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2015 IL App (3d) 150124-U
(Consolidated with 150125 and 150126)

Order filed July 20, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2015

<i>In re</i> S.L., Ju.L., and Je.L.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors,	)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
	)	Appeal Nos. 3-15-0124, 3-15-0125, and
	)	3-15- 0126 (Consolidated)
Petitioner-Appellee,	)	Circuit Nos. 13-JA-62, 13-JA-63, and
	)	13-JA-64 (Consolidated)
v.)	
)	
Nathan L.,	)	Honorable
	)	Timothy Cusack,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that it was in the best interests of the children to terminate father's parental rights was not against the manifest weight of the evidence.

¶ 2 The State filed separate two-count dependency and neglect petitions on behalf of the three children because their mother, Denise L., was deceased and their father, respondent Nathan L., was in custody pending a trial for Denise's murder. After a jury convicted father of first degree murder, and the court sentenced father to serve 80 years in prison, the State filed a petition to terminate father's parental rights based on depravity. The court found it was in the children's best interests to terminate father's parental rights. Father appeals the court's best interests finding. We affirm.

¶ 3 **BACKGROUND**

¶ 4 The State filed separate dependency and neglect petitions on behalf of S.L., born June 5, 2000; Ju.L., born May 17, 2002; and Je.L., born March 3, 2008. The dependency count alleged the children were without a parent because their mother was deceased and their father was incarcerated after being arrested for the murder of the children's mother.

¶ 5 On March 12, 2013, the court named the Department of Children and Family Services (DCFS) the temporary guardian of the children and DCFS placed the children with their maternal grandparents. Thereafter, by agreement of all of the parties, on May 6, 2013, the court appointed the maternal grandparents as temporary guardians of the children rather than DCFS. In the agreed order, the parties agree to toll the time to conduct the adjudicatory hearing pending the resolution of father's criminal proceedings.

¶ 6 On July 21, 2014, a jury found father guilty of the first degree murder of mother. The trial court sentenced father to serve 80 years in prison for that offense on September 10, 2014.

¶ 7 After the return of the jury's verdict in the criminal case, father filed an amended answer to the underlying juvenile petition, on August 4, 2014, stipulating to the State's evidence proving

the neglect and dependency counts as alleged in the petitions regarding all three children. On October 1, 2014, the State filed supplemental petitions to terminate father's parental rights based on depravity due to father's murder conviction.

¶ 8 On October 6, 2013, the court held a dispositional hearing and entered adjudicatory orders finding the children neglected and dependent. The court made the children wards of the court, and named the maternal grandparents as the guardians of the children.¹ The court order directed DCFS to continue mental health services for the children.

¶ 9 Father filed an answer to the petition to terminate his parental rights on October 22, 2014, and stipulated to the State's evidence proving unfitness based on depravity due to his murder conviction. However, father denied it was in the children's best interests to terminate father's parental rights. The court made the unfitness finding based on father's stipulation, and scheduled a dispositional hearing regarding whether it was in the best interests of the children to terminate father's parental rights.

¶ 10 On February 4, 2015, the court held the best interests hearing. At the State's request, the court took judicial notice of reports prepared for the best interests hearing on behalf of each minor. The reports were prepared by Richard Upchurch, a caseworker for Lutheran Social Services of Illinois (LSSI). The State also presented a certified copy of Peoria County case No. 13-CF-208, showing father's felony conviction for the first degree murder of the children's

¹ In the dispositional report, the caseworker noted that father was an ordained minister since January of 1998. The family moved frequently within the United States and back and forth to Lithuania due to father's mission work. Each time the family returned to Illinois, they resided with the maternal grandparents for periods of time.

mother. The parties stipulated that father's appeal regarding the murder conviction remained pending and the appellate court had not yet issued a mandate.

¶ 11 Upchurch's reports provided that all three of the children were well-adjusted and bonded to their guardians, the maternal grandparents. The children were also very bonded to their siblings. The guardians were financially able to care for the children and wished to adopt all three children, if the court terminated father's parental rights. The guardians' house had separate bedrooms for each minor. The guardians allowed the children to decorate their individual bedrooms. The children also had a large playroom in the house.

¶ 12 The reports documented the children were well adapted to living with their guardians. They had a sense of security and routine in this placement, and the guardians attended church regularly and participated in family devotions before bedtime. All three children had many friends; were doing well in school; and participated in church, school, and extracurricular activities. All three of the children stated they did not want to be moved and they were happy living with their maternal grandparents. Not one child discussed their father as part of their long-term goals or wishes.

¶ 13 The LSSI report identified the children's need for permanence and stability. In Upchurch's opinion, it was in the best interests of all three children to terminate father's parental rights and allow the guardians to adopt the children.

¶ 14 Father presented evidence to refute Upchurch's opinion and recommendations at the best interests hearing. Bruce L., the minors' paternal grandfather testified he had been designated as father's power of attorney since April of 2013. According to Bruce, father set up a specific savings account to pay for the children's needs. At father's request, Bruce was making monthly

payments toward the children's health care and life insurance plans since father's incarceration. Bruce said father also directed Bruce to buy birthday presents, graduation presents, and pay for some orthodontia work for the children.

¶ 15 Bruce said he had a good relationship with the three children and had contact with the children after father's arrest during a visit a few days after Christmas, at a church skating party, and at the children's sporting events. Bruce had no problems with the children's current guardians, the maternal grandparents, and felt comfortable contacting them if he wanted to arrange something regarding the children.

¶ 16 Next, Katherine L., the children's paternal grandmother, testified that father mailed her several handwritten letters of encouragement and Bible verses to give to the children. She also testified about cards and pictures the children made for father.

¶ 17 Father's sister, Abigail P., testified about her brother's missionary work for the church and living for an extended period of time in Lithuania. Father's family returned from Lithuania in 2011 and lived with the maternal grandparents for awhile. Abigail said she saw father's family regularly after they returned to the United States.

¶ 18 Abigail stated the children's father was a great, nurturing father to the children, and if he had to discipline the children, he would send them to their rooms to "think about it." The children had a close bond with father. Abigail testified that her own children had a close bond with the children. Abigail said father asked her to take care of the children when he was arrested and the children stayed with Abigail's family at the "mission house" for a few days until DCFS took the children to the home of the maternal grandparents.

¶ 19 Abigail stated she saw the children “a lot” from the time father was arrested until the jury trial date in July of 2014. She described many activities that her children participated in with the children in this case. In July 2014, after father was convicted of mother’s murder, Abigail said she “kind of let the dust settle a little bit.” After father’s incarceration, the children also changed schools when the new school year began.

¶ 20 Abigail expressed concerns that the relationships between the children and father’s relatives deteriorated after the jury found father guilty. She felt those relationships would further deteriorate if father's parental rights were terminated and the maternal grandparents adopted the children. Abigail explained that, after adoption, the maternal grandparents would have complete rights, and father’s family would have no rights to have contact with the children. Abigail testified she was also concerned, if father’s conviction was reversed, that father would not have the option to have the children returned to his care. Abigail felt it was in the children’s best interests to maintain a relationship with father and Abigail’s relatives.

¶ 21 Next, father’s attorney called Upchurch to testify as a witness regarding his LSSI report. Upchurch clarified that all three of the children stated they wanted to live with the maternal grandparents. Upchurch stated he did not ask the children questions regarding their relationships with father’s relatives, which is why that type of information was omitted from his report. Father rested his case at that time.

¶ 22 After closing argument, the court stated it reviewed the best interests factors when making its decision. The court found the children, who were now 14, 12, and 6 years of age, needed stability in their lives. Regarding one of the best interests factors, the court found that the safety and welfare of the children not only applied to their physical safety, but also their mental

stability. The court found the children were doing well in their placement with their guardians, the maternal grandparents. The court stated, “I don’t believe hanging them out to dry for an indefinite period of time, waiting to see if an appeal is successful or not is necessarily in their best interests.” Further, the court found that “[father’s] incarceration is an impediment to his reasonable desire to maintain ties with the kids.”

¶ 23 Additionally, the court found their guardians, the maternal grandparents, were “ready, willing, and able to provide care for the [children’s] needs, certainly to provide permanence to them.” The minor’s ties to the guardians’ community were also appropriate. All three children expressed a desire to remain in the care of the guardians. The court also found that the children needed to move forward and rebuild their lives at this time and needed to put “this ugly past” behind them. The court found it was in the children’s best interests to terminate father’s parental rights.

¶ 24 Father filed a timely notice of appeal.

¶ 25 ANALYSIS

¶ 26 Father contends that the trial court’s finding that it was in the children’s best interests to terminate his parental rights was against the manifest weight of the evidence. Father does not challenge the court’s unfitness finding of depravity regarding the petition to terminate parental rights.

¶ 27 After a trial court adjudicates a parent unfit based on the allegations of the petition to terminate parental rights, the State must prove by a preponderance of the evidence that it is in the best interests of the child to terminate the parental rights. *In re D.T.*, 212 Ill. 2d 347, 364 (2004); *In re S.D.*, 2011 IL App (3d) 110184, ¶ 33. To review a trial court's best interests determination,

this court applies the manifest weight of the evidence standard of review. *S.D.*, 2011 IL App (3d) 110184, ¶ 33.

¶ 28 When determining the child's best interests under a petition to terminate parental rights, section 1-3(4.05) of the Juvenile Court Act of 1987 requires the court to consider the following factors: (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; (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 2014); *S.D.*, 2011 IL App (3d) 110184, ¶ 34. A trial court may also consider the nature and length of the child's relationship with his current caretaker and the effect a change in placement would have on his emotional and psychological well-being. *In re Jaron Z.*, 348 Ill. App. 3d 239, 262 (2004).

¶ 29 In the instant case, the children, their mother, and father had also lived together as a family unit with the maternal grandparents in the past, when the family returned from various missionary work assignments. In addition, the evidence provided during the best interests hearing demonstrated that the children had been living exclusively with the maternal

grandparents since May 6, 2013, shortly after father's incarceration, and the maternal grandparents were ready, willing, and able to continue to care for the children's needs, including food, shelter, health, and clothing. The children were well-adjusted in their placement with their maternal grandparents, and were very bonded to each other. All three children wished to remain in this placement. The reports demonstrated the children had substantial ties to the community in their current placement, noting that all three children had lots of friends, were doing well in school, and participated in many church, school, and extracurricular activities.

¶ 30 Father raised two concerns in opposition to the court terminating his parental rights. One was his concern that his appeal of the murder conviction was still pending and, if his conviction was reversed, he could not regain custody of his children. Further, father's witnesses testified during the best interests hearing that they were concerned that the relationships between the children and father's relatives would deteriorate if the court terminated father's parental rights.

¶ 31 Father's desires for maintaining his own relationship with the children or family members wishing to maintain their own relationships with the children are not strong considerations during a best interests hearing after a parent is found unfit. It is well established that, during the best interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest to live in a stable, permanent, loving home. *D.T.*, 212 Ill. 2d at 364; *S.D.*, 2011 IL App (3d) 110184, ¶ 34. Further, father wanted the court to forego terminating his rights until after the appellate court issued its decision regarding father's appeal of his criminal conviction. Our supreme court has expressly held that the Adoption Act (750 ILCS 50/1 *et seq.* (West 2014)) does not call for courts to reserve ruling on findings of unfitness or termination of parental rights until the appellate process in the underlying criminal matter has been exhausted.

See *In re Donald A.G.*, 221 Ill. 2d 234, 254 (2006). The child's interest to live in a stable and permanent home prevails.

¶ 32 After our careful review of the record, in light of the factors to be considered during the best interests hearing, we conclude the trial court's finding regarding the children's best interests was not against the manifest weight of the evidence.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, we affirm the decision of the circuit court of Peoria County finding it was in the children's best interests to terminate father's parental rights.

¶ 35 Affirmed.