

2014 IL App (2d) 14-0850-U  
No. 2-14-0850  
Order filed December 24, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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*In re K.N.B.*, a Minor ) Appeal from the Circuit Court  
) of Lake County.  
)  
) No. 13-JA-71  
)  
(The People of the State of Illinois, Petitioner- ) Honorable  
Appellee, v. Kendra C., Respondent-Appellant, ) Sarah P. Lessman,  
Bryan M., Respondent.) ) Judge, Presiding.

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*In re K.D.B.*, a Minor ) Appeal from the Circuit Court  
) of Lake County.  
)  
) No. 13-JA-72  
)  
(The People of the State of Illinois, Petitioner- ) Honorable  
Appellee, v. Kendra C., Respondent-Appellant, ) Sarah P. Lessman,  
Bryan M., Respondent.) ) Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices McLaren and Hutchinson concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's judgment terminating respondent's parental rights was affirmed where its findings that respondent was an unfit parent and that it was in the minors' best interests to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 The trial court found respondent, Kendra C., to be an unfit parent and ruled that it was in the best interests of her minor children, K.N.B. and K.D.B., both born in 2010, to terminate her parental rights. On appeal, she challenges the trial court's parental unfitness and best interests findings. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 23, 2013, the State filed petitions to terminate respondent's parental rights. The State alleged as follows. On February 21, 2012, the trial court adjudicated the minors neglected. On March 13, 2012, the court found that it was in the minors' best interests that they be made wards of the court and granted guardianship of the minors to the Illinois Department of Children and Family Services (DCFS). Respondent was an unfit parent in that she (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) failed to make reasonable efforts to correct the conditions that were the basis for the minors' removal (750 ILCS 50/1(D)(m)(i) (West 2012)); (3) failed to make reasonable progress toward the return of the minors within 9 months of the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (4) failed for a period of 12 months to visit the minors (750 ILCS 50/1(D)(n)(i) (West 2012)).

¶ 5 An unfitness hearing began on December 3, 2013. Jennifer Woods testified as follows. She was the assigned caseworker from November 2011 to February 2012 and from October 2012 to the time of the hearing. The minors were first taken into DCFS custody following their premature birth at 28 weeks of gestation. During the 42 days that they were in the hospital, respondent visited the minors twice. In January 2011, following a shelter care hearing, the minors were returned to respondent's custody. In April 2011, respondent left the minors with a relative, who took them to the hospital, where it was discovered that they were suffering from

pneumonia. Following that incident, an order of protection pursuant to section 2-25 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-25 (West 2012)) was entered. Respondent violated the order of protection, and, on May 23, 2011, DCFS again took custody of the children.

¶ 6 Woods testified that, although a service plan was initiated in May 2011, she could not find proof that respondent was given the plan. Nevertheless, respondent completed a substance abuse assessment in August 2011, which resulted in a recommendation that she complete 10 hours of substance abuse education. In addition, respondent attended parenting classes. When Woods first became the caseworker in November 2011, she contacted respondent to discuss the service plan and to set up visitation. A new service plan was initiated that month.

¶ 7 According to Woods, from November 2011 to February 2012, when a new caseworker was assigned, respondent completed her parenting classes and her drug drops. However, respondent failed to start her 10 hours of substance abuse education or attend individual counseling. During that period, she attended 6 of 18 scheduled visits with the minors. Generally, the missed visits were caused by respondent's failure to call to confirm the visits. Woods gave respondent a bus pass to attend visits, because she lived in Zion, Illinois, and visits were held in Waukegan, Illinois. At some point, respondent had reported being unsure of which buses to take to attend visits.

¶ 8 Kathi Felts testified that she was the caseworker from February to October 2012. She evaluated respondent's compliance with the service plan that was in effect from November 2011 to April 2012 and believed that respondent's progress was unsatisfactory. Respondent did not start her 10 hours of substance abuse education; she missed 3 drug drops in February and March; she missed "a lot" of visits; and she failed to attend individual therapy despite being referred. Respondent's last visit with the children was on March 20, 2012. Felts explained that she had

taken the minors to respondent's mother's house, where respondent was living, for a birthday party. However, Felts ended the visit after a number of people began smoking cigarettes in the home.

¶ 9 Felts further testified that she prepared the service plan that was in effect from April to November 2012. She mailed the plan to respondent via certified mail, and respondent's mother signed for the delivery. She also personally dropped off the service plan at respondent's mother's house in May 2012, and mailed the plan to respondent again in June 2012. Between April and October 2012, respondent failed to contact Felts, engage in any services, complete any drug drops, or have any visits with the minors.

¶ 10 Called to testify a second time, Woods testified that she was reassigned to the case in late October 2012. She evaluated respondent's compliance with the service plan that was in effect from April to November 2012. Respondent's progress was unsatisfactory, because she did not complete any services during the period. Woods mailed the "rated" service plan to respondent, who subsequently called Woods and left a message. However, when Woods attempted to return the phone call, respondent did not answer, and her voicemail was not functioning. Respondent did not contact Woods again until May 2013. Respondent did not visit the children between March 20, 2012, and April 23, 2013, the date the State filed the petitions to terminate her parental rights. The State rested, and respondent presented no evidence.

¶ 11 The trial court found that the State proved by clear and convincing evidence that respondent was an unfit parent in that she failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2012)); failed to make reasonable progress toward the return of the minors within 9 months of the adjudication of

neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)); and failed for a period of 12 months to visit the minors (750 ILCS 50/1(D)(n)(i) (West 2012)).

¶ 12 The court proceeded to a best interests hearing, which took place on June 24, 2014. Woods testified that the minors had been with the same foster family since May 23, 2011. The minors were bonded to the foster parents and called them “mommy” and “daddy.” The foster parents provided for all of the minors’ needs, including clothing, food, and medical care. The minors had toys and participated in swimming and other recreational activities. They were scheduled to begin an early education program in the fall. The foster parents had expressed a willingness to adopt the minors.

¶ 13 On cross-examination by respondent’s attorney, Woods testified that she reestablished contact with respondent in May 2013 and initiated monthly visitation at that time. Since that time, respondent had visited the children 10 of 13 months. She missed one month’s visit because she failed to call to schedule her visit. The other missed visits were not respondent’s fault.

¶ 14 Respondent testified that she ceased visiting her children in March 2012 because she felt uncomfortable with the foster parents’ presence at the visits. She felt uncomfortable because the minors were “crying for them instead of being with [her].” She explained that she “couldn’t concentrate” on “visiting with them showing them that [she] loved them.” Since she reestablished visitation in May 2013, her visits were “perfect.” The minors called her “Mommy Kendra” and hugged and kissed her.

¶ 15 The trial court found that the State proved by a preponderance of the evidence that it was in the minors’ best interests to terminate respondent’s parental rights. The court found that the minors had been with the same foster parents for more than three years and that they provided

for all of the minors' needs. The court terminated respondent's parental rights and granted DCFS the power to consent to the minors' adoption. Respondent timely appealed.

¶ 16

## II. ANALYSIS

¶ 17 On appeal, respondent challenges the trial court's findings that she was an unfit parent and that it was in the minors' best interests to terminate her parental rights. Regarding the unfitness finding, she contends that the caseworkers "frustrated and discouraged" her efforts to maintain a reasonable degree of interest, concern, and responsibility as to the minors' welfare. Similarly, she argues that the caseworkers included "unnecessary and unsubstantiated" tasks in her service plan, which resulted in her failure to make reasonable progress toward the return of the minors within 9 months of the adjudication of neglect. She further argues that the caseworkers' failure to encourage visitation resulted in her not visiting the children for a period of 12 months. Regarding the best interests finding, respondent maintains that the trial court failed to consider the factors listed in section 1-3(4.05) of the Act (705 ILCS 405/1-3(4.05) (West 2012)) and that the finding was against the manifest weight of the evidence.

¶ 18 Termination of parental rights under the Act is a two-step process. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 1. The State first must establish by clear and convincing evidence one ground of parental unfitness from those listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). 705 ILCS 405/2-29(2) (West 2012); *In re B.B.*, 386 Ill. App. 3d 686, 698 (2008). If the trial court finds a parent to be unfit, the court must conduct a second hearing to determine, by a preponderance of the evidence, whether it is in the minors' best interests to terminate parental rights. *B.B.*, 386 Ill. App. 3d at 698. A reviewing court will not disturb a trial court's decision at a termination hearing unless it is against the manifest weight of the evidence. *Julian K.*, 2012 IL App (1st) 112841, ¶ 65. A trial court's decision is against the manifest weight

of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, and not based on evidence. *B.B.*, 386 Ill. App. 3d at 697-98.

¶ 19 A single ground of parental unfitness under section 1(D) of the Adoption Act is sufficient to support a finding of unfitness. *Julian K.*, 2012 IL App (1st) 112841, ¶ 2. Here, the trial court's finding that respondent was an unfit parent pursuant to section 1(D)(n)(i) was not against the manifest weight of the evidence. That section provides that a parent is unfit where there is evidence that the parent intends to forego his or her parental rights "as manifested by his or her failure for a period of 12 months \*\*\* to visit the child." 750 ILCS 50/1(D)(n)(i) (West 2012). The relevant time period is the 12 months following the parent's last contact with the child. *In re Adoption of H.B.*, 2012 IL App (4th) 120459, ¶ 25. Any evidence submitted to explain why the parent had no contact with the child must relate to events occurring during that time period. *H.B.*, 2012 IL App (4th) 120459, ¶ 25.

¶ 20 In this case, it is undisputed that respondent had no contact with the minors from March 20, 2012, to April 23, 2013, which was a period of more than 12 months. In addition, respondent presented no evidence at the unfitness hearing to explain her failure to visit the children. Notably, at the best interests hearing, respondent testified that she ceased visitation because she felt uncomfortable with the foster parents' presence at the visits and because the minors were "crying for them instead of being with [her]." If anything, this testimony, which suggests that respondent may have prioritized her comfort over protecting her parental rights, tends to support the conclusion that respondent intended to forego her parental rights.

¶ 21 Respondent argues that she stopped visitation because the foster parents' presence at the visits "made the children cry" and "because it was harming her children." This misconstrues her testimony. She testified that the minors were "crying for [the foster parents] instead of being

with [her].” On redirect examination, respondent’s trial counsel asked her whether she ceased visitation because she was worried about the minors’ well-being, and she responded, “Yes, I was scared.” Counsel then asked, “You were scared for them?” Respondent testified, “No, I was scared—I don’t know how to explain it. I really don’t.” Thus, respondent did not testify that she ceased visitation out of concern for the minors. Her testimony was equivocal, and even could have suggested that she was *not* motivated by concern for the minors’ well-being.

¶ 22 Respondent further contends that she “clearly” did not intend to forego her parental rights, because she appeared in court in July 2012 at the first permanency hearing. According to respondent, “she would not have been at court” had she intended to forego her parental rights. Contrary to respondent’s position, her attendance at a court hearing during the 12-month period that she failed to engage in any services or visit her children supports, rather than negates, the finding that she intended to forego her parental rights. Her attendance establishes that she was aware of the proceedings and had transportation available to her. Nevertheless, from March 20, 2012, to April 23, 2013, she failed to visit her children or even request visitation.

¶ 23 We also reject respondent’s argument that the caseworkers’ failure to encourage visitation resulted in her not visiting the children for a period of 12 months. Section 1(D)(n)(i) of the Adoption Act provides that, in making the determination that a parent has intended to forego his or her parental rights, “the court may consider but shall not require a showing of diligent efforts by an authorized agency to encourage the parent to perform the acts specified in subdivision (n).” 750 ILCS 50/1(D)(n)(i) (West 2012). Thus, the court was not required to consider the caseworkers’ efforts to facilitate visitation.

¶ 24 Even so, the record indicates that the caseworkers did make reasonable efforts to encourage respondent’s compliance with the service plan, including facilitating visitation. At the

July 10, 2012, and December 6, 2012, permanency hearings, the court found that DCFS had “made reasonable efforts in providing services to facilitate achievement of the permanency goal.” In addition, both Felts and Woods testified that they attempted to contact respondent via mail or phone, but were unsuccessful. Felts testified that she mailed the April 2012 service plan to respondent on two occasions and even personally dropped off the service plan at respondent’s mother’s house in May 2012. However, respondent failed to contact Felts. After Woods mailed the rated service plan to respondent in November 2012, respondent called and left a message for Woods. When Woods tried to return the call, respondent did not answer the phone and her voicemail was not functioning. Respondent did not contact Woods again until May 2013. Respondent’s failure to visit the children was not due to a lack of effort by the caseworkers.

¶ 25 Furthermore, section 1(D)(n)(i) provides that, “[i]n the absence of evidence to the contrary, the ability to visit \*\*\* shall be presumed.” 750 ILCS 50/1(D)(n)(i) (West 2012). Here, there was no evidence that respondent was unable to visit the minors. Although at some point she had reported being unsure of which buses to take to attend visits, she was provided a bus pass and attended 6 of 18 visits between November 2011 and February 2012. There was no evidence that, after her final visit on March 20, 2012, respondent was unable to visit the children.

¶ 26 Based on the foregoing, we conclude that the trial court’s finding that respondent was an unfit parent pursuant to section 1(D)(n)(i) of the Adoption Act was not against the manifest weight of the evidence. We turn to the trial court’s best interests finding.

¶ 27 Once a parent is found unfit, the focus shifts to the child, and the parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The Act sets forth the factors to be considered whenever a best interests determination is required: “(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”; “(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 2012). Also relevant is the nature and length of the minor’s relationship with his or her present caretaker and the effect that a change in placement would have upon the minor’s emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871 (2011).

¶ 28 The record is clear that the trial court considered all of the evidence presented at the best interests hearing and made findings that were consistent with the factors listed in section 1-3(4.05) of the Act. The court’s findings fill approximately two pages of the transcript and address, among other things, the minors’ physical safety and welfare, their need for permanence and stability, their strong bond with the foster parents, and the foster parents’ willingness to adopt the minors. The court emphasized that the minors had been with the same foster parents for more than three years and that the foster parents provided for all of the minors’ needs. In addition, the court found that respondent did not refute any of the State’s evidence. The trial court’s best interests finding was not against the manifest weight of the evidence.

¶ 29 Respondent’s argument that the court failed to consider the best interests factors and that “[i]t is not clear from the record what factors the court relied upon” misses the mark. Although the court did not explicitly identify the specific factors from section 1-3(4.05) that it relied upon,

its two pages of findings corresponded to the statutory factors. Moreover, the court articulated specific findings, and the basis for its decision is adequately set forth in the record.

¶ 30 Furthermore, respondent's argument that her cessation of visitation evidenced her concern for the minors' best interests fails for the reasons we have already explained above. Moreover, although respondent reestablished visitation in May 2013 and had monthly visits thereafter, this does not render the court's best interests determination against the manifest weight of the evidence. Even taking into account respondent's recent monthly visits, the evidence relevant to the minors' need for permanence and stability weighed in favor of terminating respondent's parental rights. As the trial court found, the minors had become well-bonded to their foster parents during the three-plus years that they had lived with them. Notably, respondent was absent from the minors' lives for a large portion of that time.

¶ 31

### III. CONCLUSION

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 33 Affirmed.