NOTICE
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2015 IL App (4th) 141084-U

NO. 4-14-1084

FILED
May 5, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: N.H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 13JA13
TAVARIS HUNT,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court found the trial court did not err in terminating respondent's parental rights.

¶ 2 In March 2013, the State filed a petition for adjudication of neglect/abuse with respect to N.H., the minor child of respondent, Tavaris Hunt. In June 2013, the trial court made the minor a ward of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS). In June 2014, the State filed a motion to terminate respondent's parental rights. In October 2014, the court found respondent unfit. In December 2014, the court found it in the minor's best interest that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in terminating his parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2013, the State filed a petition for adjudication of abuse/neglect and shelter care with respect to N.H., born in February 2007, the minor child of respondent and Jaleesa Johnson. The petition also named J.C. and A.J., the minor children of Johnson. In count I, the petition alleged N.H. was abused pursuant to section 2-3(2)(i) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(2)(i) (West 2012)) because Johnson inflicts or inflicted physical injury on him. In count II, the petition alleged J.C. and A.J. were abused pursuant to section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2012)) in that Johnson created a substantial risk of physical injury to them. In count III, the petition alleged all three minors were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)) because their environment was injurious to their welfare when they resided with Johnson because the environment exposed them to risk of physical harm. The trial court entered a temporary custody order, finding probable cause to believe the minors were neglected or abused.

¶ 6 In May 2013, the trial court found in favor of the State on counts II and III. In its June 2013 dispositional order, the court found respondent unfit and unable, for reasons other than financial circumstances alone, to care for, protect, train, or discipline N.H. and the health, safety, and best interest of the minor would be jeopardized if he remained in his custody. The court adjudged the minors neglected and abused, made them wards of the court, and placed custody and guardianship of the minors with DCFS.

¶ 7 In June 2014, the State filed a motion to terminate respondent's parental rights. The motion alleged respondent was unfit because he (1) failed to make reasonable efforts to correct the conditions that were the basis for the minor's removal (count I) (750 ILCS

50/1(D)(m)(i) (West 2012)); (2) failed to make reasonable progress toward the return of the minor within the initial nine months of the adjudication of neglect or abuse (count II) (750 ILCS 50/1(D)(m)(ii) (West 2012)); (3) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (count III) (750 ILCS 50/1(D)(b) (West 2012)); and (4) was incarcerated at the time the termination motion was filed, has repeatedly been incarcerated as a result of his criminal convictions, and his repeated incarceration has prevented him from discharging his parental responsibilities for N.H. (count IV) (750 ILCS 50/1(D)(s) (West 2012)).

¶ 8 In September and October 2014, the trial court held hearings on the motion to terminate parental rights. Megan Fitzsimmons, a caseworker at the Center for Youth and Family Solutions (CYFS), testified she assumed case-management duties in August 2013. At that time, respondent was incarcerated. Respondent was released in August 2013, and he resided with his grandmother. Fitzsimmons made contact with him to discuss the case. She stated he was referred for services involving domestic violence, parenting education, individual counseling, and drug testing. Fitzsimmons stated respondent did "not fully" comply with drug testing.

¶ 9 Fitzsimmons testified respondent had visits with N.H. at the CYFS office. The visits went "generally well," and respondent "mostly just played with" N.H. Fitzsimmons stated respondent's attendance at the visits was "pretty inconsistent." Respondent last visited with N.H. in late November or early December 2013. The visits stopped when respondent returned to prison in January 2014.

¶ 10 On cross-examination, Fitzsimmons testified respondent completed a substance-abuse evaluation in October 2013. Respondent refused to participate in individual counseling, saying he did not want to do it and did not need counseling. Respondent was unable to attend his parenting class in January 2014 because of his incarceration and was removed from the

domestic-violence course. In not completing the drug drops, respondent "would sometimes say he didn't want to complete them, and then other times he would say that he couldn't, because of his ankle bracelet."

¶ 11 The trial court took judicial notice of respondent's 2010 conviction for aggravated battery and 2013 conviction for domestic battery. Marya Burke, a facilitator at Cognition Works, testified she received a referral for respondent. Respondent began a program for domestic-violence perpetrators in October 2013 but did not complete it due to his incarceration.

¶ 12 Josh Hagerstrom, a CYFS therapist, testified he received a referral for respondent. They scheduled an appointment but respondent did not attend. Hagerstrom made another attempt to reschedule but respondent never appeared. Hagerstrom unsuccessfully terminated him in January 2014.

¶ 13 Respondent testified he resided at Robinson Correctional Center. He stated he was incarcerated at the start of N.H.'s case. He made contact with his caseworker. He was released from his incarceration in September 2013. He made contact with his caseworker again and began visiting with N.H. Respondent stated the visits "went well." When asked about drug drops, respondent stated he "passed every one" and the only time he could not give a sample was because he "was on an ankle bracelet and [he] couldn't get free movement all of the time." After being incarcerated in January 2014, respondent has completed an anger-management program, obtained 15 college credits, and attended a first-responder course. He stated his release date is November 18, 2019.

¶ 14 Following closing arguments, the trial court orally found respondent unfit on all four counts. The court's written order notes respondent was found unfit on counts I, II, and III.

¶ 15 In December 2014, the trial court conducted the best-interest hearing. The CYFS

best-interest report indicated N.H. resides in a traditional foster home with his sister, A.J. N.H. has developed a strong bond with his foster mother, feels comfortable in the home, and enjoys living there. N.H. has expressed interest in being adopted by his caregiver. N.H.'s visits with respondent were suspended due to respondent's incarceration in January 2014.

¶ 16 The report stated respondent had been incarcerated for the majority of this case. He began services and "engaged well initially." However, he began to miss classes, never attended individual counseling, and stopped calling in for drug screens. He remained engaged during visits with N.H. "but did not demonstrate appropriate boundaries and often caused [N.H.] to become angry."

¶ 17 The trial court found it in the minor's best interest that respondent's parental rights be terminated. This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. Forfeiture

¶ 20 Initially, we note the State contends respondent has forfeited his argument on appeal because he failed to support the argument section of his brief with citations to the record. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *People v. Snow*, 2012 IL App (4th) 110415, ¶ 11, 964 N.E.2d 1139 ("Rule 341(h)(7) requires the contentions raised in the argument section of the brief to be supported by citation to legal authority and the pages of the record relied on" and "failure to do so results in forfeiture of the argument."). However, the forfeiture rule is a limitation on the parties and not the jurisdiction of this court (*In re Janine M.A.*, 342 Ill. App. 3d 1041, 1045, 796 N.E.2d 1175, 1179 (2003)). Thus, we will address the argument.

¶ 21 B. Best-Interest Finding

¶ 22 Respondent argues the trial court's decision to terminate his parental rights was

against the manifest weight of the evidence. We disagree.

¶ 23 "Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2012). These include the following:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2012).

¶ 24 A trial court's finding that termination of parental rights is in a child's best interest

will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against the manifest weight of the evidence in cases "where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008).

¶ 25 Respondent argues his visits with N.H. went well. He had contacted his caseworker, even while incarcerated, and has completed an anger-management program and courses for college credit while in prison. Respondent contends termination of his parental rights "at this relatively early stage adversely affects N.H.'s familial ties and the uniqueness of his relationships, without need."

¶ 26 The CYFS best-interest report indicated N.H. lived in a licensed foster home with his sister. N.H. had developed a strong bond with his foster mother, feels comfortable in the home, and reports he enjoys living in the home. The evidence indicates respondent was incarcerated when N.H. was taken into care. After being released, respondent "sporadically" engaged in visitation, refused to take part in individual counseling, and stopped complying with random drug testing. Then, respondent returned to prison in January 2014 and is not scheduled to be released until November 2019.

¶ 27 The evidence indicates respondent did not parent N.H. or provide him a home and will be unable to do so in the near future. He has absented himself from N.H.'s life during his son's formative years, and N.H., now eight years old, need not wait another five years until respondent is released from prison for the permanency he deserves.

¶ 28 At the best-interest hearing, the trial court noted respondent was not in a position to provide any permanency or any long-range sense of security. Considering the evidence and

the best interest of the minor, we find the court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court's judgment.

¶ 31 Affirmed.