieger acknowledged on cross-examination that a possibility exists that his mental condition may improve given time.

¶ 47 Initially, we commend respondent for the effort he has taken to comply with his client-service plan goals. However, we disagree that respondent's assertions, are sufficient to overcome the expert medical testimony the State presented to the contrary. Here, respondent's success came, in large measure, as a result of the prolonged assistance he received from DCFS and his relatives. Indeed, DCFS did not seek to have respondent psychologically evaluated to determine his ability to independently care for T.S. and N.S. until respondent's mother revealed her intent to cease providing respondent her support.

¶ 48 Here, as we have previously noted, the issue before the trial court was whether respondent was unable to perform his parental responsibilities because he was mentally impaired, which required competent evidence from, in part, a clinical psychologist. The expert medical evidence the State presented to make its case showed that (1) respondent's cognitive functioning was in the "borderline to mildly mentally impaired range," (2) it was "highly unlikely" that respondent could safely parent his children without assistance, and (3) respondent's mental condition is permanent and not likely to improve.

¶ 49 Accordingly, we conclude that the trial court's finding that respondent was unfit because he was unable to discharge his parental responsibilities pursuant to section 1(D)(p) of the Adoption Act was not against the manifest weight of the evidence.

¶ 50 *2. The Trial Court's Best-Interest Finding*

¶ 51 a. The Standard of Review

¶ 52 At the best-interest stage of parental termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 53 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 54 b. Respondent's Claim That the Trial Court's Best-Interest Finding Was Against the Manifest Weight of the Evidence

¶ 55 Respondent also argues that the trial court's best-interest finding was against the manifest weight of the evidence. Specifically, respondent contends that the court should have focused on the positive actions respondent took to reacquire custody of T.S. and N.S. instead of the negative issues related to his mental condition. We disagree.

¶ 56 Following the presentation of evidence and argument at the December 2012 best-

interest hearing, the trial court considered the factors enumerated in section 1-3(4.05) of the Juvenile Court Act, commenting that the most important was the children's (1) sense of security, familiarity, continuity, and least disruptive placement and (2) need for permanence and stability. The court then noted that the testimony provided by Farrington and Sites, which showed that those factors were being met for at least the last 2 1/2 years by the adoptive placement of T.S. and N.S. with their foster parents.

¶ 57 In this regard, ample evidence was presented at the best-interest hearing to support the trial court's decision to terminate respondent's parental rights. Based on that evidence, we disagree with respondent that the facts demonstrated that the court should have reached the opposite result.

¶ 58

III. CONCLUSION

¶ 59 For the reasons stated, we affirm the trial court's judgment.

¶ 60 Affirmed.