

THIRD DIVISION
MARCH 17, 2014

No. 1-13-3317

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In the Interest of</i> S.S., N.S., and C.S.,)	
)	
Minors-Respondents-Appellees,)	Appeal from the
)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Cook County.
)	
Petitioner-Appellee,)	Nos. 09 JA 522
)	09 JA 688
v.)	10 JA 1004
)	
DOROTHY S.,)	Honorable
)	Rena M. Van Tine,
Mother-Respondent-Appellant.))	Judge Presiding.
)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

ORDER

- ¶ 1 *HELD:* Order of the circuit court terminating respondent mother's parental rights affirmed where its finding that termination was in the best interest of respondent's three minor children was not against the manifest weight of the evidence.
- ¶ 2 Following hearings conducted in accordance with the Juvenile Court Act of 1987

(Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2008)), the circuit court found that respondent, Dorothy S., was an unfit parent as that term is defined in section 1(D) of the Illinois Adoption Act (Adoption Act) (750 ILCS 50/1 *et. seq.* (West 2010)), and that it was in the best interest of her three minor children, S.S., N.S. and C.S. to terminate her parental rights. On appeal, Dorothy challenges the termination of her parental rights, arguing that the circuit court's finding was against the manifest weight of the evidence. For the reasons delineated herein, we affirm the judgment of the circuit court.

¶ 3

I. BACKGROUND

¶ 4 Respondent is the natural mother of N.S., born April 7, 2008, S.S., born June 22, 2009, and C.S., born November 8, 2010. Charles S. Senior is the biological father of respondent's three minor children.¹ In July 2008, the Illinois Department of Child and Family Services (DCFS) investigated a report containing allegations of substance abuse and domestic violence in the family home. Based on the investigation, N.S. was placed into non-relative foster care on August 1, 2008.

¶ 5 Thereafter, on June 29, 2009, one week after S.S.'s birth, the Cook County State's Attorney filed a petition for adjudication of wardship and a motion for temporary custody on her behalf. The basis for the State's action was Dorothy and Charles' failure to complete recommended services as well as respondent's repeated failed drug tests. The State's motion for temporary custody was granted and S.S. was placed in the same non-relative foster family with her older brother N.S. Later, following an adjudication hearing, the circuit court found that S.S.

¹ Charles S. Senior is not a party to this appeal.

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was an abused and neglected minor and subsequently adjudicated her a ward of the court.

¶ 6 On November 10, 2010, two days after C.S.'s birth, the State filed another petition for adjudication of wardship as well as another motion for temporary custody. In support of its filings, the State noted that C.S.'s siblings were not in their parents' care and that the parents had not been compliant with court recommended services, including anger management and substance abuse treatment as well as domestic violence and individual counseling. In addition, Dorothy had tested positive for controlled substances during her pregnancy with C.S. Two days later, given that there was probable cause of abuse and neglect, the circuit court immediately placed C.S. into temporary DCFS custody. C.S. was placed in a different foster home than his siblings. At the adjudication hearing that followed, the circuit court found that C.S. was an abused and neglected minor.

¶ 7 Over the next few years, N.S., S.S. and C.S. remained in their respective foster homes. During that time, Dorothy made some efforts to comply with court-recommended services and was permitted supervised visitation. On January 24, 2012, the State filed a motion seeking to terminate Dorothy's parental rights with respect to N.S. and S.S. The State filed a termination motion for C.S. on October 12, 2012. In the motions, the State alleged that Dorothy remained an unfit parent and that her children were in pre-adoptive foster homes in which they were thriving.

¶ 8 The cause subsequently proceeded to a fitness hearing. Because respondent does not contest the circuit court's finding that she was unfit, we need not recount all of the testimony and evidence presented during that hearing. However, we note that in its oral ruling, the circuit court acknowledged that it found Dorothy's testimony about her love for her children to be credible,

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but highlighted her long-standing problems with substance abuse and her failure to complete services as evidence that she "failed to make or maintain a reasonable degree of responsibility as to her children's welfare." Having found respondent unfit, the cause then proceeded to a best interest hearing.

¶ 9 At the hearing, Wendy Barnowski, a caseworker from Lutheran Child and Family Services (LCFS), testified that she was assigned to the case in January 2012, and has visited the children in their foster homes. Barnowski's last visit with S.S. and N.S. occurred on September 24, 2013. At the time of the hearing, N.S. was 5 years old and attending kindergarten. S.S. was 4 years old and participated in daycare and a Head Start program. Barnowski testified that N.S. has been diagnosed with pervasive development disorder, oppositional defiant disorder and attention deficit hyperactivity disorder (ADHD). Following his diagnoses, N.S. began meeting with a psychiatrist and taking psychotropic medication. He also attended weekly counseling sessions. Barnowski testified that N.S.'s displays of aggressive behavior and temper tantrums have lessened since beginning therapy. Barnowski further testified that although S.S. had displayed defiant behaviors and also attended counseling sessions, she had not been diagnosed with any mental health or behavioral disorders.

¶ 10 Barnowski opined that both N.S. and S.S. appeared to be very comfortable in their foster home. Barnowski described the home as comfortable and testified that their foster parents were the children's primary attachment figures because they have been their caregivers on a daily basis and have provided them with a sense of stability, love and security. She testified that N.S. and S.S. referred to their foster parents as "Mom" and "Dad" and that both children displayed more

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affection toward their foster parents than they did toward Dorothy. N.S. and S.S. have both indicated to Barnowski that they wanted to remain with their foster parents.

¶ 11 Barnowski's last visit with C.S. at his separate foster home also took place on September 24, 2013. C.S. was 2 years old at the time of the hearing. She testified that he had no special needs and required no services. Barnowski has observed C.S. display affection toward both of his foster parents and he appeared to be happy and comfortable in their presence. She opined that C.S.'s foster parents are his primary attachment figures, explaining that they have been able to satisfy C.S.'s physical and emotional needs and have provided him with a sense of security and permanency. When Barnowski has observed C.S. around his foster parents, he appeared to be very animated and very talkative. He frequently smiled and laughed in their presence. In contrast, during C.S.'s visits with Dorothy, he did not make much of an effort to interact with her.

¶ 12 Barnowski has observed approximately 10 to 12 visits between Dorothy and her three minor children. She stated that Dorothy's use of her cell phone to text message during her visits with the children was an ongoing issue. During the supervised visits, Barnowski has heard N.S. and S.S. refer to Dorothy as "Mom" or "Dorothy." Barnowski indicated that N.S. and C.S. both had "minimal" bonds with Dorothy, but testified that S.S. had more of a bond with her mother and displayed affection toward her. Barnowski confirmed that Dorothy has made efforts to converse with her children appropriately and has demonstrated affection during the visits. Approximately three weeks before the hearing, Dorothy gave Barnowski cards to give to the children. Barnowski also confirmed that despite her long history of drug abuse, Dorothy never

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appeared to be under the influence of any substance during her visits with the children.

¶ 13 Barnowski opined that it was her recommendation that Dorothy's parental rights be terminated. She explained that each of the children have been in the care of other adults for most of their lives. Their foster homes provided them with stable and nurturing environments. She found each of the children to be happy and well-adjusted in their foster homes and have had all of their needs met. In Barnowski's opinion, the termination of Dorothy's parental rights would provide the children with a sense of permanency, which would prove beneficial to them.

¶ 14 Sharon M., C.S.'s paternal great-aunt and foster mother, testified that C.S. was put in her care when he was two-days old. During that time, Sharon has had three biological daughters and a niece also living with her. C.S. has known each of the girls all of his life and refers to them as his "sissies." He also refers to her as "mommy" and calls Sharon's husband, "daddy." C.S. gets along well with her husband, who is a Chicago police officer. Sharon described C.S. as "fun" and "bold" and indicated that he was "so loved" by everyone at the house. During his time in Sharon's care, C.S. has formed relationships with his extended family and has gone on vacations and excursions with the family. Sharon indicated that she believes that it is important for C.S. to have a relationship with N.S. and S.S. and wants to continue to foster a relationship between the siblings. Sharon confirmed that she and her husband want to adopt C.S.

¶ 15 On cross-examination, Sharon acknowledged that she would permit Charles Sr. to visit C.S., but indicated that he has "never" made an effort to visit his son while he has been in her care. She also acknowledged that she has a strained relationship with Dorothy and confirmed that they "are not the best of friends." She has not sent pictures of C.S. to Dorothy. Sharon,

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however, did testify that she would be willing to allow Dorothy to visit C.S. when he gets older. She explained that she wanted C.S. to have a "normal childhood" and believed that suspending visitation until he was older and better able to understand the situation would be beneficial to him.

¶ 16 James H. testified that he has been N.S.'s foster father since he was four months old and that S.S. was placed in his care when she was six days old. The children are now 5 ½ and 4 years old, respectively. James and his wife are also the parents of an adopted 6-year-old son named Joey. James testified that the children all act like typical siblings and that Joey is protective of both N.S. and S.S.

¶ 17 James confirmed that N.S. has behavioral issues and has been receiving regular psychiatric care. N.S. also takes psychotropic medication. James testified they sought treatment for N.S., in part, because he had violent outbursts during which he would flail around on the floor and exhibit violence toward himself and others. Approximately two years ago, N.S. would have these outbursts two to three times per week, and they would last for approximately 45 minutes. Since receiving medication and psychiatric counseling and care, however, James testified that N.S. no longer experiences such outbursts and is able to vocalize his feelings instead of expressing them in a violent physical manner. James described N.S.'s current behavior as very good and testified that he has not exhibited behavioral issues at school. He is doing well in kindergarten and has a lot of friends.

¶ 18 James testified that S.S. also has some behavioral issues and explained that she is very headstrong and defiant and does not listen well. S.S. has also taken part in therapy sessions

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offered by Catholic Charities. She has been receiving therapy for approximately one year and during that time, James has seen improvements in her behavior. He testified that S.S. has started listening better and is starting to understand that rules exist for a reason.

¶ 19 James testified that N.S. and S.S. call him "Dad" and refer to his wife as "Mommy." He acknowledged, however, that N.S. and S.S. have also referred to Dorothy as "Mom." Over the years, both children have established relationships with James and his wife's extended families. They refer to James' mother as "Nana" and call his brothers and sisters "Uncle" and "Aunt," respectively. The children also go on family trips and take part in other activities with the family.

¶ 20 James confirmed that N.S. and S.S. have had visitation with Dorothy while in his care. N.S.'s behavior following his visits is different than his typical behavior at home. He is typically angry and argumentative and never wants to discuss the visits. N.S. has asked James on several occasions if he could stay home rather than meet with Dorothy. S.S.'s behavior, in contrast, is not markedly different after her visits with Dorothy.

¶ 21 In addition to visits, James testified that he made other efforts to help Dorothy remain in contact with the children. He explained that he obtained a P.O. Box and provided the details to Dorothy during a mediation session. Although C.S.'s foster parents have sent correspondence to the P.O. Box, Dorothy has never done so. In September 2013, however, Ms. Barnowski gave James cards that Dorothy wanted to give to N.S. and S.S. For the past five years, James and his wife have sent Dorothy pictures of the children, and he informed the court that he is willing to continue doing so.

¶ 22 James confirmed that he and his wife want to adopt N.S. and S.S. because they "love

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them" and want to provide a sense of permanency for them. If the adoption were allowed to proceed, James indicated that he would ensure that the children continue visitations with their younger biological brother, C.S. James also expressed a willingness to permit continued visitation with Dorothy, but only if the visits were requested by N.S. and S.S. James confirmed that Dorothy could request visitation through the P.O. Box, but emphasized that visits with Dorothy would only be allowed if the children desired visitation.

¶ 23 Dorothy M., respondent's grandmother, testified on her behalf. She indicated that she has provided for her granddaughter since she was six months old. She confirmed that she was present during several supervised visitations between her granddaughter and her three children. Although Dorothy M. did not recall observing her granddaughter on her phone while the children were present, she did remember seeing respondent hugging and kissing her children. During the visits, the children referred to Dorothy S. as "Mom" or "Mama" and the affection between the children and their mother appeared to be reciprocal.

¶ 24 Dorothy S. testified that she did not want her parental rights to be terminated. She loves her children and has done what has been required of her. She explained that she is sober and remains bonded with her children and that her children call her "Mommy," "Mama" or "Mom." Dorothy further testified that N.S. was usually "enthralled" to see her. She denied that James H. or Ms. Barnowski ever gave her the address to the P.O. Box, but acknowledged that she did not ask James for the address.

¶ 25 In its oral ruling, the court acknowledged that Dorothy was "credible in terms of being attached to her biological children and wanting them back" and found that she was "bonded to

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them." The court, however, examined the best interest factors identified in the Juvenile Court Act, and concluded that based on the factors, it was in the best interest of N.S., S.S. and C.S. to terminate Dorothy's parental rights. In pertinent part, the court stated:

"I find that it is the respective foster parents that have been providing for the physical safety and welfare of all three children. They're the ones who have raised the children, given them good shelter, health[care], and clothing. They're the ones who are taking them to places and getting them involved in educational activities and also doing what they can to develop further their respective identities.

I do consider each child's background and ties, all of them, and I do find that at this point really from the inception of each of the cases that their ties are stronger to their respective foster parents than they are to either of the biological parents.

* * *

I also look at what the least destructive placement alternative is for each child as I'm mandated to do. At this point, given that they have spent almost their entire lives with their foster parents, it would be very harmful, emotionally harmful, for them to be removed and placed somewhere else, so this is the least destructive placement alternative for each of the children. They want to remain [in their foster homes].

I also look to their community ties, including their churches, schools, and friends, and they're all with their respective foster parents at this point * * *.

One of the most important factors is their need for permanency. That is a strong factor here in a case that's been in the system for several years. They need to know that

this is where they belong, this is where they're most stable, and the foster homes do offer the most stability for them. They have the continuity of relationships with their foster parents, with their siblings as both sets of foster parents also get along and make the opportunity to meet with each other so that [N.S.], [S.S.], and [C.S.] have regular contact with each other.

* * *

I take into account the risks attendant to entering and being in substitute care. In this particular case, there are no significant risks that I see in the children staying in these respective foster homes and growing up there. On the contrary, this is where they want to be. This is where they've grown up, this is where they feel their attachment, and it's the least disruptive placement.

Also, as I'm mandated to do, I take into account the preferences of the people who are actually around and have been raising the children, the people who are right here and now who are available to care for the children. And both [sets of foster parents] have credibly testified that they want to adopt the children for all of the right reasons.

* * *

Both sets of foster parents have an excellent track history of meeting all of the emotional, physical, and medical needs of the minors.

* * *

So at this point, considering all of the best interest factors, I do find that it is in the best interest of all three minors to terminate the parental rights of both the mother as well

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as the father. * * *

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 On appeal, Dorothy argues that the trial court's finding that it was in the best interest of N.S., S.S. and C.S. to completely and permanently terminate her parental rights is against the manifest weight of the evidence, and thus, the termination order should be reversed. She emphasizes that the court specifically found her testimony that she loved her children to be credible and that "[t]here was no showing that it would be emotionally harmful for the children to continue to have a relationship with [her.]"

¶ 29 The State and Public Guardian both respond that the record "shows that the trial court carefully weighed the statutory best interest factors and properly terminated Dorothy S.'s parental rights."

¶ 30 The involuntary termination of a party's parental rights is a "drastic measure (*People v. Phyllis B.*, 231 Ill. 2d 459, 463 (2008)) given that it "permanently and completely" severs the parent-child relationship (*People v. Brenda T.*, 212 Ill. 2d 347, 356 (2004)). The involuntary termination of parental rights is a two-step process governed by the Juvenile Court Act (705 ILCS 405/1-1 *et seq.* (West 2010)) and the Illinois Adoption Act (705 ILCS 50/0.01 *et seq.* (West 2010)); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). Once a petition to terminate parental rights is filed in the circuit court pursuant to section 2-29 of the Juvenile Court Act, the cause proceeds to a fitness hearing. 705 ILCS 405/2-29 (West 2010); *In re J.L.*, 236 Ill. 2d at 337; *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 63. If, at the conclusion of the fitness hearing, the court finds by

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clear and convincing evidence, that the parent is unfit, as that term is defined in section 1 of the Adoption Act, the cause then proceeds to a termination hearing. 705 ILCS 405/2-29(2), (4) (West 2010); 750 ILCS 50/1(D) (West 2010); *In re J.L.*, 236 Ill. 2d at 337; *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 63.

¶ 31 Because a parent's lack of fitness to have custody of her children does not automatically result in the termination of her legal relationship with them (*In re M.F.*, 326 Ill. App. 3d 1110, 1115 (2002)), it is incumbent upon the court presiding over the termination hearing to determine whether the termination of parental rights is in "the best interest" of the child. 705 ILCS 405/2-29(2) (West 2010); *In re J.L.*, 236 Ill. 2d at 337-38. The preponderance of the evidence standard applies to a court's best interest determination. *In re Shaunte*, 2012 IL App (1st) 112280, ¶ 106. Section 1-3 of the Juvenile Court Acts lists the factors to be considered by the court in making a best interest determination. 705 ILCS 405/1-3 (4.05) (West 2010). Pursuant to this provision, "the trial court is required to consider and balance 11 different factors, and to do this multifactor-balancing while keeping in mind the child's age and developmental needs." *In re Julian K.*, 2012 Ill App (1st) 112841, ¶ 81. Section 1-3 provides as follows:

"Whenever a 'best interest' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:

- (a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
- (b) the development of the child's identity;
- (c) the child's background and ties, including familial, cultural and religious;

- (d) the child's sense of attachments, including:
 - (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel love, attachment, and a sense of being loved);
 - (ii) the child's sense of security;
 - (iii) the child's sense of familiarity;
 - (iv) continuity of affection for the child;
 - (v) the least disruptive placement alternative for the child;
- (e) the child's wishes and long-term goals;
- (f) the child's community ties, including church, school, and friends;
- (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
- (h) the uniqueness of every family and child;
- (i) the risks attendant to entering and being in substitute care; and
- (j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3 (4.05) (West 2010).

¶ 32 Although the court must consider each of these factors in ascertaining the best interest of the child, no single statutory factor is dispositive. *In re Austin W.*, 214 Ill 2d 31, 50 (2005). In addition to these statutory factors, our supreme court has instructed that "[o]ther important considerations when deciding a child's best interests are 'the nature and length of the child's

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relationship with the present caretaker' and the effect a change of placement would have upon the emotional and psychological well-being of the child." *Id.*, quoting *In re Violetta B.*, 210 Ill. App. 3d 521, 534 (1991). Ultimately, a trial court's findings at a termination hearing will not be reversed unless they are against the manifest weight of the evidence. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 64. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the lower court's determination is 'unreasonable, arbitrary, or not based on [the] evidence presented.'" *In re Angela D.*, 2012 IL App (1st) 112887, ¶ 28, quoting *In re J.Y.*, 2011 IL App (3d) 100727, ¶ 21.

¶ 33 Here, the record reveals that the circuit court engaged in a thoughtful and comprehensive analysis of the best interest factors in determining that the termination of Dorothy's parental rights was in the best interest of her children. The evidence at the hearing established that each of respondent's minor children have spent the vast majority of their childhood years in their respective foster homes. Because the minors were removed from Dorothy's care shortly after they were born, they have strongly bonded to their foster parents and foster families. The evidence also established that the minors' foster parents provided stability and love to the children as well as environments in which their physical, medical, psychological, educational and emotional needs were met on a consistent basis. Although the circuit court found Dorothy testified credibly that she loved her children and that she did not want to have her parental rights terminated, it is well-established that "the superior right of a natural parent must yield [if] it is in accord with the best interest of the child." *In re Austin W.*, 214 Ill. 2d at 50. Moreover, although Dorothy testified that she was bonded with her children, Wendy Barnowski, the children's

caseworker, testified that neither N.S. nor C.S. shared a strong bond with their mother. Only S.S. appeared to be bonded to Dorothy. We emphasize, however, the existence of bond between a parent and a child, standing alone, does not support a finding that termination of a parent's parental rights is against the manifest weight of the evidence. See, e.g., *In re Angela D.*, 2012 IL App (1st) 112887, ¶ 39. Moreover, we note that although S.S. appeared to share a bond with respondent, she told Barnowski that she wanted to stay in her foster home. Ultimately, after a review of the record and the pertinent best interest factors, we are unable to conclude that the trial court's finding that it was in the best interest of respondent's minor children to terminate her parental rights was against the manifest weight of the evidence. See, e.g., *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004) (affirming an order terminating the mother's rights where the 5-year-old minor child was in a stable foster home in which he had lived since he was a baby and was strongly bonded with his foster family); see also *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 83 (rejecting the parent's contention that the circuit court's finding that termination of her parental rights was against the manifest weight of the evidence where her son had been living in his foster home for several years, was doing well in the home and at school, and where his foster parents expressed a desire to adopt him).

¶ 34

III. CONCLUSION

¶ 35 The judgment of the circuit court is affirmed.

¶ 36 Affirmed.

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