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2014 IL App (3d) 130940-U

Order filed April 11, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

<i>In re</i> K.A.H.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor	)	Rock Island County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	Appeal No. 3-13-0940
Petitioner-Appellee,	)	Circuit No. 12-JA-19
	)	
v.	)	Honorable
	)	Raymond J. Conklin,
Burton H.,	)	Thomas Berglund,
	)	Peter W. Church,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Lytton and Justice Holdridge concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Trial court's determinations that respondent father was unfit and that it was in minor's best interest to terminate his parental rights were not against the manifest weight of the evidence.

¶ 2 Trial court found respondent father, Burton H., unfit for failure to make reasonable progress toward the return home of his daughter, K.A.H., and that it was in her best interest that Burton's parental rights be terminated. He appealed both findings. We affirm.



February 2013, and did not obtain appropriate housing. At a hearing on the unfitness allegations, the caseworker testified that Burton had 14 arrests in Cook County, nine of which resulted in convictions. His criminal history included resisting a peace officer in 2002, battery with bodily harm and battery in 2005, possession of cannabis (three) and battery with bodily harm (two) in 2006, aggravated unlawful use of a weapon with a vehicle, unlawful use of a weapon by a felon, possession of cannabis, and ordinance violations (three) in 2007, and aggravated battery (two) in 2011. She had no contact with Burton from September 2012 to July 2013 when a new caseworker took over the case. She called the Department of Corrections (DOC) to inquire about any services Burton was receiving and was told by a counselor that there was no record of Burton's participation in any services. In her view, Burton was no closer to the goal of returning K.A.H. home than when the case began.

¶ 7 Burton testified that he was working to become a better man and father. He participated in a lifestyle redirection class in the DOC. In addition, he attended vocational classes, for which he earned 28.5 hours of college credit. He understood that he missed the "first step of things" in K.A.H.'s life but believed it was never too late to be involved. The trial court found that Burton had rebutted the presumption of depravity and that the State had not presented sufficient evidence to prove Burton was unfit on the basis of depravity. The trial court further found Burton unfit on the basis of his failure to make reasonable progress during the nine-month period after the neglect adjudication.

¶ 8 A best interest hearing took place. The caseworker and foster mother both testified regarding K.A.H. She had been with the foster family since shortly after birth. The foster family included K.A.H.'s half-brother, whom the foster parents also wanted to adopt. They were willing to continue arrangements where K.A.H. sees her other siblings. The family has provided for K.A.H.'s physical and emotional needs. The foster mother described the daily routine and

both the foster mother and the caseworker said that K.A.H. was a happy child who felt secure with her foster family. She called her foster mother “mom” and her foster father “dad.” K.A.H. participated as a family member in activities with the foster parents’ extended families, church and community. The foster parents have attended to K.A.H.’s medical needs, which include asthma that has caused several hospitalizations. The foster parents are committed to continuing to see that K.A.H. receives the necessary treatment for her medical condition.

¶ 9 Burton testified and acknowledged that placement with the foster family was in K.A.H.’s best interest at the present time but no one could meet her needs like he could as her father. The trial court found that it was in K.A.H.’s best interest that Burton’s parental rights be terminated. It considered that K.A.H.’s current placement with the foster family to be appropriate, the foster parents were meeting K.A.H.’s needs, she was bonded with her foster family, she recognized her foster parents as “mom” and “dad” and was accepted by their extended families, friends, church and community. Burton appealed the termination of his parental rights.

¶ 10 ANALYSIS

¶ 11 On appeal, Burton argues that the trial court erred when it terminated his parental rights. He challenges the unfitness and best interest findings as contrary to the manifest weight of the evidence.

¶ 12 There is a two-step process for the termination of parental rights. 705 ILCS 405/2-29 (West 2012). The trial court must determine that the parent is unfit; if found unfit, the trial court then determines whether it is in the child’s best interest that his parent’s rights be terminated. 750 ILCS 50/1D (West 2012); 705 ILCS 405/2-29(2), (4) (West 2012). Grounds for unfitness include depravity and the parent’s failure “to make reasonable progress toward the return of the child to the parent during any 9-month period” following a neglect adjudication. 750 ILCS 50/1D(i), (m)(ii) (West 2012). Reasonable progress is an objective standard, measureable by a

benchmark encompassing the parent's compliance with the service plan and the court's directives in light of the conditions causing removal, as well as other conditions that would prevent the court from returning the child to his parent's custody. *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). Reasonable progress requires measurable movement toward reunification and occurs when a trial court can expect to order the child returned to the custody of his parents in the near future. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). The State must prove unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067 (2004). The trial court's findings of unfitness are accorded great deference on review and we will not reverse the findings unless they are against the manifest weight of the evidence. *Jordan V.*, 347 Ill. App. 3d at 1067.

¶ 13 The trial court determined that Burton was unfit based on his failure to make reasonable progress toward K.A.H.'s return home. The evidence established that Burton did not make any progress during the nine-month period after the trial court found K.A.H. neglected. Burton was incarcerated when K.A.H. was born and when the neglect petition was filed. He will remain in the DOC until June 2016. While he anticipated participation in some of the service tasks in the future, he had not engaged in any tasks during the applicable period. Burton has successfully taken a number of vocational classes and looks forward to using his new knowledge to build a career upon his release from prison. However, he did not participate in a parenting class or counseling, undergo a substance abuse evaluation, or obtain and maintain stable housing as required by the service plan. We acknowledge Burton's incarceration makes it difficult for him to obtain the required services. He did not, however, take any steps toward the return home of K.A.H. from May 2012 to February 2013, the applicable period as alleged in the petition to terminate. The trial court's finding of unfitness due to Burton's failure to make reasonable progress was not against the manifest weight of the evidence.

¶ 14 We next consider the trial court's finding that termination of Burton's parental rights was in K.A.H.'s best interest. He maintains that he loves and is committed to his daughter and it would not be in K.A.H.'s best interest that his parental rights be terminated.

¶ 15 After finding a parent unfit, the focus shifts and the trial court must then decide whether it is in the child's best interest that the rights of her parent(s) be terminated. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). A trial court considers the following factors when determining whether termination of parental rights is in a child's best interest: the child's physical safety and welfare; development of her identity; the child's familial, cultural and religious background; her sense of attachment, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; the wishes of the child; the child's ties to her community; her need for permanence, including stability and continuity of relationships with parent figures and siblings; the uniqueness of each family and child; risks related to substitute care; and the preferences of caregivers. 705 ILCS 405/1-3(4.05) (West 2012). It is not in a child's best interest to remain in limbo and without permanency. *In re D.L.*, 191 Ill. 2d 1, 13 (2000); *In re A.H.*, 215 Ill. App. 3d 522, 530 (1991). We will not reverse a trial court's termination determination unless it is against the manifest weight of the evidence. *B.B.*, 386 Ill. App. 3d at 697.

¶ 16 At the best interest hearing, the caseworker testified as to the emotional and physical care the foster family has provided K.A.H., including ongoing medical treatment for K.A.H.'s asthma. By all accounts, K.A.H. was a happy child, smiling and "always dancing around." The foster home was safe, K.A.H. identified with her foster family, calling her foster parents "mom" and "dad." She was accepted by their extended families, friends, church, and community. The foster mother testified she and her husband want to adopt K.A.H. and her half-brother and are committed to providing them a safe and stable home. K.A.H. was been in their care since she was released from the hospital after birth and has spent almost her entire life with the foster

family. The foster parents regularly take K.A.H. to visit her other siblings and will continue to do so in the future. Burton testified that although he cannot parent K.A.H. at the present time, he was working to become a better man and father and will be present to parent his daughter after his release from prison. He acknowledged that it was in K.A.H.'s immediate best interest that she remained with the foster family, who provided for all her needs, but stated that as her father, it was in K.A.H.'s best interest that she has a relationship with him in the future.

¶ 17 We find that the statutory factors support termination of Burton's parental rights. Burton is incarcerated until June 2016, at which time K.A.H. will be over four years old. She has never met her father as he was in jail before she was born. K.A.H. has been with the foster family since birth and is fully integrated into and identifies with them. The foster parents are willing to adopt K.A.H. and her half-brother and will continue to ensure that K.A.H. maintains a relationship with her other siblings. K.A.H.'s physical and emotional needs, including her asthma, are being met by the foster family. K.A.H. is accepted by the foster family's extended families, friends, church, and community. Importantly, the only home K.A.H. has ever known is with the foster family. The best interest factors weigh in favor in termination. The trial court's order terminating Burton's parental rights was not against the manifest weight of the evidence.

¶ 18 For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

¶ 19 Affirmed.