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2015 IL App (3d) 150584-U
(Consolidated with 150585)

Order filed December 23, 2015

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

<i>In re</i> Sa.F. and Sy.F.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors,	)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
	)	Appeal Nos. 3-15-0584 and 3-15-0585
Petitioner-Appellee,	)	(Consolidated)
	)	Circuit Nos. 10-JA-254 and 10-JA-255
v.	)	(Consolidated)
)	
Shatonya F.,	)	Honorable Albert L. Purham, Jr.
	)	and Honorable Timothy J. Cusack,
Respondent-Appellant).	)	Judges Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices O’Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court’s finding that it was in the best interest of the minors to terminate mother’s parental rights was not against the manifest weight of the evidence. Mother received effective assistance of counsel during the termination proceedings.

¶ 2 In 2010, the court found Sa.F. and Sy.F. were neglected minors due to living in an injurious environment and ordered appellant-mother, Shatonya F., to cooperate with the Department of Children and Family Services (DCFS). Four years later, the State filed petitions to terminate the parental rights (termination petitions) of the parents on behalf of each minor. Regarding mother for purposes of this appeal, the termination petitions alleged mother failed to make reasonable progress toward the return of Sa.F. and Sy.F. to her care during a specific nine-month period.

¶ 3 The court appointed an attorney to represent mother for purposes of the termination proceedings. After the State presented its evidence at the fitness hearing, the court continued the case for further hearing. On the date of the continued hearing, mother met with her attorney at the courthouse before the scheduled hearing, but opted to leave the courthouse after meeting with her attorney. During this meeting, mother signed an amended answer stipulating to the facts alleged in the termination petitions. The court accepted the amended answer, but determined that the State already rested. Mother's attorney had no other evidence to present at the fitness hearing. Based on the evidence, the court entered an order finding mother unfit as alleged in the termination petitions.

¶ 4 The court set the matter over for a best interest hearing. On the date of the best interest hearing, mother failed to appear. The attorneys stipulated to the reports prepared for the hearing, and the court found it was in the minor's best interest to terminate mother's parental rights. Shortly thereafter, the court granted mother's motion to vacate the best interest order and reset the matter for a contested best interest hearing. After witnesses testified, including mother, the court found it was in Sa.F. and Sy.F.'s best interest to terminate mother's parental rights.

¶ 5 Mother appeals the court’s best interest decision to terminate mother’s parental rights. Mother also claims she received ineffective assistance of counsel during the termination proceedings. We affirm the circuit court’s decision that it was in the minors’ best interest to terminate mother’s parental rights.

¶ 6 **BACKGROUND**

¶ 7 On September 14, 2010, the State filed neglect petitions on behalf of Sa.F., born March 15, 2006, and Sy.F., born October 16, 2009, alleging Sa.F. and Sy.F.’s environment was injurious to their welfare.¹ The neglect petitions alleged mother’s parental rights were previously terminated regarding a different child in Cook County, Illinois, and mother failed to complete the required tasks with respect to other older siblings in Cook County foster care. The neglect petitions further alleged that DCFS had several indicated reports regarding mother’s children being put at risk of physical harm from 2002 through 2009. These reports documented burns and cuts, welts, bruises, abrasions and oral injury to a child; the medical neglect of a child; and a child’s failure to thrive. Finally, the petitions alleged mother had a criminal history including a 2007 forgery, a 2002 criminal child neglect, and a 1999 theft. The State added an amended count to the neglect petitions that provided, “[Mother] was found unable to parent in Cook County Case No. 02 JA 1991 on September 8, 2003 and in Case Nos. 02 JA 1992 and 03 JA 1578 on December 2, 2004.”

¶ 8 The court ordered temporary shelter care on September 14, 2010, and DCFS placed Sa.F. and Sy.F. in temporary foster care. The court found Sa.F. and Sy.F. were neglected and, after a dispositional hearing, the court found mother was unfit to care for Sa.F. and Sy.F. and placed

¹There was a neglect petition filed on behalf of a third child, A.F., however, due to the child having severe disabilities and residing in a nursing home, mother’s parental rights were not terminated regarding this child and she is not subject to this appeal.

them under the guardianship of DCFS on December 3, 2010. On that same date, the court entered an order detailing several tasks mother had to complete to have Sa.F. and Sy.F. returned to her care.

¶ 9 The court held several permanency review hearings regarding mother's progress in completing tasks while Sa.F. and Sy.F. remained in foster care placement. On September 30, 2013, the court found mother had been making progress and that mother was fit to care for Sa.F. and Sy.F. However, the court ordered that foster care placement was still necessary and mother could not yet have overnight visits with Sa.F. and Sy.F., but could begin unsupervised visits.

¶ 10 Subsequently, on January 2, 2014, the State filed a motion asking the court to find mother was again unfit to care for the children, followed by a supplemental motion for unfitness filed on March 19, 2014. The petitions alleged several incidences of domestic violence involving different men that occurred in late 2013 and 2014, and at least one incident was witnessed by Sa.F. and Sy.F. Mother failed to disclose these problems with her caseworker in a timely manner. Further, mother's accounts of these incidences showed discrepancies between her statements in police reports, statements in petitions for orders of protection, and statements made to the caseworker upon inquiry. The court ordered supervised visitation in the interim. On March 31, 2014, the court granted the State's motion and again found mother unfit to care for Sa.F. and Sy.F. based on: "dishonesty, domestic violence, claim children on taxes, [and] allowing children to be around batterer."

¶ 11 The State filed petitions to terminate the parental rights of both father and mother on August 5, 2014, on behalf of Sa.F. and Sy.F.² The termination petitions claimed mother was an

²The State also filed a termination petition on behalf of A.F., however, due to the child permanently residing in a nursing home, the court did not terminate mother's parental rights regarding this child.

unfit person because she failed to make reasonable progress, from June 30, 2013, through March 30, 2014, toward completing her tasks to have Sa.F. and Sy.F. returned to her care. Mother appeared in court and was appointed counsel regarding the termination petitions.

¶ 12 The court began the unfitness hearing on the termination petitions on December 17, 2014, and the State presented its evidence. After completing a day of testimony, the matter was continued to March 4, 2015, for further evidence. On March 4, 2015, mother appeared at the courthouse and met with her attorney prior to the second day of the hearing. When the court called the case, mother's attorney appeared in court and explained to the court that mother was present earlier and decided not to wait for the court hearing. According to mother's attorney, mother did not want to wait for court because she had a job opportunity and needed to complete some training or paperwork that day. Mother's attorney stated she fully discussed the case with mother and mother decided to prepare an amended answer, stipulating to the facts in the termination petitions. Mother left before the hearing began. Mother's attorney presented the handwritten, amended answer *instanter*, which stipulated that "the State could prove the allegations contained in the [termination] Petition."

¶ 13 The trial judge stated that he usually liked to discuss this type of stipulation with the parent to make sure the stipulation is voluntary and knowing. The State advised the court that it had no more witnesses or evidence to present for the fitness hearing, and would be resting at this point. Under these circumstances, the State argued it would be proper to go forward with the rest of the hearing. Alternatively, if the court wanted to address mother personally, the State asked that the matter be continued until later in the day to attempt to telephone mother and get her back in the courtroom.

¶ 14 Sa.F. and Sy.F.’s guardian *ad litem* (GAL) suggested that the court accept the amended answer and stipulation and set the matter for a best interest hearing. Mother’s attorney told the court that she no longer had evidence to present for the fitness hearing because mother was her only witness and mother left the building prior to court.

¶ 15 The court determined that the State had already proven its factual basis for the fitness hearing based on the witnesses and evidence the State produced at the first day of the fitness hearing. Since mother chose to leave and present no further evidence, the court found the State’s evidence proved mother was an unfit parent, as alleged in the termination petitions, by clear and convincing evidence. The court then set the best interest hearing for April 8, 2015, at 1:30 p.m.

¶ 16 Mother did not appear for the best interest hearing, but her attorney was present. The court admitted the best interest report into evidence and the parties presented argument. In that report, the caseworker stated that Sa.F. and Sy.F. had been in foster care for over four years and had resided at the same foster home since September of 2010. Sa.F. and Sy.F. were bonded to their foster family and called their foster parents “mom” and “dad.” The foster parents loved Sa.F. and Sy.F. and were able to provide food, shelter, and care for both minors. The foster parents wished to adopt both Sa.F. and Sy.F. if mother’s parental rights were terminated. At the close of the hearing, the court found it was in the best interest of Sa.F. and Sy.F. to terminate mother’s parental rights and allow Sa.F. and Sy.F. to be adopted by their foster family.

¶ 17 On April 20, 2015, mother’s attorney filed a motion to vacate the best interest finding and proceed to a best interest hearing. According to the motion, mother thought the best interest hearing was scheduled for April 20, 2015, and mother appeared at that time claiming she was not informed of the April 8, 2015, date for the hearing. The court granted mother’s motion to vacate, over the objection of the GAL, and reset a best interest hearing.

¶ 18 On July 16, 2015, the court held the contested best interest hearing and mother was present with her attorney. The court admitted the best interest reports as evidence. The family caseworker, Dawn Keister, testified she had been mother's caseworker since late in 2014, and had seen mother approximately one time each month since then. Since the goal for Sa.F. and Sy.F. was adoption, the only service provided to mother at that time was supervised visitation with Sa.F. and Sy.F. Ms. Keister stated that mother had several different jobs during this period. Mother reported that she had stable housing during this period, but the caseworker did not verify the housing.

¶ 19 Ms. Keister reported that, although mother had only monthly visitation with Sa.F. and Sy.F., mother missed two out of the last six visits. The caseworker also spoke to mother several times on the phone. During one supervised visit, Ms. Keister acknowledged that Sa.F. and Sy.F. referred to mother as "Mom," and they interacted affectionately with mother. Mother brought a Jenga game with her and she played the game with Sa.F. and Sy.F. Mother behaved appropriately during the visit and Sa.F. and Sy.F. appeared happy to see their mother.

¶ 20 Ms. Keister testified that mother said she talked to Sa.F. over "Skype" a couple of times. However, the caseworker spoke to the foster mother and Sa.F., who both denied that Sa.F. ever used Skype. Mother also told the caseworker that Sa.F. played Xbox video games on the internet with mother's roommate's son and Sa.F. was forming a bond with the roommate's son. This was also not true and the caseworker confirmed that Sa.F. did not have that game system or play video games with anyone over the internet. Ms. Keister was concerned that mother either lied about these things or falsely believed these things were true. Since late in 2014, Ms. Keister was not aware of any counseling mother attended.

¶ 21 Ms. Keister stated Sa.F. and Sy.F. both resided in the same foster home, which she visited on a monthly basis. Ms. Keister separately asked Sa.F. and Sy.F. if they wanted to remain living at the foster home, and they both answered affirmatively. At that time, Sa.F. told the caseworker that he would like to continue seeing mother once a month, but Sy.F. told her he did not want to continue seeing mother.

¶ 22 According to Ms. Keister, mother reported living with a man named Ian Mandrell, who was mother's "best friend" and "roommate," during the time period that Ms. Keister was the family caseworker. Based on the adoption goal for the family, Ms. Keister did not run a background check on this individual. The State rested its case.

¶ 23 Next, mother's attorney called mother to testify. Mother stated that she was present at the designated visitation location for one of the missed visits with Sa.F. and Sy.F., on December 24, 2014, but mother was told that Sa.F. and Sy.F. were not there. Ms. Keister told mother, at a later date, that she and the minors were present to visit mother, but the caseworker was told mother never appeared for the visit. Mother said she no longer received other services after Ms. Keister became the caseworker, but mother continued with counseling on her own at Heartland Clinic.

¶ 24 Mother said she previously attended counseling at the Illinois Mentor agency, but a situation arose where the counselor called the police and "lied to the police." Mother said the counselor told the police that mother was being "irate" and "outrageous" and someone from "ERS" came and talked to mother. Mother testified that she was not suicidal or homicidal, but she was just emotional over this DCFS case, so ERS did not admit her. Mother testified that she believed her counselor from Mentor lied to the police and mother could not trust that counselor anymore, so mother stopped counseling with the Mentor agency in March of 2014. Mother said

she obtained a different counselor in October of 2014 at the Heartland Clinic and attends counseling once a month.

¶ 25 Mother testified she previously completed a 12-week domestic violence class and a parenting class in 2012. Mother stated she had stable housing “[o]n and off,” but she had been living with her friend Ian Mandrell for about a year. Mother said the prior caseworker completed a background check on Mandrell and, on September 29, 2014, that caseworker said Mr. Mandrell was “clean.” Mother said she also had stable employment “off and on,” sometimes working for a “temp agency.”

¶ 26 Mother stated she had a strong bond with Sa.F. and Sy.F. She said they appeared really excited when they first saw mother at visits and ran up to her and gave her a hug. Mother denied telling the caseworker that she Skyped with Sa.F. and Sy.F. Mother stated her roommate’s son told her he played Xbox with Sa.F. in the past, which is what mother told the caseworker. When questioned, mother said she did not recall the March 31, 2014, permanency review hearing where the court found she had not made reasonable efforts in counseling due to being dishonest with the counselor. Mother claimed she told the counselor about the domestic violence between herself and Daryl Dunnigan just prior to that March 2014 hearing. Mother also discussed the past domestic violence order of protection she obtained against Dunnigan addressed at an earlier permanency review hearing.

¶ 27 Mother said her rent was currently \$425 and either her roommate paid the rent or community action agencies gave financial assistance to mother. Mother said she had not been working for a while. Additionally, mother stated she went to the plasma center twice a week for money. She received food stamps to pay for food and a Medicaid card for medical services from the Department of Human Services. Mother borrowed a car when she needed transportation.

¶ 28 Finally, mother testified that she did not think it was in Sa.F. and Sy.F.'s best interest to terminate her parental rights because she had a bond with her children and they loved her.

Mother said she did everything the agencies told her to do.

¶ 29 After closing arguments, the court found that, throughout the proceedings, mother constantly showed mixed efforts in completing her tasks. The court noted that mother was found fit at one time, on September 30, 2013, based on mother's efforts, but the children remained in care while mother had unsupervised visitation. However, the court also noted that the State filed a petition to find mother unfit again in early 2014, and resumed supervised visitation based on problems regarding domestic violence that came to light late in 2013. By September 2014, the court again found mother unfit to care for the children due to mother's "dishonesty, domestic violence, [and] allowing the kids to be with a domestic violence perpetrator." The court noted that in prior permanency review hearings it found that mother had not been honest with her caseworkers or counselors about domestic situations that might affect Sa.F. and Sy.F.

¶ 30 The court further found that Sa.F. and Sy.F. had been in foster care for nearly five years and the court had to look at what was best for Sa.F. and Sy.F. The court found Sa.F. and Sy.F. had established a sense of security with the foster parents and had a place they called home that had been a safe haven for almost five years.

¶ 31 The court then made specific findings regarding the statutory factors to consider. The court found Sa.F. and Sy.F.'s physical safety and welfare was with their foster parents. Additionally, Sa.F. and Sy.F.'s sense of identity was best served with the foster family. Sa.F. and Sy.F.'s ties to the community and sense of attachment, "which goes to the child's sense of security, their familiarity, their affection, [and] least disruptive placement," all favored the foster household. Sa.F. and Sy.F. both stated they wished to remain living with the foster family.

Finally, the court stated Sa.F. and Sy.F.’s need for permanence “trumps everything else” and favored the minors staying with the foster family. The court found it was in Sa.F. and Sy.F.’s best interest to terminate mother’s parental rights and allow DCFS to consent to the foster parents’ adoption of Sa.F. and Sy.F. Mother filed a timely notice of appeal.

¶ 32 ANALYSIS

¶ 33 Mother challenges that the trial court’s finding that it was in Sa.F. and Sy.F.’s best interest to terminate her parental rights was against the manifest weight of the evidence. Mother also contends that she did not receive effective assistance of appointed counsel at the trial court level.

¶ 34 I. Best Interest of the Minors

¶ 35 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 minor 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.*, 2011 IL App (3d) 110184, ¶ 33.

¶ 36 When deciding a child’s best interest under 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. Section 1-3(4.05) of the Juvenile Court Act of 1987 (Juvenile Court Act) requires the court to consider the following factors during a best interest hearing: (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).

¶ 37 In the case at bar, the court referred to several of these factors when it found that it was in Sa.F. and Sy.F.'s best interest to terminate mother's parental rights. The court found Sa.F. and Sy.F. had a home where they felt safe with their foster family, which had continued for nearly five years. Sa.F. and Sy.F. had established a sense of identity, attachment, and ties to the family and community while in this foster home. Sa.F. and Sy.F.'s familiarity, affection, and least disruptive placement existed in the foster home, and Sa.F. and Sy.F. wanted to remain living with their foster parents, who wished to adopt both Sa.F. and Sy.F. The foster parents loved Sa.F. and Sy.F. and were able to continue to provide for all of the needs of Sa.F. and Sy.F. Finally, the court found Sa.F. and Sy.F. needed permanence that could be provided by the foster family.

¶ 38 By contrast, although mother made some progress in completing her tasks in 2013 resulting in a finding of fitness, problems with unsupervised visits arose in late 2013, causing the court to order supervised visits and make a new finding of unfitness. The court noted that this was due, in part, to caseworkers discovering mother had been dishonest with them, especially

regarding on-going domestic violence relationships, and Sa.F. and Sy.F. were subjected to domestic violence perpetrators during some of the unsupervised visits in late 2013. These were similar problems that occurred at the time the State filed Sa.F. and Sy.F.'s original neglect petitions in 2010, and were reported at permanency review hearings.

¶ 39 For purposes of a best interest hearing, Sa.F. and Sy.F.'s interest in living in a stable and permanent home prevails over the biological parent's wishes. After our careful review of the record, we conclude the trial court's finding regarding Sa.F. and Sy.F.'s best interest was not against the manifest weight of the evidence.

¶ 40 II. Effective Assistance of Counsel

¶ 41 On appeal, mother contends that she received ineffective assistance of counsel during the fitness portion of the termination proceedings when her attorney helped her prepare and file the amended answer stipulating that the State's evidence would prove that mother was unfit as alleged in the termination petitions. Mother claims her counsel did not fully explain the rights she was giving up by this stipulation, and mother was not in the courtroom to have the court inquire about the voluntariness of mother's stipulation to the facts in the termination petitions. The State submits that mother's attorney provided mother with effective assistance of counsel throughout the termination proceedings.

¶ 42 In a termination of parental rights proceeding, although civil in nature, certain due process safeguards have been extended for the protection of juveniles, including the right to counsel. *In re M.D.B.*, 121 Ill. App. 3d 77, 84 (1984). Because a termination of parental rights proceeding differs from a criminal proceeding, specifically being civil and nonadversarial in nature, due process only requires that these proceedings be "fundamentally fair." See *In re A.H.*,

359 Ill. App. 3d 173, 182 (2005) (citing *Santosky v. Kramer*, 455 U.S. 745, 754 (1982)); see also 705 ILCS 405/1-5(1) (West 2014).

¶ 43 The Juvenile Court Act has codified a statutory right to counsel, which has been extended to the parents of a minor who are party respondents in a proceeding. 705 ILCS 405/1-5 (West 2014). Implicit with the right to counsel is that counsel's representation of that individual must be effective. *In re R.G.*, 165 Ill. App. 3d 112, 127 (1988). Thus, we apply the standards set forth in the *Strickland* case (*Strickland v. Washington*, 466 U.S. 668 (1984)) to determine whether mother's appointed counsel was effective during the termination proceedings. See also *People v. Albanese*, 104 Ill. 2d 504 (1984).

¶ 44 To prove ineffective assistance of counsel, mother must show that her counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that the result would have been different had there not been ineffective assistance of counsel. *R.G.*, 165 Ill. App. 3d at 127-28. Errors in trial strategy or judgment alone do not establish that the representation was incompetent. *Id.* at 128.

¶ 45 Here, mother contends that her counsel was ineffective for filing mother's amended answer on the second day of the fitness hearing. Mother's amended answer stipulated to the facts regarding fitness and was filed just prior to beginning the second day of the fitness hearing. It is also important to note that mother was present at the courthouse on that second day and spoke to her attorney at length prior to the hearing. Mother's attorney represented to the court that mother chose not to stay at the courthouse for the continued fitness hearing, and prepared the amended answer in lieu of her appearance on the second day of the hearing.

¶ 46 In this case, mother was present in court for the fitness hearing when the State presented its evidence. On the second day of hearing, the State did not present additional evidence against

mother and mother opted not to appear, but signed an amended answer instead. Thereafter, without mother being present to testify, mother's attorney rested her case without presenting any evidence. Nonetheless, based on the full day of testimony presented by the State, the court found the State proved by clear and convincing evidence that mother was unfit as alleged in the termination petitions.

¶ 47 It is well established that, when reviewing counsel's performance, there is a strong presumption that his or her actions were the result of sound trial strategy and not incompetence. *People v. Burrows*, 148 Ill. 2d 196, 232-33 (1994). In the case at bar, mother was present with her attorney when the State presented its fitness evidence and best interest evidence, and the record shows that mother's attorney cross-examined witnesses and reviewed and presented argument regarding the documentary evidence.

¶ 48 One issue raised in mother's brief suggested her counsel was also ineffective for failing to object to reports and "other hearsay" during the fitness hearing. Some of the reports relied upon for purposes of mother's fitness were permanency review reports, which were a matter of record regarding mother's progress and for which the court could take judicial notice. It is well established that a court may rely on writings in agency records, made as a memorandum or record of any condition, as proof of that condition in an abuse, neglect, or dependency proceeding if the document was made in the regular course of business. 705 ILCS 405/2-18(4)(a) (West 2014); see also *In re A.S.*, 2014 IL App (3d) 140060, ¶ 31.

¶ 49 Nothing in this record indicates that mother's counsel's representation fell below an objective standard of reasonableness or, under these circumstances, that mother's termination proceedings were not fundamentally fair or would have resulted in a different outcome had mother not stipulated to the facts in the termination petitions alleging her unfitness. Therefore,

we conclude mother was not denied effective assistance of counsel during the proceedings terminating her parental rights.

¶ 50

CONCLUSION

¶ 51

For the foregoing reasons, we affirm the decision of the circuit court of Peoria County finding it was in Sa.F. and Sy.F.'s best interest to terminate mother's parental rights.

¶ 52

Affirmed.