2015 IL App (4th) 140944-U

NO. 4-14-0944

FILED
February 20, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: T.D., Q.D., and A.D., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 13JA19
JAMES DAY,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's best-interest finding was not against the manifest weight of the evidence where respondent's health prevented him from ever being able to care for the minor children and termination was the only way the children could achieve permanency.

¶ 2 In May 2014, the State filed a petition for the termination of parental rights of respondent, James Day, as to his adopted minor children and biological grandchildren T.D. (born in 2004), A.D. (born in 2005), and Q.D. (born in 2006). In August 2014, the Champaign County circuit court found respondent unfit. After an October 2014 hearing, the court concluded it was in the minor children's best interest to terminate respondent's parental rights.

¶ 3 Respondent appeals, contending the trial court erred by finding it was in the children's best interest to terminate his parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Respondent was married to Letitia Day, who passed away in July 2014. Another minor grandchild was also involved in these proceedings, B.D. (born in 2009). However, the trial court vacated respondent and Letitia's temporary guardianship of her in July 2013, so she is not involved in this appeal. B.D.'s parents, Dannelle and Michael Pasley, surrendered their parental rights to her, and thus they are not parties to this appeal.

¶ 6 In April 2013, the State filed a petition for the adjudication of wardship as to all four minor children, which contained several counts. Count I of the petition alleged the minor children were dependent under section 2-4(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-4(1)(b) (West 2012)) because they were minors lacking proper care as a result of the physical disability of their parents, guardians, or custodians. The six other counts alleged neglect pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)), which defines a neglected minor as "any minor under 18 years of age whose environment is injurious to his or her welfare." First, as to all of the minor children, the petition asserted an injurious environment due to (1) respondent and Letitia leaving them in the care of Dannelle, whose parental rights had been terminated as to T.D., Q.D., and A.D. (In re T.P., No. 06-JA-43 (Cir. Ct. Champaign Co.)) (count II); (2) the unsanitary conditions in respondent and Letitia's residence (count III); and (3) their exposure to substance abuse when they resided with Dannelle (count VI). Counts IV and V pertained only to B.D. Count VII pertained only to T.D. and asserted an injurious environment based on respondent and Letitia's failure to provide him with adequate medical care. On July 8, 2013, the trial court entered a written adjudicatory order, finding the State had proved all of the allegations in the petition by a preponderance of the evidence, except for count III. After a July 2013 dispositional hearing, the

court entered a written order finding respondent and the other parents were unfit and unable to care for, protect, train, or discipline the minor children. The court made the minor children wards of the court and placed the minor children's custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 7 In May 2014, the State filed a petition to terminate respondent's parental rights as to T.D., Q.D., and A.D. The motion asserted respondent was unfit because he failed to (1) make reasonable efforts to correct the conditions that were the basis for the children's removal from his care (750 ILCS 50/1(D)(m)(i) (West Supp. 2013)) (count I); (2) make reasonable progress toward the return of the children within the initial nine months after the neglect and dependent adjudication (750 ILCS 50/1(D)(m)(ii) (West Supp. 2013)) (count II); and (3) maintain a reasonable degree of interest, concern, or responsibility for the children's welfare (750 ILCS 50/1(D)(b) (West Supp. 2013)) (count III). After an August 2014 fitness hearing, the trial court found respondent unfit as alleged in all three counts. The written order was filed on September 2, 2014.

¶ 8 On October 21, 2014, the trial court held the best-interest hearing. The evidence consisted of DCFS's best-interest report and respondent's home-inspection report. The best-interest report noted T.D., who has both "Attention Deficit/Hyperactivity Disorder, Combined type" and "Bipolar I Disorder, Most Recent Episode Mixed, in Partial Remission," still resided in a residential facility but was awaiting specialized foster care. It noted respondent had questioned his ability to parent T.D. Q.D. and A.D. resided in a foster home with B.D. The foster parents reported having issues with Q.D. Q.D. struggled with telling the truth and anger management. Q.D. had also begun exhibiting sexualized behaviors. No concerns were reported about A.D. Q.D. and A.D.'s foster parents were unable to provide permanency through adoption.

¶ 9 Respondent continued to live in the home, which had been a safety concern throughout the case. His adult daughter, Sharon Day, was living with him and helping him work on the home. The outside of the home still appeared to be cluttered and had missing siding. A wheelchair ramp had been added to the front of the home. While a lot of the clutter had been removed from the inside of the home, a bug problem still existed. The problem with the furnace had not been addressed due to money going to funeral expenses for Letitia.

¶ 10 Additionally, the report stated respondent had not attended a counseling session since May 2014. He had also not participated in housing advocacy with Addus. From June to August 2014, respondent did not visit with the children due to his and Letitia's hospitalizations. Since September 2014, respondent had been making his twice-monthly visits with the children. Sharon and another daughter of respondent also attended the visits. The report noted respondent's health presented a challenge at visits. It also stated respondent continued to not understand why the children were in care and what he needed to do differently.

¶ 11 Sharon had expressed an interest in being a placement option for the children. However, she was then residing in respondent's home. DCFS was hopeful she would find a viable home soon.

¶ 12 The best-interest report noted respondent's health, lack of service participation, and overall denial of any needed services impeded reunification. While an adoptive placement had yet to be found for the minor children, the report recommended the termination of respondent's parental rights. The guardian *ad litem* also recommended termination of respondent's parental rights.

¶ 13 Respondent's counsel argued the inspection report indicated the prior concerns raised about respondent's home had been addressed.

¶ 14 After hearing the parties' arguments, the trial court found it was in the minor children's best interest to terminate respondent's parental rights. The court pointed out respondent came to court with health-care assistance to help him get around. It also noted respondent's health was not going to improve. On October 23, 2014, the trial court entered the written order terminating respondent's parental rights. On October 27, 2014, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction pursuant to Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010).

¶ 15 II. ANALYSIS

¶ 16 In this case, respondent only challenges the trial court's best-interest finding. The State contends the court's finding was proper.

¶ 17 During the best-interest hearing, the trial court focuses on "the child[ren]'s welfare and whether termination would improve the child[ren]'s future financial, social and emotional atmosphere." *In re D.M.*, 336 Ill. App. 3d 766, 772, 784 N.E.2d 304, 309 (2002). In doing so, the court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West Supp. 2013)) in the context of the children's age and developmental needs. See *In re T.A.*, 359 Ill. App. 3d 953, 959-60, 835 N.E.2d 908, 912-13 (2005). Those factors include the following: the children's physical safety and welfare; the development of the children's identity; the children's family, cultural, and religious background and ties; the children's sense of attachments, including feelings of love, being valued, and security, and taking into account the least-disruptive placement for the children; the children's own wishes and long-

term goals; the children's community ties, including church, school, and friends; the children's need for permanence, which includes the children's need for stability and continuity of relationships with parent figures and with siblings and other relatives; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the wishes of the persons available to care for the children. 705 ILCS 405/1-3(4.05) (West Supp. 2013).

¶ 18 We note a parent's unfitness to have custody of his children does not automatically result in the termination of his legal relationship with them. *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). The State must prove by a preponderance of the evidence the termination of the respondent's parental rights is in the minors' best interest. See *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). "Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006). This court reviews a trial court's best-interest determination under the manifest-weight-of-the-evidence standard. See *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). A trial court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 517 (2005). Additionally, we give great deference to the trial court's determination because it has a superior opportunity to observe the witnesses and evaluate their credibility. *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 19 While respondent loves his children, the evidence showed he had health issues that required him to need assistance. Those health issues were not temporary ones. Moreover, one of the minors needed specialized care and another one had evolving behavioral issues. Thus, respondent's health prevented him from providing the care the minor children needed, and that situation would not improve with time. The children had already been in foster care for around

18 months. Respondent's daughter, Sharon, was trying to obtain housing to become a placement for the minor children. The fact an adoptive placement had not yet been found does not prevent the termination of respondent's parental rights. See *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 25, 16 N.E.3d 930. Under the facts of this case, the trial court's finding termination of respondent's parental rights was in the minor children's best interest was not against the manifest weight of the evidence.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 22 Affirmed.