2015 IL App (2d) 150838-U
No. 2-15-0838
Order filed December 24, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re LAMONTE J. & DEMETRIUS J., Minors	)	Appeal from the Circuit Court of Lake County.
	)	Nos. 2014-JA-158 2014-JA-159
(The People of the State of Illinois, Petitioner-Appellee, v. Demetrius J., Respondent-Appellant.)	)	Honorable Valerie Ceckowski, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justice Zenoff and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's decision to terminate respondent's parental rights was not contrary to the manifest weight of the evidence.

¶ 2 After finding that respondent, Demetrius J., was an unfit parent, the trial court ruled that it was in the best interests of respondent's minor children, Lamonte J. and Demetrius J., to terminate his parental rights. Respondent appeals. We affirm the trial court's ruling.

¶ 3 I. BACKGROUND

¶ 4 The record reflects that respondent and Felicia S.[1] are the biological parents of Demetrius J., born in May 2010, and Lamonte J., born in April 2011. The Department of Child and Family Services (DCFS) began providing services to the family by opening an intact case in 2010. Demetrius J. and Lamonte J. were adjudicated neglected in June 2012, after the trial court found that respondent had committed an act of domestic violence in the presence of the children and refused to cooperate with DCFS. Following a dispositional hearing in July 2012, the children were made wards of the court and placed in the custody and guardianship of DCFS. On November 19, 2014, the State filed a petition for termination of respondent's parental rights. The State alleged, *inter alia*, that respondent was depraved and had failed to make reasonable progress toward the return of the children during either of the nine-month periods between April 23, 2013, and October 24, 2014.

¶ 5 The record also reflects that respondent was convicted of committing three crimes between 2011 and 2014. Two of these offenses were for unlawful possession of a controlled substance with intent to deliver and the third was for unlawful possession of a firearm by a street gang member. Respondent has been incarcerated in connection with these crimes for the bulk of the time period pertinent to this appeal. The parties agree that he is eligible for release in 2016, although the record is unclear as to the specific date.

¶ 6 The hearing on the State's petition for termination of parental rights took place over four days, commencing on May 27, 2015, and concluding on July 16, 2015. Case worker Terri Cummings, from the child protective agency One Hope United, provided testimony regarding the

[1] Felicia S. is not a party to this appeal, and the termination of her parental rights will be referenced only as necessary.

service plans that were rated between January 2012 and July 2013. Cummings testified as follows.

¶ 7 Respondent was incarcerated for the entirety of the six-month service period between January and July 2012. He received unsatisfactory ratings for failing to visit his children[2] or complete services for substance abuse and domestic violence. Respondent was released from prison on November 21, 2012, more than half-way through the second six-month period. He arranged to visit his children on three occasions before January 2013. However, he did not maintain contact with Cummings or submit to random urine testing and he ultimately received the same unsatisfactory ratings as he had received during the first six-month period.

¶ 8 During the third six-month period, which ended in July 2013, respondent became involved in "parent coaching visitation" and received satisfactory ratings for parenting and visits. However, he was arrested and incarcerated in April 2013, approximately half way through the service period. Prior to his arrest, respondent had failed to show proof of appropriate housing or a source of legal income. He received unsatisfactory ratings for failing to complete service tasks relating to substance abuse, domestic violence, and mental health. Cummings testified that respondent did not send any cards or letters to the children during his periods of incarceration, nor did he make any phone calls to inquire about their well being.

¶ 9 The service plan for the six-month period ending in January 2014 was admitted into evidence, although no accompanying testimony was provided. The service plan reflects that respondent was incarcerated for the entirety of this period. He received unsatisfactory ratings for

[2] Defendant's unsatisfactory ratings for failing to visit his children while he was incarcerated play no role in our analysis of whether the trial court erred in terminating his parental rights. In any event, defendant's ability to communicate with his children during his incarceration is discussed below.

failing to obtain evaluations for substance abuse, domestic violence, and mental health. Respondent reported that he did not qualify for any such services during his incarceration due to his projected release date in March 2014.

¶ 10 One Hope United case worker Lacy Norton began working with the family in March 2014. She testified regarding the service plan for the six-month period ending in July 2014. Norton explained that respondent was released on March 13, but was arrested and incarcerated on June 26. While free from incarceration, respondent failed to show proof of appropriate housing or a source of legal income. He received unsatisfactory ratings for failing to complete service tasks relating to substance abuse, domestic violence, and mental health.

¶ 11 The final six-month service plan in question covered the period ending in January 2015. Norton's testimony was limited to the events prior to November 19, 2014, when the State filed the petition for termination of parental rights. Norton testified that respondent was incarcerated for the entirety of this period, during which he sent no cards or letters to the children, failed to communicate with One Hope United, and failed to cooperate with services for substance abuse, mental health, or domestic violence. Respondent was initially placed on a waiting list for a substance abuse program in the Lake County jail, but was unable to attend because he was later transferred to the Department of Corrections (DOC). Norton admitted that she did not know whether respondent's particular DOC facility offered programs for substance abuse, mental health, or domestic violence.

¶ 12 On July 16, 2015, the trial court ruled that respondent was an unfit parent to have the children, pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)), and the parties proceeded to a hearing on the best interests of the children. Case worker Norton testified that, since August 2014, Demetrius J. and Lamonte J. had been residing in a traditional foster

home with three other children, including their biological half-sister. They got along with the other children and they referred to their foster parents as "mommy" and "daddy." They were enrolled in pre-school. During the summer, they had been involved in outside activities such as swimming lessons and T-ball. In Norton's opinion, the children felt loved and had bonded with their new family. She believed it was in the children's best interests that respondent's parental rights be terminated and the children be made available for adoption. Norton also stated in her report that the foster parents had a "strong desire" to adopt both children.

¶ 13 Norton acknowledged on cross-examination that she had discretion in arranging visits with respondent while he was in DOC custody "depending on the distance for the children." She further acknowledged that she arranged for no such visits, even though the children had been excited to see respondent and interacted well with him while he was free from incarceration.

¶ 14 Suzanne Wexler, a court-appointed special advocate, testified that she had visited with Demetrius J. and Lamonte J. in several different homes since May 2012. Wexler's observations and opinions were largely cumulative of those offered by Norton. In addition, Wexler noted that both children had exhibited behavioral issues in the past, which she believed were being adequately addressed by the current foster parents. She opined that it would be detrimental to the children if they were removed from their current foster home.

¶ 15 In delivering its findings regarding the children's best interests, the trial court noted that the children first entered the foster care system because respondent and Felicia S. would not cooperate with services. The children felt loved and secure in their foster home, where they had been residing for approximately 10 months at the time of the best interest hearing. The trial court acknowledged that respondent was unable to visit the children while he was incarcerated, but noted that he did not send them any cards or letters, which could have aided in maintaining a

continuing relationship. Accordingly, the trial court found by the preponderance of the evidence that it was in the children's best interests to terminate respondent's parental rights. The trial court's written order for a finding of unfitness and ruling on the State's petition to terminate parental rights was filed on July 24, 2015. Respondent timely appealed.

¶ 16 II. ANALYSIS

¶ 17 Respondent contends on appeal that the trial court erred in terminating his parental rights. He argues that One Hope United "manufactured" the result of the best-interest hearing by refusing to arrange for visits with his children while he was incarcerated, and the trial court erred by failing to consider One Hope United's actions. For the following reasons, we affirm the trial court's ruling.

¶ 18 A reviewing court will not disturb the trial court's findings regarding parental unfitness or the best interest of the minor unless those findings are against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104 (2008); *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24. "A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 19 The Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2014)) provides a two-step process for the involuntary termination of parental rights. *In re C.W.*, 199 Ill. 2d 198, 210 (2002); *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 28. First, the State must prove by clear and convincing evidence that the parent is unfit under any single ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). 705 ILCS 405/2-29(2) (West 2012). If the trial court finds that the parent is unfit, it must conduct a second hearing, during which the State must prove by a preponderance of the evidence that it is in the best interest of the minor to terminate parental rights. *In re D.T.*, 212 Ill.2d 347, 352, (2004).

¶ 20 We first note that respondent does not challenge the trial court's finding in this case that he was an unfit parent. Thus, our analysis is confined to the issue of whether it was in the children's best interests to terminate respondent's parental rights. To that end, respondent argues that this case is similar to *In re O.S.*, 364 Ill. App. 3d 628 (2006). In that case, following the respondent-mother's release from prison, the trial court ordered her not to tell her child that she was his biological mother. The trial court further instructed the respondent-mother to pretend that she was a relative of the child named "Jenny," and threatened to terminate her visitation rights if she failed to comply. *In re O.S.*, 364 Ill. App. 3d at 632. The trial court later concluded that it was in the best interest of O.S. to terminate the respondent-mother's parental rights. *Id*. at 633. The reviewing court held that it was improper to allow the mother to believe that she was progressing toward reunification "while *ensuring* that she [would] fail the best interest test." (Emphasis in original) *Id*. at 638. Accordingly, the reviewing court concluded that there had been a "violation of due process tainting the constitutionality of the termination of [the mother's] parental rights." *Id*.

¶ 21 Although respondent does not argue that his due process rights have been violated in this case, he maintains that this case is similar to *In re O.S.* because One Hope United refused to allow the children to visit him during his incarceration. We disagree. Unlike in *In re O.S.*, there is no evidence in this case that the State or the trial court engaged in deception or fraud. Case worker Norton acknowledged that she did not arrange for any visits while respondent was in DOC custody, but she never affirmatively stated that she refused to take such action. Moreover, nothing in the record indicates that respondent ever requested that One Hope United arrange for visits with his children in the first place. Regardless, as the State points out, Norton had no obligation to arrange for visitation while defendant was incarcerated. See *In re Sheltanya S.*, 309

Ill. App. 3d 941, 957 (1999) ("DCFS has no obligation to arrange for visits with minor children at prisons.").

¶ 22 Furthermore, we agree with the State's argument that, even if respondent had opportunities to visit the children while he was in DOC custody, the trial court's best-interest ruling would not have been contrary to the manifest weight of the evidence. At the best-interest stage of termination proceedings, "all considerations must yield to the best interest of the child." *In re O.S.*, 364 Ill. App. 3d at 633. The trial court's decision requires consideration of statutory factors, including, *inter alia*: (1) the child's physical safety and welfare; (2) the child's sense of attachment, including where the child feels love, security, familiarity, and continuity of affection; and (3) the child's need for permanence, which includes the need for stability and continuity of relationships with parent figures and siblings. 705 ILCS 405/1-3(4.05) (West 2014).

¶ 23 Here, the State presented evidence that the children had been living in a stable home with their biological half-sister for nearly 10 months prior to the best interest hearing. The children felt loved and secure, and they referred to their foster parents as "mommy" and "daddy." They had been involved in outside activities and were enrolled in pre-school. Additionally, the foster parents, who had a "strong desire" to adopt both of the children, were adequately addressing the children's behavioral issues.

¶ 24 Respondent, meanwhile, failed to cooperate with One Hope United during the 18-month period referenced in the State's petition for termination of parental rights, including the limited time that he was free from incarceration. Case workers Cummings and Norton testified that, while he was incarcerated, respondent never contacted One Hope United to inquire about his services or his children's welfare. Likewise, respondent never sent the children any cards or letters, which, as the trial court noted, could have helped him maintain a continuing relationship.

¶ 25 In sum, we reject the notion that anyone other than respondent is responsible for the termination of his parental rights. Respondent had an opportunity to work toward reunification with the children, but rather than comply with his services, he chose to be uncooperative with One Hope United and continued committing crimes. Considering the statutory factors noted above, and given the opinions of Norton and Wexler that it was in the children's best interests for respondent's parental rights to be terminated, we conclude that the trial court's best-interests ruling was not contrary to the manifest weight of the evidence.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, the judgment of the circuit court of Lake County is affirmed.

¶ 28 Affirmed.