2015 IL App (1st) 143909-U

SECOND DIVISION
June 16, 2015

No. 1-14-3909

IN THE INTEREST OF DEVIN W.,	)	Appeal from the
	)	Circuit Court of
Minor-Respondent-Appellee,	)	Cook County
	)	
(THE PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
Petitioner-Appellee	)	No. 09 JA 678
v.	)	
	)	
KEVIN W.,	)	Honorable
	)	Patricia Martin,
Mother-Respondent-Appellant.)	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Simon and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding of unfitness was not against the manifest weight of the evidence. The trial court's determination that it was in the child's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 Respondent Kevin W., appeals from orders of the circuit court of Cook County finding him unfit and terminating his parental rights. On appeal, respondent argues that the trial court's

determination that he was unfit was against the manifest weight of the evidence. Respondent also argues that the trial court's finding that it was in the child's best interest to terminate his parental rights was against the manifest weight of the evidence. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 The Department of Children and Family Services (DCFS) became involved with this family on January 3, 2009, prior to Devin W.'s birth, when the police were called to respondent and Latrice's residence due to a domestic disturbance. Police reported that 17-month-old Kevin W., 5-month-old Shauntee W. and an 18-month-old cousin were in the residence at the time. The residence had no furniture, heat or food and there were rats and roaches present in the home. Respondent and Latrice were indicated for: (1) inadequate food; (2) environmental neglect; and (3) substantial risk of physical injury and environment injurious to health and welfare by neglect to their children and the young cousin that was also present in the residence. Kevin and Shauntee were placed in a foster home on January 14, 2009.

¶ 5 Devin W. was born on July 21, 2009, to respondent and Latrice. Respondent was incarcerated at the time. Following his birth, Devin was placed under a safety plan for 3 weeks because Latrice was not cooperating with her previously established service plan and had tested positive for an illegal substance in June 2009. Devin was taken into protective custody on August 17, 2009, after Latrice failed to engage in services. The State filed a petition for adjudication of wardship on August 19, 2009. In the petition, the State alleged that Devin was neglected due to an environment injurious to his welfare and was abused due to a substantial risk of physical injury because Latrice had a prior indicated report. Devin was placed in the

temporary custody of Shina J., his maternal second cousin.

¶ 6 On March 25, 2010, Devin was adjudicated neglected based on an environment injurious to his health and abused based on substantial risk of physical injury. On June 16, 2010, the court entered a disposition order finding that both parents were unable to care for, protect, train or discipline the minor. Devin was then placed under DCFS guardianship.

¶ 7 On January 8, 2013, the State filed a petition to appoint a guardian with the right to consent to adoption. In the petition, it was alleged that: (1) respondent failed to maintain a reasonable degree of interest, concern or responsibility as to Devin's welfare (750 ILCS 50/1(D)(b) (West 2008)); (2) respondent had at least three felony convictions, with one conviction within the five years (750 ILCS 50/1(D)(i) (West 2008)); and (3) respondent failed to make reasonable progress toward the return of the child to him (750 ILCS 50/1(D)(m) (West 2008)) for the periods of March 25, 2010 to December 25, 2010, December 26, 2010 to September 26, 2011, September 27, 2011 to June 27, 2012, and November 28, 2011 to August 28, 2012.

¶ 8 Fitness Hearing

¶ 9 Respondent testified at the fitness hearing that he is the father of Devin and his siblings Kevin and Shauntee. Respondent testified that he was incarcerated for most of Devin's life. He spent time in prison between 2009 and 2013 for three separate offenses. He was released from prison in January 2012 and was not incarcerated again until February 2013 for a drug offense.[1]

¶ 10 Lade Ademosu testified that she was a caseworker with Universal Family Connection and worked with respondent from June 2009 to February 2013. Ademosu prepared nine service

[1] The record in this case is inconsistent regarding the time in which respondent was incarcerated.

plans for the family from 2009 to 2013. Those service plans were admitted into evidence.

¶ 11 Ademosu testified that respondent was informed that he needed drug treatment, parenting classes, anger management, domestic violence counseling, and an education program. Respondent's progress was rated as unsatisfactory in June 2010 because he was not engaged in any services because he was incarcerated. Respondent was incarcerated from January 2009 to November 2011. During the time he was incarcerated, defendant spent some time in solitary confinement and therefore had no visits with his children from February 2010 to July 2010. He had one visit in July 2010 and another in December 2010.

¶ 12 Respondent was also rated unsatisfactory with respect to the January 28, 2011, service plan because he had not completed anger management or a 12-step program, the services available to him in prison. He was rated satisfactory with respect to the July 2011 plan because he had visits with the children in prison and interacted with them appropriately. He also completed anger management classes and a 12-step drug education program. Respondent still had to complete parenting classes, and a GED program or other education program to help him secure a job.

¶ 13 Respondent was released from prison on November 12, 2011 and contacted Ademosu on December 3, 2011. Ademosu told respondent that he needed to do a drug assessment and arranged for him to see a counselor and attend parenting classes. Respondent attended the appointment for the drug assessment and Ademosu again informed respondent that he needed to complete the drug assessment and parenting class. She also recommended that respondent engage in counseling because he had just been released from prison and she thought it would help him bond with his children. Respondent did not engage in counseling or drug related

services.

¶ 14 Ademosu asked respondent for his parole officer's name and phone number several times because she needed to contact the parole officer to determine what respondent was required to do. Respondent never provided this information.

¶ 15 Respondent visited his children five out of twenty four possible visits between January 2012 and July 2012. Ademosu was present during a home visit on March 29, 2012. She believed that respondent was under the influence as his eyes were glassy, his speech was slurred and she smelled marijuana. Ademosu testified that defendant sat in one place for 40 to 45 minutes and did not interact with the children. Ademosu testified that she did not recommend unsupervised visits for respondent in 2012 because he had not completed services and his visits were sporadic.

¶ 16 Ademosu testified that defendant was incarcerated again in June 2012. Ademosu rated respondent unsatisfactory in the July 2012 service plan because he had not completed parenting classes, drug treatment or domestic violence counseling. In August 2012 the goal was changed from return home in 12 months to substitute care pending termination.

¶ 17 From August 2012 to March 2013, respondent visited with Devin four times and visited his other children two times. Ademosu rated respondent's progress as unsatisfactory in the January 2013 service plan because of his lack of visitation with the children.

¶ 18 Glendora Thomas testified that after a staff meeting in August 2012 the agency recommended the goal change for all three of respondent's children. The goal was changed due to respondent's lack of visitation and failure to comply with the service plan recommendations. She noted that from 2009 to 2012 they were unable to institute a plan for unsupervised visits

with respondent. She did state that she was aware that respondent sent letters, books, Christmas cards and a video for his kids.

¶ 19 Jose Vega, a certified addiction and drug counselor for the Association House of Chicago, testified that respondent began in the substance abuse program in October 2012. Respondent attended inconsistently and completed only nine of the required thirty-six hours. Respondent was eventually discharged for lack of attendance.

¶ 20 Mark Williams, a senior substance abuse counselor at Association House Chicago, testified that respondent missed three of six sessions and did not complete services. Williams testified that as of June 2012, he believed respondent had been clean and sober for three years.

¶ 21 Shina J., Latrice's cousin and Devin's foster parent, stated that at the time of her testimony Devin had been her foster child for almost five years. She testified that respondent visited Devin approximately six times between 2009 and the end of 2013. She acknowledged that respondent was incarcerated from 2009 to 2012.

¶ 22 Respondent testified that he is Devin's father. At the time of his testimony he was serving a sentence for delivery of .5 grams of heroin, with a release date of November 14, 2014. He had been incarcerated on this charge since June 2013. Respondent also testified that he was incarcerated in early 2009 and released in November 2011. He was incarcerated again in June 2012 and was released August 31, 2012. He stated it was difficult to parent his children when he was in custody.

¶ 23 Respondent stated that he completed substance abuse treatment through Association House Chicago although the assessment indicated that treatment was not necessary. He also completed a 12-step program while he was incarcerated. He denied having a substance abuse

problem despite the fact that his diagnosis upon entering the treatment program was cannabis dependence in remission. Respondent also testified that he completed a parenting program at Association House Chicago, anger management in prison and a psych evaluation while in Cook county jail.

¶ 24 Respondent testified hat he did not get the quarterly visits in prison that he was supposed to get. When he was released from prison on November 27, 2011, he had to wait three weeks before he was able to visit his children. Respondent testified that from 2009, when the family came into the system, until the time of hearing he sent cards, gifts and letters to his children.

¶ 25 After hearing the evidence, the trial court found that there was clear and convincing evidence that respondent was unfit based on multiple felony convictions, ground (i), and failure to make reasonable efforts or reasonable progress, ground (m), but not based on ground (b). The court ruled that it was in Devin's best interest to terminate parental rights. The court found that respondent's ability to parent had not improved since the case came into the system. Respondent had similarly not made reasonable effort to maintain stable housing to care for his children and the court could not say that respondent would be able to care for his children if they were given back to him. In addition, the court found that during the pendency of his case, respondent had spent a significant amount of time incarcerated for three convictions. Being incarcerated was a result of respondent's actions and gave respondent little time to parent his children. While respondent had made reasonable efforts to visit his children, respondent had not had enough visitation for the court to believe that respondent could care for his children, especially because respondent's visits were supervised. The court also found that respondent had made some progress but found his progress to be insufficient for the following periods: December 26, 2010

to September 26, 2011, September 27, 2011 to June 27, 2012 and November 28, 2011 to August 28, 2012.

¶ 26 Best Interest Hearing

¶ 27 Diana Reed, the foster care case manager at Universal Family Connection testified that Devin was one of her clients. Devin was placed with Latrice's cousin Shina and had been there since he was born. Reed testified that the foster home was safe and appropriate. As of September 2014, Devin was six years old and was in school. Devin had behavior problems at school but was doing well academically.

¶ 28 Reed also testified that Devin bonded well with Shina and referred to her as "mom." When Reed would come to the foster home to pick Devin up, he would hug and kiss Shina and tell her that he would miss her. There was no concern about Shina's ability to care for Devin or meet his needs. Shina had two daughters living in the home and Devin had bonded well with them also.

¶ 29 Shina had signed a permanency commitment for Devin which indicated that she was committed to adopting him. Reed testified that although there was no father figure in Devin's foster home, Shina was ready, willing and able to care for Devin. Reed testified that respondent had requested that DCFS place his other children with his mother. Respondent's mother was willing and able to take Shauntee and Kevin and had not been ruled out as a possible placement for them.

¶ 30 Reed observed two visits between respondent and his children. There was a bond between respondent and his children, but mostly with his older children, Kevin and Shauntee. She also observed that during the sibling visits Devin did not interact well with Kevin and

Shauntee. Devin mostly played by himself. Reed testified that if respondent's rights were terminated, she believed that Shina would allow Devin to see respondent. Reed stated that the agency recommendation was that respondent's parental rights be terminated and that Devin be adopted by his foster parent.

¶ 31 Respondent testified he was incarcerated at Dixon Correctional Center with a release date of November 20, 2014. He had been there for 11 months. When his case first came into the system in 2009 he visited his children 7 to 8 times a month. During 2011 to 2012 he visited his children in their foster homes. While at Dixon he had two visits, one in April and one in August. He asked for more visits. He has sent his children cards, gifts and a video.

¶ 32 Respondent testified that he loves his children and believes he can be a father figure to them in the future. He stated that he believed he could provide for them once he was released from prison. He asked DCFS to place the children with his mother.

¶ 33 Respondent's mother testified to her living situation. She lived in a four bedroom house with her three daughters and her seven grandchildren. She stated that she was ready, willing and able to care for respondent's children. She stated that she asked DCFS to place Kevin and Shauntee with her. She stated that someone had come and looked at her house but she didn't receive any information telling her what to do from there. Respondent's attorney later told the court that respondent's mother had too many children in her home to be a good placement.

¶ 34 After hearing argument, the court issued a written order terminating respondent's parental rights to Devin but not terminating his parental rights to Shauntee and Kevin. The court found that unlike his brothers, Devin had been in the same relative foster home since birth and was well bonded to his foster mother, who he calls "mom." The foster mother wants to adopt Devin and

will allow him to maintain a relationship with respondent and his siblings.

¶ 35 It is from these orders that respondent now appeals.

¶ 36 ANALYSIS

¶ 37 The involuntary termination of a party's parental rights is a drastic measure because 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 2008)) and the Illinois Adoption Act (705 ILCS 50/0.01 *et seq*. (West 2008)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). Once a petition to terminate parental rights is filed, 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. At the conclusion of the fitness hearing, if the court finds by clear and convincing evidence that the parent is unfit, the cause proceeds to a hearing to determine whether it is in the best interests of the child that the parental rights be terminated. 705 ILCS 405/2-29(2), (4) (West 2010); 750 ILCS 50/1(D) (West 2008); *In re J.L.*, 236 Ill. 2d at 337; *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 63.

¶ 38 Fitness Hearing

¶ 39 Respondent argues that the trial court's finding that he is unfit based on his failure to make reasonable progress towards return home under sections 1(D)(m)(i), (ii), and (iii) (750 ILCS 50/1(D)(m)(i), 1(D)(m)(ii), 1(D)(m)(iii) (West 2008)) , and based on section 1(D)(i) (750 ILCS 50/1(D)(i) (West 2008)) of the Act is against the manifest weight of the evidence.

¶ 40 Because parents have superior rights against all others to raise their children, the State

must prove by clear and convincing evidence at least one ground of parental unfitness under section 1(D) of the Adoption Act before the trial court may terminate parental rights. *In re G.W.*, 357 Ill. App. 3d 1058, 1059-60 (2005). A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. See *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89. A trial court's finding regarding the best interest of the child will not be reversed on appeal unless such findings are against the manifest weight of the evidence. *In re J.L.*, 236 Ill. 2d at 344. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the lower court's determination is "unreasonable, arbitrary, or not based on the evidence." *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 70. Proof of any one ground is sufficient to find a parent unfit. *In re Angela D.*, 2012 IL App (1st) 112887, ¶ 29.

¶ 41 Unfitness under section 1(D)(i) (750 ILCS 50/1(D)(i) (West 2008)) has been defined as an inherent deficiency of moral sense and rectitude (*In re Abdullah*, 85 Ill. 2d 300, 305 (1981)) and may be established by a course of conduct of sufficient duration and repetition to indicate a deficiency in moral sense and showing either an inability or an unwillingness to conform to accepted morality. *In re Shanna W.*, 343 Ill. App. 3d1155, 1166 (2003). A rebuttable presumption exists that a parent is unfit if he or she has been convicted of any three felonies if one of the convictions took place within five years of filing of the termination petition. 750 ILCS 50/1(D)(i) (West 2008).

¶ 42 Here, respondent does not dispute that the State proved statutory unfitness by clear and convincing evidence where the State introduced copies of defendant's convictions into evidence. Rather, respondent argues that he sufficiently rehabilitated himself and therefore overcame the

presumption of statutory unfitness under section 1(D)(i).

¶ 43 Respondent does not really state how he rehabilitated himself but argues that he kept in contact with Devin while incarcerated and sent him letters and gifts in an attempt to maintain a bond with him. He argues that he kept in contact with his caseworker while incarcerated and inquired about Devin. He stated he also completed a parenting skills class, a 12-week drug education program and anger management.

¶ 44 Contrary to respondent's argument, the evidence does not show that respondent has rehabilitated himself sufficiently to overcome the presumption of his being unfit. Respondent was incarcerated for three separate offenses during the pendency of this case, from 2009 to 2013. Although respondent has engaged in some services, some as recently as 2014, respondent has not shown that he can refrain from engaging in criminal conduct which leads to his incarceration. His incarceration gave him little time to participate in services or in caring for his children.

¶ 45 When parental rights are terminated based upon clear and convincing evidence of a single ground of unfitness, the reviewing court need not consider additional grounds for unfitness cited by the trial court. See *In re D.D.*, 196 Ill. 2d 405, 422 (2001). Therefore, we need not consider whether respondent was unfit based upon the trial court's findings that he failed to make reasonable progress under section 50/1(D)(m). 750 ILCS 50/1(D)(m) (West 2008)).

¶ 46 Best Interest Hearing

¶ 47 We next address respondent's argument that the State failed to prove by a preponderance of the evidence that termination of his parental rights was in Devin's best interest. If the trial court finds a parent unfit on one or more statutory grounds under the Act (750 ILCS 50/1(D) (West 2008)), the trial court then conducts a second, bifurcated proceeding to determine whether

termination of parental rights and allowance of an adoption petition would be in the child's best interest. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). In a best interests hearing, the focus of the termination proceeding shifts to the child, and the parent's interest in maintaining the parent-child relationship must yield to the child's interest in having a stable and loving home life. *In re D. T.*, 212 Ill. 2d 347 (2004). The State must prove by a preponderance of the evidence that termination is in the child's best interest. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). The trial court's determination will not be reversed unless it is against the manifest weight of the evidence. *Id.* A decision is against the manifest weight of the evidence only when the opposite conclusion is clearly evident. *In re Z.L.*, 379 Ill. App. 3d 353, 376 (2008).

¶ 48 When determining whether termination of parental rights is in a child's best interest, a court must consider the following factors of section 1-3 (4.05) of the Juvenile Court Act of 1987 in the context of the child's age and developmental needs: (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 persons available to care for the child. 705 ILCS 405/1-3 (4.05) (West Supp. 2009).

¶ 49 Here, the trial court clearly considered the above factors when it found that it was in Devin’s best interest to terminate respondent’s parental rights. The court found that Devin had

been in the same foster home since birth and was in a safe and appropriate environment. He had bonded with his foster mother and called her "mom." The court also found that Devin maintained a relationship with respondent and his siblings and would be able to maintain those relationships after adoption.

¶ 50 Respondent argues that the court should not have terminated respondent's parental rights with respect to Devin for the same reasons it did not terminate his parental rights with respect to Kevin and Shauntee. The court stated it was not terminating respondent's parental rights with respect to Kevin and Shauntee because they were bonded with respondent and had only been placed in their current foster home several months prior.

¶ 51 Cases involving an adjudication of neglect and wardship are *sui generis* and must be decided on the unique facts of the case. *In re Z.L.*, 379 Ill. App. 3d 353, 376 (2008). The court's reasoning for not terminating respondent's parental rights with respect to Kevin and Shauntee simply does not apply to Devin. The record shows that Kevin and Shauntee had been placed in several foster homes with no permanency and that the current foster parent was willing to adopt Shauntee but not Kevin. In contrast, the evidence showed that Devin was placed with Shina shortly after birth. At the time of the best interest hearing Devin was six years old. He was attending school and doing well academically. He was bonded with Shina and called her "mom." When he was picked up for visits with his parents, Devin would kiss and hug Shina and tell her he would miss her. He was also well-bonded with Shina's two daughters. Shina had signed a permanency commitment and expressed her desire to adopt Devin. Furthermore, Reed testified that respondent had a stronger bond with Kevin and Shauntee than with Devin.

¶ 52 In this case, the evidence presented at the best interest hearing was more than sufficient to

support the trial court's determination that termination of respondent's parental rights was in Devin's best interest. The evidence shows that Shina has provided a permanent and stable home for Devin and would continue to do so. The evidence also shows that she would allow Devin to maintain a relationship with respondent and his biological siblings. Based on this record, we cannot say that the trial court's decision that the State proved by a preponderance of the evidence that termination is in Devin's best interest was against the manifest weight of the evidence.

¶ 53 CONCLUSION

¶ 54 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 55 Affirmed.