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2015 IL App (3d) 140799-U

Order filed February 9, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

<i>In re</i> J.H.,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
a Minor)	Rock Island County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-14-0799
)	Circuit No. 13-JA-30
v.)	
)	
J.H.,)	
)	
Respondent-Appellant).)	Honorable Peter W. Church,
)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's determination that it was in the minor's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.
- ¶ 2 Following an adjudicatory hearing in the Rock Island County circuit court on the State's petition, the trial court issued an order finding the minor, Ja.H., neglected.

¶ 3 On August 22, 2014, following a fitness hearing, the trial court found that the State proved by clear and convincing evidence that respondent, J.H. was unfit. After conducting a best interest hearing on October 8, 2014, the trial court found that it was in the minor's best interest to terminate respondent's parental rights.

¶ 4 Respondent appeals, arguing that the court's determination that it was in the minor's best interest to terminate his parental rights was against the manifest weight of the evidence. We affirm.

¶ 5 **BACKGROUND**

¶ 6 Respondent is the father of Ja.H. Respondent's date of birth is August 17, 1979. The minor's date of birth is May 21, 2013. Je.H. is the minor's mother.

¶ 7 On May 24, 2013, when the minor was only a few days old, the State initiated this case by filing a petition for adjudication of wardship alleging neglect and a petition for temporary custody. Following a hearing, the court granted the State's petition for temporary custody. The minor child resided with Delois Anderson since May 24, 2013, when he was discharged from the hospital.

¶ 8 The State amended its petition for adjudication. Specifically, the amended petition alleged: (1) the minor's environment was injurious to his welfare; (2) the Iowa court previously adjudicated the minor's two siblings neglected and terminated parental rights to those children; (3) the Iowa Department of Human Services (DHS) reported Je.H. combative, threatening, and argumentative when she is not taking her medication. Je.H. admitted that she was diagnosed with depression, bipolar disorder, anxiety, reactive attachment disorder, ADHD and PTSD, and suffers from anxiety attacks; and (4) DHS reported that respondent takes medication and was loving and appropriate with the minor's siblings, but was unable to parent the children safely due

to his continuing relationship with Je.H. Respondent admitted that he was diagnosed with schizophrenia and bipolar disorder.

¶ 9 The parents stipulated to the State's petition at the adjudicatory hearing. The court adjudicated the minor neglected on July 16, 2013. The court also ordered respondent and Je.H. to complete certain services.

¶ 10 The trial court conducted the first permanency review hearing on February 7, 2014. The court found that respondent had not made reasonable and substantial progress toward returning the minor home and failed to make reasonable efforts toward returning the minor home. The court made the same determination at the second permanency review hearing on May 9, 2014. The court also changed the goal from "return home" to "substitute care pending determination of termination of parental rights."

¶ 11 The State filed a supplemental petition to terminate parental rights on June 12, 2014. The State alleged that respondent was unfit under the Adoption Act (the Act) (750 ILCS 50/1(D) (West 2012)) in that he: (1) failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare (750 ILCS 50/1(D)(b) (West2012)); (2) failed to make reasonable efforts to correct the conditions that were the basis of removal of the child from the parent during any nine-month period following adjudication of neglect, said period being July 16, 2013, through April 16, 2014 (750 ILCS 50/1(D)(m)(i) (West 2012)); and (3) failed to make reasonable progress toward the return of the child to the parent during any nine-month period following adjudication of neglect, said period beginning July 16, 2013, through April 16, 2014 (750 ILCS 50/1(D)(m)(ii) (West 2012)).

¶ 12 In support of its allegations, the State alleged that respondent: (a) failed to maintain housing that was an appropriate return option for the minor; (b) failed to consistently comply

with psychiatric treatment and medications; (c) failed to attend individual counseling; (d) failed to attend a majority of available visits with the minor; (e) failed to complete a psychological evaluation; and (f) failed to participate in a domestic violence class. The State further alleged that it was in the best interest of the child for the court to terminate respondent's parental right.

¶ 13 The court conducted a fitness hearing on August 22, 2014. Respondent was present in court and represented by counsel. The court admitted the minor's birth certificate without objection. The State called its only witness, Christy Hutchison, a child welfare specialist 2 for Bethany for Children and Families. Hutchison was the assigned caseworker for the minor. She assumed responsibility of his case on July 17, 2013. Hutchison testified that the State took the minor into care due to the fact that the State of Iowa previously terminated respondent's and Je.H.'s parental rights with respect to two other children.

¶ 14 There was a service plan in place when Hutchison assumed responsibility of the minor's case. The service plan required both parents to: complete psychiatric and psychological evaluations and follow through with recommended services; participate in individual counseling; maintain financial stability and stable housing; and complete a parenting class. The court adopted and ordered these services in its dispositional order on July 16, 2013. On November 1, 2013, after a domestic violence incident occurred between respondent and Je.H, Hutchison required both parties to attend a domestic violence perpetrators class.

¶ 15 Hutchison testified that respondent had housing when the State took custody of the child, but lost housing in September of 2013 when he was arrested. After respondent served six weeks in jail, he and Je.H. lived with friends, on the street, or in hotels when they could afford to do so. Respondent worked part-time doing construction and received social security benefits. He attended approximately 45% of total scheduled visits with the minor. During visits with the

minor, respondent had difficulty appropriately feeding and interacting with the child.

Respondent spent most of the time during visits trying to calm down Je.H.

¶ 16 Respondent failed to complete a psychological evaluation or complete any psychological services. He received psychiatric care through Transitions, although it did not provide verification of such treatment. He requested records from Transitions, but never received them. Respondent provided Hutchison with a signed release for records from Transitions, but she was also unable to obtain the records. She faxed the release four different times and made several phone calls. Hutchison stopped by Transitions on two different occasions in attempt to obtain respondent's records. Respondent told Hutchison that he took his psychiatric medications. Je.H. reported that respondent took his medications "off and on." Respondent failed to follow through with his referral for services at Robert Young. Furthermore, respondent did not participate in counseling or domestic violence services. Respondent did complete a parenting class.

¶ 17 Hutchison testified that at the end of the nine-month period following adjudication from July 16, 2013, until April 16, 2014, respondent failed to: maintain appropriate housing; consistently comply with mental health treatment and medication; engage in counseling; attend a majority of visits with the minor; complete a psychological evaluation; and participate in a domestic violence class. She also testified that from April 16, 2014, until August 22, 2014, respondent reported that he received treatment at Robert Young, but failed to provide any verification of such treatment. Further, respondent and Je.H. attended less than 30% of the scheduled visits.

¶ 18 Respondent testified on his own behalf. He said that he was diagnosed with schizophrenia prior to Ja.H.'s birth. Respondent testified that he consistently took prescribed psychiatric medication from July of 2013, until August 22, 2014. He also indicated that he

stopped receiving psychiatric services from Transitions in June of 2014 when he started receiving treatment at Robert Young. Respondent further testified that he received counseling services prior to enrolling in Transitions. He conceded that he did not complete a domestic violence class.

¶ 19 Prior to the child's birth, respondent lived in a six-bedroom house. He moved out of the house and into an apartment in September of 2013. After being arrested in October of 2013, respondent served six weeks in jail. Once released from jail, respondent lived with a coworker in a trailer. After two or three months, respondent and Je.H. moved into a finished basement of a friend's house. One month later, respondent and Je.H. moved into his boss's house, rent-free. Respondent testified that his housing applications were denied 13 times in the past year due to him being a felon. At the time of the fitness hearing, respondent lived in a basement, which he was remodeling.

¶ 20 On rebuttal, Hutchison testified that she never received verification of respondent's treatment at Transitions. She also never received verification of any residences that respondent lived in after he was released from jail.

¶ 21 The court entered an order finding respondent unfit on all three grounds the State alleged in its supplemental petition.

¶ 22 The trial court conducted a best interest hearing on October 8, 2014. Respondent was present and represented by counsel. The trial court took judicial notice of the best interest report prepared by Hutchison on September 9, 2014. The report indicated that Delois Anderson cared for the minor since he was discharged from the hospital. The minor was an accepted member of Anderson's family and had positive relationships with Anderson's extended family and friends. Anderson consistently provided for the minor's health, safety and developmental needs. She

expressed that she wanted to adopt the child. Respondent and Je.H. failed to consistently visit with the child since the court awarded the State temporary custody. During supervised visits over the last six months, the minor interacted with his parents as adults that he was familiar with. However, at times the minor was uncomfortable around his parents and appeared more comfortable with the supervising staff. Hutchison's report opined that it was in the minor's best interest to terminate respondent's parental rights.

¶ 23 The State called Hutchison as its only witness. She testified that the State placed the minor with Anderson, a godparent; Anderson took custody of the minor when he was just three days old. The minor was not yet vocal, but calls Anderson "Ma." The child was comfortable with his foster mother. Anderson did not allow respondent or Je.H. into her home. Anderson's 18-year-old grandson lived with her in a three-bedroom house. Anderson's grandson interacted with the minor as a sibling and occasionally babysat the minor. Anderson expressed her desire to adopt the minor. Her extended family supports the prospect of Anderson potentially adopting the minor. Further, the minor attended church with Anderson; the members of the church support Anderson. Hutchison testified that Anderson was retired, but sought part-time work at home, due to the fact that she was not as happy with retirement as she thought she would be. Anderson receives retirement income and can support the family. Hutchison also stated that Anderson provided food, shelter, and clothing for the child since bringing him into her home.

¶ 24 At the time of the best interest hearing, Anderson was 70 years old. Hutchison testified that Anderson will be 86 or 87 when the minor turns 18; an 86 or 87-year-old could appropriately parent an 18-year-old boy. Hutchison testified that she had no concerns about Anderson's ability to meet the minor's physical, safety and welfare needs, presently and in the future. The family had a backup plan in the event Anderson was unable to parent the child;

Anderson's daughter would take custody of the child should anything happen to Anderson.

Hutchison said that it would disrupt the child's sense of permanency to move him to a different home. She also testified that the parents attended one visit in September of 2014. During the visit, the minor interacted with his parents hesitantly, but eventually warmed up to them.

¶ 25 Respondent then testified on his own behalf. He stated that he lived in a 1½-bedroom apartment. At the time of the hearing, respondent was repairing his apartment to make it safe for children. He worked part-time as a custodian at the apartment building in which he resided. Respondent received social security, took his medication, and was mentally stable. Respondent testified that he was able to do day-to-day tasks required to raise a child.

¶ 26 The court entered an order finding that it was in the best interest of the minor child that respondent's parental rights be terminated. The trial court expressed some concern regarding Anderson's age, but stated that he considered the totality of all of the best interest factors.

¶ 27 Respondent appeals. We affirm.

¶ 28 ANAYLSIS

¶ 29 Respondent argues that the trial court's determination that it was in the minor child's best interest to terminate his parental rights was against the manifest weight of the evidence. Specifically, respondent argues that the court placed too much focus on whether Anderson currently provided for the minor as opposed to focusing on her ability to parent for the next 16 years.

¶ 30 Once the court makes an unfitness finding, the court then considers the "best interest" of the child in determining whether parental rights should be terminated. 705 ILCS 405/2-29(2) (West 2012); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The focus shifts to whether, in light of the child's needs, parental rights should be terminated. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The

parent's interest in maintaining the parent/child relationship must yield to the child's interest in a stable, loving home. *Id.* The State bears the burden of proving by a preponderance of the evidence that termination is in the child's best interest. *Id.* at 366. When determining whether termination of parental rights is in the minor child's best interest, the court must consider the following factors, 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 such love, attachment, and a sense of being valued);

(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 2012).

¶ 31 On review, we will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence. *In re E.M.*, 328 Ill. App. 3d 633, 640 (2002). A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 32 Respondent fails to point to any evidence that would justify a reversal of the trial court's decision. Respondent argues that as the minor child's foster parent reaches an advanced age, providing for the physical safety and welfare of the child will become a challenge; the minor might struggle with development of his identity when being raised by a single elderly woman instead of two younger parents. Also, if Anderson falls ill or dies, then the minor will lose the only parental figure he has. To reverse the trial court, we would have to conclude that Anderson's age alone required a finding that it was not in the minor's best interest to terminate respondent's parental rights. We do not find Anderson's age dispositive.

¶ 33 The court can determine that it is in the minor's best interest to terminate the parental rights even where there is no available adoptive home immediately following termination. *In re*

D.M., 336 Ill. App. 3d 766, 775 (2002); *In re Tashika F.*, 333 Ill. App. 3d 165, 170-171 (2002).

Therefore, the fact that the minor might be without a parent due to Anderson's advanced age does not prevent the court from terminating respondent's parental rights. The court considered Anderson's age, along with all of the other evidence presented, and determined that it was in the minor's best interest to terminate respondent's parental rights. Additionally, the evidence does not support respondent's position that Anderson will be unable to care for the child in the future.

¶ 34 At the best interest hearing, the trial court took judicial notice of the best interest report prepared by Hutchison, which indicated that the minor resided with Anderson since the day he was discharged from the hospital. Anderson provided a stable environment for the minor and met his health, safety, and developmental needs. Anderson wanted to adopt the minor; the child was an accepted member of her family. The minor had relationships with Anderson's extended family and friends.

¶ 35 Hutchison testified that Anderson was in good health and properly cared and provided for the child. Hutchison stated that an 86 or 87-year-old would be in a position to properly parent an 18-year-old boy. Anderson's 18-year-old grandson also resided with her; he interacted with the minor as a sibling and occasionally babysat the minor. Hutchison had no concerns about Anderson's ability to continue to provide for the minor and appropriately care for the minor. The family had a backup plan in the event that something happened to Anderson, rendering her unable to care for the child. Hutchison testified that it would be disruptive to the child's sense of permanency to move the child to a different home; the minor resided with Anderson since his birth.

¶ 36 The record demonstrates that respondent did not provide for the physical safety and welfare of the minor. Respondent failed to maintain stable and suitable housing for the child. At

the time of the best interest hearing, respondent acknowledged that he was remodeling his apartment to make it suitable for children. Additionally, respondent only attended one visitation with the minor one time between the fitness hearing and the best interest hearing. Prior to that, respondent attended about 30 of the scheduled visitations with the child. Respondent failed to complete the court order services, including attending counseling and a domestic violence class and undergoing a psychological evaluation. Given the record before us, we cannot say that the trial court's finding that it is in the best interest of the minor to terminate respondent's parental rights is against the manifest weight of the evidence.

¶ 37

CONCLUSION

¶ 38

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

¶ 39

Affirmed.