2015 IL App (4th) 150163-U

NO. 4-15-0163

FILED
June 30, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: C.M., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 13J6
CHARMAN MILES,	)	
Respondent-Appellant.	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White 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 had been incarcerated for almost four years and had not seen the minor during that time, and the current foster parent understood the minor's special needs and desired to adopt him.

¶ 2 In August 2014, the State filed a petition for the termination of the parental rights of respondent, Charman Miles, as to his child C.M. (born in 2003). In January 2015, the Champaign County circuit court found respondent unfit. After a February 2015 hearing, the court concluded it was in C.M.'s best interest to terminate respondent's parental rights.

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

¶ 4 I. BACKGROUND

¶ 5 Respondent had a brief relationship with C.M.'s biological mother Tracy Thompson. C.M. was born substance exposed, and Thompson's parental rights were terminated in 2004 (In re C.M., No. 03-JA-48 (Cir. Ct. Champaign Co.)). C.M. was placed in the custody of respondent and his partner, Faye Hart. Respondent and Hart had been together since 1994 and had two children, one born in 1996 and one in 2004. In September 2011, respondent was sentenced to 18 years' imprisonment for unlawful possession of a controlled substance with the intent to deliver.

¶ 6 In September 2013, the State filed a petition for the adjudication of wardship as to C.M. The petition alleged C.M. was dependent under section 2-4(1)(a) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-4(1)(a) (West 2012)) because he was a minor without a parent or guardian able or willing to care for him. After a November 2013 adjudicatory hearing, the trial court found C.M. dependent. At the December 2013 dispositional hearing, the court entered a written order, finding respondent unfit and unable to care for, protect, train, or discipline C.M. The court adjudicated C.M. as dependent, made him a ward of the court, discharged Hart as his guardian, and placed C.M.'s custody and guardianship with the Department of Children and Family Services.

¶ 7 In August 2014, the State filed a petition to terminate respondent's parental rights as to C.M. The motion asserted respondent was unfit because he (1) failed to make reasonable efforts to correct the conditions that were the basis for C.M.'s removal from his care (750 ILCS 50/1(D)(m)(i) (West Supp. 2013)) (count I); (2) failed to make reasonable progress toward C.M.'s return within the initial nine months after the dependent adjudication (750 ILCS 50/1(D)(m)(ii) (West Supp. 2013)) (count II); (3) failed to maintain a reasonable degree of interest, concern, or responsibility for C.M.'s welfare (750 ILCS 50/1(D)(b) (West Supp. 2013))

(count III); and (4) was incarcerated at the time the State filed the termination petition and had repeatedly been incarcerated as a result of a criminal conviction, which prevented him from discharging his parental responsibilities for C.M. (count IV). After a January 22, 2015, fitness hearing, the trial court found respondent unfit because he failed to maintain a reasonable degree of responsibility for C.M.'s welfare and for the reasons set forth in counts I, II , and IV. The court filed its written order on January 23, 2015.

¶ 8 On February 27, 2015, the trial court held the best-interest hearing. The evidence consisted of a report from the court appointed special advocates (CASA) and a best-interest report by C.M.'s social worker. The court also reviewed all of its prior orders in the case. No testimony was presented. The CASA report noted respondent was not eligible for parole until 2020. It further explained C.M. had a long history of mental health and behavior issues and had been hospitalized numerous times. C.M. had prior diagnoses of mood disorder, attention-deficit hyperactivity disorder, oppositional defiant disorder, conduct disorder, developmental delays, and "rule out psychosis and post traumatic stress disorder." Due to all of his issues, C.M. attended alternative schools. The CASA report recommended respondent's parental rights be terminated.

¶ 9 The best-interest report also noted respondent's imprisonment and the fact he was not a return home option for C.M. Respondent did not want to visit with C.M. while respondent was incarcerated. Since February 20, 2015, C.M. had been living with Sheniqua White, who had two sons with C.M.'s uncle. White contacted C.M.'s school daily to see how he was doing and had arranged after-school care for him. She included C.M. in all family activities, including weekly trips to Skateland, which C.M. really enjoyed. White understood C.M. was going to

need long-term care and was willing and able to provide C.M. permanency through adoption. The best-interest report also recommended the termination of respondent's parental rights.

¶ 10 After hearing the parties' arguments, the trial court found it was in C.M.'s best interest to terminate respondent's parental rights. On March 3, 2015, the trial court entered the written order terminating respondent's parental rights. On March 5, 2015, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). 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).

¶ 11 II. ANALYSIS

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

¶ 13 During the best-interest hearing, the trial court focuses on "the child's welfare and whether termination would improve the child'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 child'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 child's physical safety and welfare; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including feelings of love, being valued, and security, and taking into account the least-disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties,

including church, school, and friends; 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; 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 child. 705 ILCS 405/1-3(4.05) (West Supp. 2013).

¶ 14 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 minor's 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).

¶ 15 Respondent asserts he was C.M.'s primary caregiver for much of C.M.'s life, and they bonded. He asserts it is in C.M.'s best interest for him to have a guardian without terminating respondent's parental rights. However, at the time of the best-interest hearing, C.M. had not seen respondent for close to four years due to respondent's incarceration. C.M. had special needs, and his current foster placement, White, understood his needs and was willing and able to give him permanency through adoption. Moreover, White had children with C.M.'s uncle, so C.M. would still have family ties, even with the termination of respondent's parental

rights. In this case, the factors of section 1-3(4.05) of the Juvenile Court Act favor the termination of respondent's parental rights.

¶ 16 Accordingly, we find the trial court's conclusion the termination of respondent's parental rights was in C.M.'s best interest was not against the manifest weight of the evidence.

¶ 17 III. CONCLUSION

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

¶ 19 Affirmed.