

NOTICE
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2013 IL App (4th) 130176-U
NO. 4-13-0176
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
June 24, 2013
Carla Bender
4th District Appellate
Court, IL

In re: M.M., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 10JA55
BRIAN FERRELL,)	
Respondent-Appellant.)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order terminating father's parental rights was not against the manifest weight of the evidence.

¶ 2 On January 28, 2013, the trial court found respondent, Brian Ferrell, to be an unfit parent to M.M., whose date of birth is March 14, 2011. On February 28, 2013, the court found it to be in M.M.'s best interest to terminate respondent's parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent does not challenge the trial court's finding of unfitness. In a two-paragraph argument, he contends the court erred by finding it was in the best interest of M.M. to terminate his rights.

¶ 5 In light of respondent's challenge only to the best-interest finding, we keep the procedural history and unfitness evidence to the minimum necessary for an understanding of the

case.

¶ 6 On May 12, 2011, the State filed a supplemental neglect petition and an expedited motion to terminate the parental rights of the presumptive father, Malcolm Mathews, to M.M. Mathews' rights to M.M.'s brother, Ma. M., had been terminated on April 28, 2011. We affirmed the termination of Mathews' parental rights regarding Ma. M. *In re: M.M.*, 2011 IL App (4th) 110382-U.

¶ 7 On July 6, 2011, M.M.'s mother stipulated M.M.'s environment was injurious to his welfare because she and Mathews had failed to correct the conditions that brought M.M.'s brother to the attention of the Department of Children and Family Services (DCFS). (M.M.'s mother is not a party to this appeal.) The court then heard evidence regarding Mathews and found M.M. neglected. After hearing evidence of unfitness regarding Mathews, the court found him unfit. The court then set a dispositional hearing and a best-interest hearing for August 11, 2011.

¶ 8 At the August 2011 hearing, the State's Attorney informed the trial court she had information indicating Mathews was not the biological father of M.M. Since Mathews was married to M.M.'s mother and thus was the presumptive father, the court went ahead with the dispositional/best-interest hearings. The court made M.M. a ward of the court, placed guardianship and custody with DCFS, and gave DCFS full discretion with respect to visitation between M.M. and his mother. Following a best-interest hearing, the court terminated Mathews' parental rights.

¶ 9 On August 31, 2011, the State filed a second supplemental petition for adjudication of neglect, alleging respondent to be the putative father of M.M.

¶ 10 In November 2011, respondent appeared and the trial court appointed counsel to represent him. The court also ordered genetic testing for a paternity determination. In February 2012, at a permanency hearing, the court found M.M.'s mother was making reasonable efforts and reasonable progress toward the return of M.M. However, the court found respondent had not made reasonable efforts or progress. Respondent failed to appear for his scheduled genetic testing, apparently because he was incarcerated in the Champaign County jail. Testing on respondent's blood sample taken at the jail confirmed respondent is the father of M.M.

¶ 11 In a report prepared by DCFS for the February 28, 2012, permanency hearing, DCFS indicated respondent showed little interest in establishing himself as a fit, willing, and able parent. Respondent reported he was "not down with doing classes." The report reflected respondent's lengthy criminal history, including felony convictions and multiple incarcerations, with two stints in the Illinois Department of Corrections (DOC). At the permanency hearing, the trial court found respondent had refused services and set another permanency hearing for May 29, 2012.

¶ 12 The DCFS report for the May 2012 permanency hearing reflected no contact between respondent and Lutheran Social Services of Illinois (LSSI) during the months of March and April. LSSI caseworkers were attempting to work with respondent. Respondent told LSSI he did not understand why the court ordered him to complete services when he was already providing diapers and clothing for his son. Respondent failed to attend a scheduled meeting on May 16, 2012, to review his service plan.

¶ 13 Respondent failed to appear at the May 29 and August 29, 2012, permanency hearings. The trial court found he had not made reasonable efforts or progress toward

reunification. The permanency report for the August 2012 hearing reflected respondent had not engaged in services or visitation with M.M. When asked by an LSSI worker about setting a visitation schedule with M.M., respondent stated, "The court could not tell [him] when [he] could and could not see his son." After telling respondent he was court-ordered not to have unsupervised visitation with M.M., he responded, "F*** the court order, I will see my son when I want to see my son." He refused to provide updated information to the caseworker and would not provide his address. The report further noted respondent pled guilty to controlled-substance trafficking on August 9, 2012.

¶ 14 On October 1, 2012, the State filed a motion seeking a finding of unfitness and for termination of respondent's parental rights. On October 2, 2012, respondent appeared with counsel and was admonished about the contents of the State's motion. The termination hearing was set for January 16, 2013.

¶ 15 In January 2013, at a pretrial conference, respondent appeared in custody. Respondent had been arrested for attempt (murder). By the time of the fitness hearing, January 28, 2013, respondent had been released from jail and the charge had been dismissed. He was not present at the start of the hearing, but did appear shortly thereafter.

¶ 16 After hearing all of the evidence, including respondent's testimony, the trial court found respondent unfit. Based on the evidence presented, the court found respondent was not interested in services and failed to attend the integrated assessment. The court found respondent told an LSSI caseworker "F*** the court order, I will see my son whenever I want." Eventually, in October 2012, respondent signed a consent for a substance abuse assessment. He failed to ever obtain it. The court took judicial notice of respondent's criminal history, which included

convictions for unlawful delivery of a controlled substance, mob action, unlawful possession of a controlled substance, and attempted delivery of a controlled substance. The court specifically found respondent was not credible when testifying about his reasons for not participating in services. The court found the State proved respondent unfit by clear and convincing evidence and set the best-interest hearing for February 28, 2013.

¶ 17 No testimony was presented at the best-interest hearing. The trial court and the parties all had copies of the reports and recommendations of LSSI and the Court Appointed Special Advocate (CASA) worker. Both reports reflected a lack of interest on respondent's part, a concern for M.M.'s safety if he was to be around respondent, and a recommendation respondent's parental rights be terminated. The court found respondent had not engaged in services and was not a permanency option for M.M. The court then terminated respondent's rights, finding it was in the best interest of M.M. to do so.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 Here, respondent does not challenge the trial court's unfitness finding. Once a parent has been found unfit for termination purposes, the focus changes to whether it is in the best interest of the child to terminate parental rights. 705 ILCS 405/2-29(2) (West 2008); *In re D.F.*, 201 Ill. 2d 476, 494-95, 777 N.E.2d 930, 940 (2002). The trial court conducts the best-interest hearing using a preponderance of the evidence standard of proof. *In re D.T.*, 212 Ill. 2d 347, 367, 818 N.E.2d 1214, 1228 (2004). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2008).

These include the following:

"(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-] disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 21 The trial court's best-interest determination is reviewed under the manifest-weight-of-the-evidence standard. *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). A decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 22 In this case, respondent had no relationship with M.M. He did not visit with M.M., he did not engage in services of any kind, and he had a lengthy criminal history. He was arrested at least twice during the pendency of this case. He took no initiative to forge any type of relationship with M.M. The court's finding it was in M.M.'s best interest to terminate

respondent's rights was not against the manifest weight of the evidence.

¶ 23

III. CONCLUSION

¶ 24

We affirm the trial court's judgment terminating respondent's parental rights.

¶ 25

Judgment affirmed.