

NOTICE

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2015 IL App (4th) 150279-U

NO. 4-15-0279

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 4, 2015

Carla Bender

4th District Appellate

Court, IL

In re: C.W., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	McLean County
v.)	No. 13JA52
KIRBY WEST,)	
Respondent-Appellant.)	Honorable
)	Kevin P. Fitzgerald,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.

Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's judgment, which terminated respondent's parental rights.

¶ 2 Respondent, Kirby West, appeals the trial court's termination of his parental rights to his child, C.W. (born July 18, 2013). He challenges the court's best-interest determination.

We affirm.

¶ 3 I. BACKGROUND

¶ 4 On July 24, 2013, the State filed a petition for adjudication of wardship, alleging C.W. was a neglected minor. Specifically, the petition alleged C.W. was a neglected minor pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2012)) in that her environment was injurious to her welfare while in the care of respondent and her mother, Mickenzie Lockwood, due to unresolved issues of substance abuse. Lockwood is

not a party to this appeal. At a shelter-care hearing the following day, respondent and Lockwood stipulated to probable cause and immediate and urgent necessity and the trial court placed temporary custody and guardianship of C.W. with the Department of Children and Family Services (DCFS).

¶ 5 At a September 5, 2013, hearing, the trial court found a paternity test established respondent was C.W.'s father, and an order of paternity was entered. Thereafter, both respondent and Lockwood admitted the allegations of neglect as set forth in the petition. As a factual basis, the State noted respondent admitted in a July 23, 2013, interview with DCFS to using cannabis one to two times per week. Further, the State noted that Lockwood tested positive for cannabis, opiates, barbiturates, and benzodiazepine when she gave birth to C.W. on July 18, 2013, and she admitted in a July 18, 2013, interview with DCFS to using cannabis during her pregnancy. The court adjudicated C.W. neglected, and respondent and Lockwood were admonished they must cooperate with DCFS, comply with the terms of their service plans, and correct the conditions which required C.W. to be in care or risk termination of their parental rights.

¶ 6 At an October 17, 2013, hearing, the trial court noted a dispositional report had been filed. The dispositional report listed the following goals for respondent: (1) gain necessary parenting skills; (2) maintain a safe and appropriate residence for himself and C.W.; (3) maintain stable employment; (4) maintain a lifestyle free of drug and alcohol abuse; and (5) maintain stable emotional health. Respondent had admitted to using cannabis in the past but his substance-abuse evaluation indicated he was not in need of substance-abuse treatment. The court entered its dispositional order, making C.W. a ward of the court and finding respondent and Lockwood unfit. The court noted that respondent "doesn't have an awful lot to do, but [he and Lockwood] are residing together so they both have to achieve fitness before we can look at a

return home which I think is very possible in this case." On November 12, 2013, the court appointed a special advocate (CASA) for C.W.

¶ 7 At a December 20, 2013, permanency-review hearing, the trial court noted a DCFS permanency-review report and a CASA report had been filed. The permanency-review report indicated respondent had (1) completed parenting classes; (2) maintained a safe residence for C.W.; (3) obtained full-time employment with medical and dental benefits where he currently earned \$8.25 per hour but would soon earn \$8.60 per hour; (4) passed a random drug test on November 26, 2013; and (5) completed one part of the two-part mental-health assessment. Further, respondent had not missed any of his scheduled visitations with C.W. DCFS recommended the court find respondent fit but Lockwood unfit. The CASA recommended the court find respondent unfit, citing concerns that he did not make enough money to support the family and noting he had initially resisted a mental-health assessment and was resistant to the idea of individual therapy. The court stated although it believed respondent was close to fitness, it had some concerns regarding (1) respondent's unwillingness to attend counseling if recommended and (2) the fact that respondent and Lockwood—who had relapsed with drugs—continued to live together. Accordingly, the court found respondent unfit and set the goal to return home within 12 months. The court noted respondent would likely be found fit at the next hearing if he was not required to engage in any services, or, if required, he cooperated with the services, depending on his relationship status with Lockwood.

¶ 8 At a March 20, 2014, permanency-review hearing, the trial court noted a DCFS permanency-review report and a CASA report had been filed, as well as a detailed report from C.W.'s foster parents. The permanency-review report noted that respondent was slow to complete his mental-health assessment but, since completing the assessment, he had been

consistently attending therapy sessions. It further noted that respondent did a good job of caring for C.W. during his visits and expressed a strong desire to have C.W. live with him. The report indicated respondent should prepare his house for when C.W. becomes mobile and establish a child-care plan, but it noted it was important Lockwood did not return home to live with respondent following her release from psychiatric hospitalization. The court found respondent fit but unable to care for C.W. due to its concern that respondent was not able to meet minimum parenting standards and the lack of a day-care plan. According to the court, a finding of "fit but unable" would allow respondent the opportunity to have more time with C.W. and to demonstrate his ability to care for her on a full-time basis. The court continued to find Lockwood unfit due to her substance-abuse and mental-health issues. The permanency goal remained return home within 12 months.

¶ 9 At a June 12, 2014, permanency-review hearing, the trial court noted a DCFS status-review report and a CASA report had been filed. The court noted respondent was meeting minimum parenting standards but expressed concerns regarding his relationship with Lockwood, who continued to be unfit. The court found respondent fit with a goal of return home within five months.

¶ 10 At an August 21, 2014, permanency-review hearing, the trial court noted a DCFS permanency-review report and a CASA report had been filed. Both reports reflected concerns regarding respondent's motivation and ability to parent. The court continued the matter so respondent would have an opportunity to work with his counselor regarding his ability to be a single parent to C.W.

¶ 11 A final permanency-review hearing was held on November 20, 2014. Prior to the hearing, on November 17, 2014, the State filed a petition to terminate the parental rights of

respondent and Lockwood. Regarding respondent, the State alleged he failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to C.W.'s welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) make reasonable efforts to correct the conditions that were the basis for the removal of C.W. from his care during any nine-month period following the adjudication of neglect (750 ILCS 50/1(m)(i) (West 2014)); and (3) make reasonable progress toward C.W.'s return during any nine-month period following the adjudication of neglect (750 ILCS 50/1(m)(ii) (West 2014)). The State's petition was precipitated by respondent testing positive for cannabis on October 17, 2014, and his admission to having used cannabis frequently during the month of September.

¶ 12 At a January 13, 2015, pretrial hearing in advance of the termination hearing, respondent admitted to his unfitness in that he failed to maintain a reasonable degree of interest, concern or responsibility as to C.W.'s welfare pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2014)). The factual basis provided by the State was that respondent—who had initially admitted C.W.'s environment was injurious due to his unresolved substance-abuse issues in the petition for wardship—tested positive for cannabis on October 17, 2014, and admitted he used cannabis frequently in September 2014, in spite of his service plan to remain drug-free. The State also noted that respondent's therapist would testify, in accordance with her written report, that respondent showed little motivation to improve his life skills in order to prepare for C.W.'s return to his care. The parties agreed the only promise made in exchange for respondent's admission was that he would be allowed extra time to complete his services. Thereafter, the court accepted respondent's admission.

¶ 13 On March 26, 2015, a best-interest hearing was conducted. Lockwood—who had been in a residential treatment facility for 30 days and had been sober for 50 days—sought a

continuance to show further sobriety and stability. The trial court denied a continuance.

Lockwood then executed a direct surrender, consenting to C.W.'s adoption by her foster parents, and the hearing proceeded as to respondent only.

¶ 14 Donna DeMuth testified that she was the CASA assigned to this case and, since November 2013, had interacted with respondent every few weeks. She filed a best-interest report and agreed, if asked, she would testify consistently with what she wrote in her report. Her reported set forth the following. C.W. resided in a foster home where she was loved and appreciated. C.W. had developed a strong attachment to her foster family. When C.W. needs to be comforted, she seeks out her foster mother. C.W. appeared confident and comfortable in her foster home, which DeMuth attributed to the loving, routine, and stable environment provided by her foster parents. C.W. had been in her foster home since her birth 20 months ago, and it was the only home she had ever known. DeMuth had observed C.W. being affectionate toward her foster family and noted her foster family continually showed C.W. affection. In DeMuth's opinion, C.W.'s foster home was the least-disruptive placement for C.W., and she felt if C.W. were removed from her foster home, her development and trust of adults would be hindered. DeMuth noted C.W.'s young age precluded her from having strong ties to school, friends, and community, and that she attended day care while her foster parents were at work. According to DeMuth, C.W. was thriving in her foster home and remaining with them would provide her the permanency she needs. Further, C.W.'s foster parents had expressed a clear intent to adopt C.W.

¶ 15 DeMuth testified that she had concerns regarding C.W.'s return to respondent. Specifically, she did not feel that respondent had taken "personal responsibility to do the things that needed to be done during this 20-month process," relying instead on others around him. She also expressed concern with respondent's finances and did not feel he was prepared to handle the

responsibilities required of a single parent. According to Demuth, in 20 months, respondent had not "stepped up enough to even have overnight visits" with C.W., and she felt it was "time to move on." In DeMuth's opinion, termination of respondent's parental rights would be in C.W.'s best interest.

¶ 16 Kendra Helferich, a DCFS caseworker, testified she had been assigned to the case since August 2013. She filed a best-interest report and agreed, if asked, she would testify consistently with what she wrote. Helferich's report set forth the following. C.W. and her foster parents and foster siblings had a strong bond. C.W. was attached to her foster family and received much love and attention from them. C.W. also had a strong bond with respondent and respondent was very affectionate toward C.W. C.W. was very secure with her foster family, but she was also very secure with respondent. C.W. had resided in the same foster home since her birth but remained connected to respondent through visits twice per week. C.W. was comfortable in her foster family's home as well as respondent's home. Respondent had been involved in C.W.'s life since her birth and had shown her consistent affection. Helferich opined that C.W.'s foster home would be the least-disruptive placement for her since she has lived there since birth. C.W. attended day care five days per week, attended church regularly with her foster family, and had become attached to another foster family in her community as well. According to Helferich, C.W.'s foster parents were the only ones in a position to care for her full-time and they had demonstrated they could provide C.W. a safe, stable, and nurturing home. Helferich also believed that C.W. should remain connected to her biological parents and noted her foster parents have committed to ongoing in-person contact at least quarterly. C.W.'s foster family had expressed an interest in adopting her and she felt confident that C.W.'s foster family would love her and meet her needs.

¶ 17 Helferich's concerns regarding respondent included his procrastination regarding completing tasks and services in a timely manner and the fact he took himself off his psychotropic medication without consulting a doctor, and prior to that, he took his medication incorrectly and inconsistently. The evidence suggests respondent was taking the medication for the diagnosed conditions of anxiety and depression. Helferich also expressed concerns regarding respondent's ability to get C.W. to her doctor's and dentist's appointments, as well as to day care. Further, she was concerned that respondent would be unable to locate or pay for appropriate day care. Helferich voiced no concerns about C.W.'s well-being with her foster family. She stated that C.W. was extremely happy in her foster home and was the center of attention. C.W.'s foster parents had allowed respondent and Lockwood into their home and regularly sent them texts and pictures. Helferich opined it was in C.W.'s best interest to be adopted by her foster family, but to continue to have meaningful contact with respondent and Lockwood.

¶ 18 On cross-examination, Helferich testified respondent's drug use was another of her concerns. She acknowledged respondent was in substance-abuse treatment and that he tested negative in December 2014 and had not tested positive since. She also testified that while respondent's house had been messy or cluttered on some visits and his toilet had been broken for nine weeks, she had since received confirmation the toilet was fixed and agreed when respondent's house was cluttered, respondent gated off the living room so C.W. had a clear area to play. She testified respondent did a good job of supervising C.W. on visits and always had food for her and engaged her in age-appropriate activities. Helferich acknowledged respondent had been in mental-health counseling with Nancy Duffy, although she stated he had missed some sessions due to transportation or work-related issues, and he failed to timely reschedule those sessions. Helferich testified she spoke with respondent regarding the difficulty of finding

overnight day care for C.W. when he worked an overnight shift. Since then, respondent had accepted a position at Arby's working from 4 p.m. to the close of business.

¶ 19 Angela Hammond, C.W.'s foster mother, testified next. She and her husband, Thomas, had been married since 2011. C.W. had resided with them since her birth. All of their children accepted C.W. as their sibling. C.W. was also accepted by their extended family. Angela testified that their work schedules were flexible. She testified that she and Thomas were committed to adopting C.W. Angela did not feel respondent had the support or financial ability to raise C.W., but she stated they planned to allow respondent and Lockwood to continue being a part of C.W.'s life.

¶ 20 Thomas Hammond testified next and agreed with Angela's testimony. He stated he would like to adopt C.W. and shared Angela's commitment to allow respondent and Lockwood to remain in C.W.'s life.

¶ 21 Respondent testified on his own behalf. He admitted he was unfit in January 2015. He agreed that he started substance-abuse treatment in February 2015 and stated he had attended four or five sessions so far. He was to attend sessions every week and testified he missed one session in March because he was not feeling well. He recalled missing one session in February because he was called in to work. He last tested positive for cannabis in October 2014. He admitted to drinking alcohol on occasion, once or twice per month, but he had not had any alcohol since January 2014. He testified he had been in mental-health counseling with Nancy Duff and was to see her every other week, but he had missed some sessions due to training at work.

¶ 22 Respondent stated his broken toilet had been fixed and his house was much cleaner as he had put many things into storage. Respondent testified he had been prescribed

Prozac and initially took it as prescribed, but it made him feel moody so he stopped taking it. Since he stopped taking the medication, respondent testified he had not had any mood swings and he felt happier. Respondent planned to ask his doctor to adjust his medication at his next appointment. He stated that he was fully prepared to take custody of C.W. and that he could handle the responsibility of parenting her.

¶ 23 On cross-examination, respondent agreed that he was slow to engage in substance-abuse treatment but testified he was in the midst of changing jobs and was not sure if insurance would cover the treatment. He stated he "didn't want to waste [his] money if the case was going to end before the treatment ended." He agreed it took a long time to fix his toilet. According to respondent, this was because his brother, a plumber, was supposed to repair it but their schedules conflicted, and then his brother had back surgery. Once his brother had back surgery, respondent hired a professional plumber to fix the toilet.

¶ 24 Respondent testified he had worked at Westminster Village in the dietary department. He had medical benefits at Westminster Village. He left that job because he had reached a point where he could no longer be promoted. He thought he had a better chance of making more money at Arby's, where he could become an assistant or general manager. He had previously worked at Arby's for a five-year period. Arby's also offered medical benefits, but respondent testified they were not available until he had worked there for six months.

¶ 25 Zachary Starry testified next. He was a general manager for Arby's and had known respondent for approximately five years. According to Starry, Arby's offers employees medical benefits after three months of employment. Starry described respondent as a hard worker who had the potential to become a manager. If respondent was promoted, he would receive an increase in pay. Starry had observed respondent with C.W. over a three- to four-hour

period at a playground. Starry has a child that is about C.W.'s age. According to Starry, respondent was kind and gentle with C.W., acted appropriately, and looked out for her safety. Starry had no concerns about respondent's ability to parent C.W.

¶ 26 At the conclusion of the hearing, the trial court noted it was faced with a difficult decision because respondent was a "good person" who had many things going for him, including having a job and a home. The court expressed its appreciation that C.W.'s foster parents had committed to allowing C.W. to maintain contact with respondent, stating it "is probably in the best interest of [C.W.] that that occur under proper circumstances."

¶ 27 The court then reviewed the statutory best-interest factors as applied to the evidence. First, it pointed to respondent's procrastination in fixing his toilet and starting his required services and found that C.W.'s physical safety and welfare, including food, shelter, health, and clothing "at least slightly" favored termination of respondent's rights. The court concluded the development of C.W.'s identity and community ties were neutral factors. While the court found C.W. was loved, felt attached to, and had a sense of being valued by both her foster family and respondent, it concluded this factor weighed slightly in favor termination, since she had resided with her foster family her entire life. For the same reasons, the court found C.W.'s sense of security and familiarity weighed slightly in favor of termination, while the continuity-of-affection factor was evenly balanced. Regarding the least-disruptive placement alternative, the court noted C.W. had completely integrated into her foster home and bonded with her foster family, which weighed in favor of terminating respondent's parental rights. Next, the court stated, "the wishes and long-term goals is a non-factor. Community ties, church, school and friends, I think, given her age, is either a non-factor or just barely minimal." It further noted, "the uniqueness of every child *** is a non-factor" and "[t]he risk attendant of being in substitute

care is a non-factor in this case." Regarding the preferences of the persons available to care for C.W., the court cited Lockwood's direct surrender to the foster family as "probably favor[ing] termination slightly, but it's not a very important factor in the [c]ourt's mind." The court further noted that while there were some concerns regarding respondent's ability to provide permanency for C.W., there were no concerns with her foster family. The court pointed out that C.W. was thriving in her foster family's home, where she was provided with everything she needed. Thereafter, the court found the State had proven by a preponderance of the evidence that it was in C.W.'s best interest to terminate respondent's parental rights.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, respondent argues the trial court erred in finding it was in C.W.'s best interest to terminate his parental rights.

¶ 31 The involuntary termination of parental rights requires a two-step process. First, the court must find by clear and convincing evidence that a parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *In re J.L.*, 236 Ill. 2d 329, 337, 924 N.E.2d 961, 966 (2010). Second, the court must find by a preponderance of the evidence that the termination of parental rights is in the child's best interest. *Id.* at 337-38, 924 N.E.2d at 966; *In re M.R.*, 393 Ill. App. 3d 609, 617, 912 N.E.2d 337, 345 (2009). At the best-interest stage, "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 determining whether termination is in the child's best interest, the court must consider, in the context of a child's age and developmental needs, the following factors: (1) the child's physical

safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 291 (2009) (citing 705 ILCS 405/1-3(4.05) (West 2008)).

"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 Shru. R.*, 2014 IL App (4th) 140275, ¶ 24, 16 N.E.3d 930. "A decision is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291.

¶ 32 Here, respondent does not challenge the finding he was unfit. Accordingly, we are concerned only with whether the manifest weight of the evidence supports the trial court's determination that terminating respondent's parental rights was in C.W.'s best interest.

Respondent's contentions on appeal relate to the above statutory best-interest factors, which he argues were either erroneously considered or improperly weighed.

¶ 33 Respondent first takes issue with evidence presented at the best-interest hearing regarding his financial circumstances and argues the court should not have considered his limited income or wealth in its best-interest analysis. He points to witness testimony about the status of the bathroom repairs, needed car repairs, and his delay in seeking substance-abuse treatment. He then argues the trial court's comments regarding this evidence indicate it improperly based its best-interest decision on his financial circumstances. However, his argument is not supported by the record. Instead, it appears the court's limited comments regarding respondent's delay in making the bathroom repairs were made in assessing "the child's physical safety and welfare" factor. The court went on to note another example of respondent's "procrastination" was his "inability to get the services done," in reference to the delay in obtaining substance-abuse treatment. Thus, viewed in their proper context, the court's comments do not reflect it based its best-interest decision on respondent's financial circumstances.

¶ 34 Next, respondent argues the trial court erred by considering the foster family's willingness to allow C.W. and respondent to maintain a relationship as a factor in favor of terminating his parental rights. The record indicates the court prefaced its best-interest decision by noting its appreciation that the foster family was committed to allowing respondent and C.W. to maintain a relationship and opined that such an arrangement was "probably in the best interest of [C.W.]." It did not identify the foster parents' proposal as bearing on any particular statutory factor and it does not appear the court actually included it as part of its best-interest analysis. However, even if it had considered the foster parents' invitation in its best-interest analysis, it would not have been error. As noted by the State, one of the factors the court was required to consider in determining C.W.'s best interest was her need for stability and continuity of her relationships. Accordingly, whether C.W.'s relationship with respondent would be allowed to

continue following termination of his parental rights was an appropriate consideration. See *In re Angela D.*, 2012 IL App (1st) 112887, ¶ 41, 972 N.E.2d 215 (holding that although there is no guarantee of future contact with the biological family once parental rights are terminated, evidence that foster parents are committed to acting in the child's best interest and would allow the child continued contact with her biological family is relevant when making a best-interest determination).

¶ 35 Respondent next takes issue with the trial court's consideration of Lockwood's surrender as a factor weighing in favor of termination of his parental rights. Specifically, the court, when considering "the preferences of the persons available to care for [C.W.]," cited Lockwood's direct surrender to the foster family as "probably favor[ing] termination slightly, but it's not a very important factor in the [c]ourt's mind." Respondent argues that at the time of the best-interest hearing, Lockwood had already given up her parental rights and was no longer a person available to care for C.W. Respondent is correct that Lockwood's direct surrender of C.W. meant she was no longer a person available to care for C.W., and thus, her preferences would be irrelevant in determining whether respondent's parental rights should be terminated. However, it is clear the trial court gave this fact very little weight, indicating, "it's not a very important factor in the [c]ourt's mind." To the extent the court considered Lockwood's surrender as slightly favoring termination of respondent's parental rights, we find, based on the totality of the evidence, it had little if any effect on the court's decision.

¶ 36 Last, respondent points to evidence that he did well with C.W. during visits, brought her food, engaged her in age-appropriate activities, took her out into the community, and showed her affection as evidence that he met minimum parenting standards, and that the best-interest factor regarding C.W.'s sense of attachments should weigh against termination of his

parental rights. While the record here indicates respondent loves C.W., and the two of them share a bond, it also shows C.W. is loved, attached to, and bonded with her foster family. The court carefully considered C.W.'s attachments to respondent and her foster family and determined this factor weighed "slightly" in favor of termination. Given the discretionary standard we must apply, we cannot say the opposite conclusion is clearly apparent.

¶ 37 Our review of the record reveals that C.W., who was 20 months old at the time of the best-interest hearing, was removed from her parents' care at birth and has resided in the same foster home since. The evidence reflects C.W. is thriving in the loving, routine, and stable environment provided by her foster family, with whom she has bonded, and her foster parents are willing to provide C.W. permanency through adoption. Although C.W. also enjoys a good relationship with respondent, there are concerns regarding his ability to parent C.W. which are not present with the foster parents. Based on this evidence, the trial court determined that termination of respondent's parental rights was in C.W.'s best interest. The facts do not clearly demonstrate that the court should have reached an opposite result and, thus, its best-interest finding was not against the manifest weight of the evidence.

¶ 38 III. CONCLUSION

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

¶ 40 Affirmed.