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2015 IL App (3d) 150401-U

Order filed October 28, 2015

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

<i>In re J.I.,</i>)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor,)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	Appeal No. 3-15-0401
Petitioner-Appellee,)	Circuit No. 10-JA-188
)	
v.)	
)	
Larry R.,)	
)	Honorable Albert L. Purham, Jr.,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding that it was in the best interest of the minor to terminate father's parental rights was not against the manifest weight of the evidence.
- ¶ 2 In 2010, the court found J.I. was a neglected minor due to living in an injurious environment and ordered both appellant-father, Larry R., and mother, to cooperate with the Department of Children and Family Services (DCFS). Four years later, the State filed a petition

to terminate the parental rights (termination petition) of both parents. The termination petition alleged father failed to make reasonable progress toward J.I. returning to his care, and failed to maintain a reasonable degree of interest, concern or responsibility as to J.I.'s welfare.

¶ 3 After a termination hearing, the court entered an order finding father unfit as alleged in the termination petition. Following a best interest hearing, the court found it was in the minor's best interest to terminate father's parental rights. Father appeals the court's decision that it was in J.I.'s best interest to terminate father's parental rights. We affirm.

¶ 4 BACKGROUND

¶ 5 On July 1, 2010, the State filed a neglect petition on behalf of J.I., born December 20, 2004, alleging J.I.'s environment was injurious to her welfare because her mother failed to properly supervise or provide a clean house and proper hygiene for J.I., and her father, Larry R., had a substantial criminal history. Father did not live with mother, and the State served father notice of the proceedings by publication because father could not be located at the time of the filing of the petition. The court found the minor was neglected. Initially, on October 13, 2010, the court found mother fit to care for J.I., placed the minor in her mother's care, and ordered mother and father, if he reappeared, to cooperate with DCFS services.¹

¶ 6 On March 21, 2011, the State filed a "Motion for Unfitness" asking the court to find mother and father unfit to care for J.I. based on mother's lack of cooperation and father's failure to have any contact with the caseworker or J.I. Subsequently, the court entered a permanency review order on March 30, 2011, finding father an unfit parent for failure to have any contact with the caseworker or the minor. However, the court allowed J.I. to remain in her mother's home subject to certain conditions.

¹Father did not appear in court throughout these proceedings and was defaulted after being served with notice by publication.

¶ 7 On October 13, 2013, the court granted the State’s second motion for unfitness based on mother’s failure to comply with the minor’s service plan. The court appointed DCFS as J.I.’s guardian and placed the minor in foster care.

¶ 8 The State filed a termination petition to terminate the parental rights of both father and mother on May 20, 2014. The termination petition claimed father was an unfit person because he failed to make reasonable progress, from August 1, 2013, to May 1, 2014, toward J.I. being placed in his care, and failed to maintain a reasonable degree of interest, concern or responsibility as to the minor’s welfare. Father appeared in court and was appointed counsel regarding the termination petition.

¶ 9 After a contested fitness hearing, the court found the State proved, by clear and convincing evidence, that father had no contact with the minor or with the caseworker, between August 1, 2013, and May 1, 2014, and father failed to maintain a reasonable degree of interest, concern or responsibility as to the minor’s welfare for at least two years. Therefore, the court found father was unfit under the termination petition. The court then scheduled a best interest hearing.

¶ 10 The court held the best interest hearing on May 20, 2015, along with a permanency review hearing. For purposes of this hearing, the court admitted the DCFS permanency report dated March 24, 2015; and the DCFS best interest report filed May 7, 2015, which included a “Foster Parent Bonding Assessment,” along with an addendum filed *instanter*.

¶ 11 The facts in the permanency and best interest reports provided that J.I. had been in foster care since October 30, 2013, and had been in her current placement since June 13, 2014. Father had no contact with J.I. since the beginning of the neglect proceedings, July 1, 2010, until the filing of the termination petition in 2014. The report stated that the caseworker met with father

to prepare this report and father said he was aware that J.I. entered into DCFS foster care in 2013, but he was unable to provide an explanation as to why he had not contacted the caseworker or arranged to visit with J.I. until after the termination petition was filed.

¶ 12 J.I. denied having any contact with father while she still resided with her mother and, since her placement in foster care, J.I. had not mentioned father or asked about him. The report noted that father began residing with mother sometime around April of 2014.² The caseworker indicated father asked for a visit with J.I. after the filing of the termination petition in May 2014, but the caseworker reported J.I. did not want to visit with father.

¶ 13 The best interest report, which was based in part upon the bonding assessment report, stated that the current foster parents wanted to adopt both J.I. and her younger sister. The caseworkers observed that J.I. has been thriving in foster care and has been well-dressed, well-groomed, and happy since her placement. The foster parents were able to provide for all of J.I.'s basic needs: food, shelter, health, and clothing. J.I. had made great strides in her education, since her placement, and was now performing at grade level. J.I. was underweight when she entered foster care and was now at a healthy weight.

¶ 14 The report further provided that J.I. was bonded and attached to her foster parents and relied on them to meet her needs. J.I.'s sense of security and permanence was with her foster family. Since her placement, J.I. also participated in several extracurricular activities. J.I. expressed to the caseworker that she wanted to stay with her foster family "forever" and did not want to return to her mother's home. The caseworker's report stressed that J.I.'s case had been open for five years and J.I. had been in placement for nearly two years with no progress by either

² The report explained that mother had not cooperated with the DCFS service plans, had not maintained consistent visitation with this minor or her other children who were also under the care of DCFS, and the caseworker felt it was in the best interest of the minor to terminate mother's parental rights as well.

parent. In addition, the report indicated that father did not have a healthy parent-child relationship with J.I. and there was not an emotional attachment between father and J.I. The caseworker concluded it was in J.I.'s best interest to terminate both mother and father's parental rights and allow J.I. to be adopted by her foster parents.

¶ 15 Father testified at the best interest hearing that he disagreed with the recommendation that it was in J.I.'s best interest to terminate his parental rights because father thought he deserved the opportunity to prove his ability to care for his daughter. Father did not dispute that he had not participated in services for "quite some time." However, father said he became more focused on his daughter after he received the petition to terminate his parental rights. Father testified he tried to arrange for a visit with J.I. after the termination petition was filed in 2014, but learned from the caseworker that J.I. did not want to see or visit with father. Father said he had no further contact with the caseworker about visits after this point in time.

¶ 16 Father stated he participated in the bonding assessment, and disagreed with the report that said there was not a healthy bond between father and J.I. Father met with J.I. as part of the assessment and father felt that J.I. interacted well with him. According to father, at the assessment meeting, J.I. immediately approached him, gave him a hug, and they talked to each other while they were "doing puzzles together." Father admitted this was the first time in "at least two years" that he saw J.I. Father believed it was in J.I.'s best interest to allow father to have an opportunity to be reunited with his daughter. However, father understood that mother would also have to complete services since father was again living with mother. Father said he discussed this with mother and they both wanted to do whatever was necessary to have J.I. placed with them.

¶ 17 At the close of the hearing, the court stated it considered the statutory factors to determine the minor's best interest. The court found J.I. currently was in placement with her sister, she was bonded to her foster parents and considered them her mother and father, the foster parents provided for the safety and welfare of J.I., and the foster parents wanted to adopt both J.I. and her sister. J.I. wanted to remain with her foster parents and had developed a sense of attachment, love, being valued, and security with them. The court found J.I. had been in placement for quite a while and developed ties to the community, church, school, and friends. The court found it was in the best interest of J.I. to terminate father's, as well as mother's, parental rights. Father filed a timely notice of appeal.

¶ 18 ANALYSIS

¶ 19 Father contends that the trial court's finding that it was in J.I.'s best interest to terminate his parental rights was against the manifest weight of the evidence. Father does not challenge the court's unfitness finding regarding the termination petition.

¶ 20 After a trial court adjudicates a parent unfit based on the allegations in a petition to terminate parental rights, the State must prove by a preponderance of the evidence that it is in the best interest of the child to terminate the parental rights. *In re D.T.*, 212 Ill. 2d 347, 365 (2004); *In re S.D.*, 2011 IL App (3d) 110184, ¶ 33. We review a trial court's best interest determination applying the manifest weight of the evidence standard of review. *S.D.*, at ¶ 33.

¶ 21 It is well established that, during the best interest hearing for a termination petition, the parent's interest in maintaining a parent-child relationship must yield to the child's interest in living in a loving, stable and safe home environment. *D.T.*, 212 Ill. 2d at 364; *S.D.*, at ¶ 34. When determining the child's best interest, 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; and (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.*, at ¶ 34.

¶ 22 In the instant case, the trial court noted that it considered the statutory best interest factors when making its decision. The evidence admitted during the best interest hearing demonstrated that J.I. and her sister had been living with the foster parents since June 13, 2014. The foster parents wanted to adopt J.I. and her sister and were willing and able to continue to care for J.I.'s needs, including food, shelter, health, and clothing. J.I. was well-adjusted in foster placement, was healthy and happy, was very bonded to her foster parents, and wished to remain in this placement. J.I. had substantial ties to the community, church, school, and friends in her current placement, was doing well in school, and participated in lots of extracurricular activities.

¶ 23 On appeal, father admits he failed to maintain contact with the minor for at least two years, failed to participate in services throughout these proceedings, and had no explanation for these failures. However, father contends that he has a good relationship with J.I., and began

cooperating with services after the State filed the termination petition. Father contends he should be given an opportunity to have J.I. placed in his care.

¶ 24 For purposes of a best interest hearing, the parent's interest in maintaining the parent-child relationship must yield to the minor's interest to live in a stable, permanent, loving home. *D.T.*, 212 Ill. 2d at 364; *S.D.*, at ¶ 34. Here, father did not participate in services or even contact his child during the pendency of these proceedings until the State filed its termination petition. The foster parents have been providing and will continue to provide a safe, stable, permanent, and loving home for J.I. and her sister. Here, J.I.'s interest to live in a stable and permanent home prevails over father's wishes.

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

¶ 26 CONCLUSION

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

¶ 28 Affirmed.