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2015 IL App (3d) 150517-U

Order filed November 17, 2015

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

In re K.P.G. and J.P.G,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors.	)	Peoria County, Illinois.
	)	
(THE PEOPLE OF THE STATE	)	Appeal No. 3-15-0517, 3-15-0518
OF ILLINOIS,	)	Circuit No. 09-JA-195, 10 JA-328
	)	
Petitioner-Appellee,	)	The Honorable
	)	Albert L. Purham,
v.	)	Judge, Presiding.
	)	
Corey G.,	)	
	)	
Respondent-Appellant).	)	
	)	

PRESIDING JUSTICE McDADE delivered the judgment of the court. Justices Schmidt and Wright concurred in the judgment.

## ORDER

¶ 1 *Held:* The trial court's decision that it was in the best interest of the minors to terminate appellant's parental rights was not against the manifest weight of the evidence.

¶ 2 FACTS

¶ 3 This case involves the termination of respondent-appellant, Corey G.'s, parental rights relative to his two minor children, K.P.G. and J.P.G.

¶ 4 K.P.G. was born on July 25, 2009. The minor's mother had previously been adjudged unfit to care for, protect, train, or discipline her other children from prior relationships, and she remained unfit. On this basis, the State filed a neglect petition on July 29, 2009, and K.P.G. was adjudicated neglected due to an injurious environment. A dispositional order entered on November 10, 2009, found that Corey was unwilling to parent the minor due to his desire to continue to reside with the minor's mother, his wife. K.P.G. was placed in foster care with his maternal aunt and uncle.

¶ 5 On November 12, 2010, Corey and his wife had another child, J.P.G. A neglect petition was filed alleging that he was in an injurious environment as the mother had yet to be found fit with respect to her other minors, Corey continued to reside with the mother, and narcotics had been found in the minor's system at birth. On January 18, 2011, J.P.G. was adjudicated neglected and a dispositional order was entered on February 15, 2011. Both minors were placed and have remained with the same foster care parents.

¶ 6 On December 9, 2014, the State filed petitions to terminate the parental rights of both parents to both of the minors. The petitions were identical save for the name of the respective minor for whom it was filed. Count I of each petition alleged that the minors' mother had willingly relinquished her parental rights. Count II of each petition asserted that Corey was unfit under section 50/1(D)(m)(ii) of the Adoption Act (Act) because he had failed to make reasonable progress toward the return of the minors during a nine month period following the adjudication of the neglected, abused or dependent minor, beginning March 5, 2014, to December 5, 2014. 750 ILCS 50/1(D)(m)(ii) (West 2014).

¶ 7 At the trial on the termination of parental rights, the court heard and considered the following evidence and arguments. K.P.G. was taken from Corey's custody because Corey had chosen to live with the minors' mother who had been found unfit. Though he professed at trial that it was his intention to help the mother overcome her drug problem and get the family back together, Corey still resided with the mother a year later when J.P.G. was born with narcotics in his system. After Corey separated from the minors' mother, he began another relationship with a woman who was also involved with DCFS and the court system and had been found unfit with regard her own children.

¶ 8 Additionally, during the identified nine-month period, Corey did not engage in any counseling with Lutheran Social Services because he stated he did not feel he needed counseling. Further, the court found that Corey visited the minors only six times out of a possible nine visits and missed both minors' birthdays, neither acknowledging the birthdays or sending any gifts. During the times he did visit, Corey spoke about his case and other subjects that were not to be discussed in front of the minors at visitation. It was also noted that Corey was unable to supervise both minors because J.P.G. regularly wandered off during visits. Corey had to be told by the supervisor or K.P.G. that the younger minor had wandered away from the visitation room.

¶ 9 The evidence also showed that Corey was told of all of the minors' medical appointments, but did not attend any one of them. Despite also being aware of J.P.G.'s adenoidectomy and tonsillectomy, Corey did not attend the surgery nor inquire about the minor's health before or after it.

¶ 10 On April 29, 2015, the trial court entered judgment on both counts in both petitions and held that the mother had relinquished her parental rights and that Corey was proven by clear and convincing evidence to be unfit under the Act. It found that Corey had failed to make reasonable

progress due to missed visits with the minors, court appearances, and administrative case review meetings and for failing to inquire regularly regarding the minors' medical needs.

¶ 11 A dispositional best interest hearing was held on June 24, 2015. The caseworker testified that Corey's visits had improved in the 3 months prior to the best interest hearing. She indicated that he had attended two of the three visits with the minors but had been arrested on the way to the missed visit. She noted that she had received a phone call from the arresting officer corroborating the time of the arrest and stated that Corey had juice and food in his possession at the time of the arrest. Upon inquiry of the court, the casework indicated that she believed K.P.G. had been placed with the foster family for his entire life except for the first week in which he was in the care of Corey. J.P.G. had been placed with the foster family his entire life. The caseworker stated that even though the minors enjoyed visiting with Corey and may have displayed affection towards him, they had also stated they wanted to remain with their foster parents. She noted in her report that the minors had bonded with their foster parent and only saw Corey as a playmate. She further opined that permanency could only be achieved for the children when Corey's rights were terminated and they were adopted.

¶ 12 Corey testified that he was the father of both minors and he was unsure how long he had initially cared for K.P.G. He asserted that it was substantially longer than a week. He indicated that he had given up custody of K.P.G. on the advice of his former caseworker. He stated that she allegedly told him that so much as a missed an appointment might lead to removal, unfitness, and termination of his parental rights. He further testified that another reason he agreed to have K.P.G. placed with the foster family was because he and the minors' mother had been living in the shelter while K.P.G. was in his care and engaging in services there. He stated that he had

wished to support the minors' mother's recovery and intended to reunite the whole family once the mother attained her fitness.

¶ 13 Corey testified that he had been arrested and charged twice in 2012 for driving under the influence (DUI). One of the DUI cases had been resolved and vacated. He was placed on court supervision for the other after having pled guilty. He was still under court supervision on the day of the best interest hearing. He stated that the missed visit with the minors noted by the caseworker was due to an arrest warrant for failure to appear related to the court supervision. He asserted that he, however, was unsure why a warrant would have issued.

¶ 14 Nevertheless, Corey asserted that he had begun engaging in a number of rehabilitative and counseling services within the last several months. He noted he owned and rented lot space for a trailer that he kept clean and in good condition without any hazards to the minors. He also indicated that he had been working at least 40 hours a week for Caterpillar as a union welder since 2010, and made enough money to support himself and the minors.

¶ 15 Corey testified with regard to his visits with the minors at Lutheran Social Services. He stated that he waited for the boys to arrive outside the building and that the minors were "looking for him as they pulled up." He stated he would shower the boys with affection and tell them that he missed them. During the visits, they would eat a meal or snack that Corey would provide as well as play with toys, read books, or play outside. Corey testified that the boys would "loungue" on him or get in his lap during visits.

¶ 16 Corey stated that J.P.G. calls him by his first name but that K.P.G. calls him by his first name or "dad" and had begun calling him "dad" about a year prior to the best interest hearing. However, Corey further testified that on a recent visit, K.P.G. had inquired if Corey was his

“dad” and indicated to Corey that he called his foster parent “dad” and wanted to continue to do that.

¶ 17 Corey testified that the minors do not seem unhappy at the end of the visits and they typically conclude the visits with cleaning up the room they used, hugging and kissing each other, exchanging terms of endearment, and Corey again showering the minors with love and affection. He noted that K.P.G. told him he wished the visits could be longer.

¶ 18 The court considered the testimony as well as the Illinois Department of Children and Family Services' (DCFS) best interest hearing report; a letter submitted by Corey dated June 10, 2015 from Dr. Philip Ladd of John R. Day and Associates, a licensed clinical counselor; Corey's attendance sheet from Alcoholics Anonymous meetings from December 2014 to June 2015; and a drug and alcohol treatment certificate of completion provided through White Oaks Transition Outpatient Program. The court subsequently found it to be in the best interest of the minors to terminate the parental rights of the minors' mother and Corey. It appointed DCFS as guardian of the minors with the power to consent to adoption of the minors

¶ 19 This appeal from the best interest finding and termination promptly followed.

¶ 20 ANALYSIS

¶ 21 The trial court determines whether it is in the minor's best interest to terminate a biological parent's parental rights using a preponderance of the evidence standard. *In re D.T.*, 212 Ill. 2d 347, 365 (2004). On review, we assess whether that determination to terminate parental rights is against the manifest weight of the evidence. *In re D.S.*, 2011 IL App (3d) 110184, ¶ 33.

¶ 22 Corey argues here on appeal that the trial court's finding was against the manifest weight of the evidence. He asserts that the evidence produced at the best interest hearing was

insufficient to find that it was in the best interest of the minors to terminate his parental rights. We find that the court's finding was not against the manifest weight of the evidence.

¶ 23 It is well settled that once a parent has been found to be unfit the parent's rights then yield to what would be in the best interest of the child. *In re Allen*, 172 Ill. App. 3d 950, 959 (1988). The issue is no longer whether parental rights can be terminated, but rather, in light of the child's needs, should the parental rights be terminated. *In re D.T.*, 212 Ill. 2d at 364. Accordingly, a parent's interest in maintaining the parent/child relationship must give way to the child's interest in a stable, loving home life. *Id.*

¶ 24 Corey primarily asserts that his parental rights should not have been terminated because of the affection he has for the minors and the affection the minors have displayed for him. He states specifically that K.P.G. had begun calling him "dad" approximately a year ago and that it seems the minor had begun to attempt to comprehend the situation. He claims that termination of his rights at this point would sever the emerging familial bond. He further argues that he had recently begun to engage in and complete a number of services that should quash any concerns of him posing a risk to the minors and that he has a stable home and is able to care for the minors financially.

¶ 25 Such factors were presented to the court and the court was able to weigh the information against the following counter evidence presented by the State and in the record. At the time of best interest hearing, both minors had been in foster care nearly their entire lives, over four years. During this time, Corey had failed to comply with his service plan to the extent necessary to have the minors returned to his care. Though he stated at the best interest hearing, five years after the fact, that he was convinced to give up K.P.G. because he would have lost the minor if he "so much as a missed an appointment", he knowingly and willfully lived with women who further

frustrated his efforts to have the minors returned to his custody. Even within the year preceding the best interest hearing, Corey failed to display any interest in the health of the minors, was arrested on the way to a visit with the minors, and even neglected to acknowledge the minors' birthdays. Although he asserts that the minors wished the visits they had with him could be longer, the casework noted that the minors also stated that they wished to continue living with their foster parents.

¶ 26 After nearly five years of noncompliance with his court-ordered service plan resulting in minors' having lived virtually their entire lives in foster care, such late and little progress does not engender confidence that Corey will become fit. Courts must not allow a child to live indefinitely with the lack of permanence inherent in a foster home. *In the Interest of A.H.*, 215 Ill. App. 3d 522, 530 (1991). The longevity of the case could also explain K.P.G.'s confusion regarding his relationship with Corey and with his foster parents. This is not indicative of the stability the statute seeks to ensure.

¶ 27 Therefore, though there may be a sense of some attachment between the minors and Corey and Corey has taken some positive steps with regard to counseling and home stability, the trial court's finding was not against the manifest weight of the evidence. The trial court did not abuse its discretion in terminating Corey's parental rights. His personal advancements are insufficient to counter the overwhelming evidence of instability with respect to the needs of the minors and they have come several years too late.

¶ 28

¶ 29

## CONCLUSION

¶ 30

The judgment of the trial court of Peoria County is affirmed.

¶ 31

Affirmed.