2015 IL App (4th) 150497-U

NOS. 4-15-0497, 4-15-0498 cons

FILED
November 6, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: C.B., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Adams County
v.	)	No. 14JA2
JAMES WALKER, (No. 4-15-0497)	)	
Respondent-Appellant.	)	
	)	
In re: T.B., a Minor,	)	No. 14JA3
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v.	)	Honorable
JAMES WALKER, (No. 4-14-0498)	)	John C. Wooleyhan,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Pope and Justice Knecht concurred in the judgment.

ORDER

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

¶ 2 In May 2014, the State filed separate petitions to terminate the parental rights of respondent, James Walker, as to (1) C.B., his son (born September 25, 2008) (Adams County case No. 14-JA-2), and (2) T.B., his daughter (born September 18, 2009) (Adams County case No. 14-JA-3). Following a June 2015 fitness hearing, the trial court found respondent unfit. At a best-interest hearing held immediately thereafter, the court terminated respondent's parental rights.

¶ 3 Respondent appeals, arguing that the trial court's fitness and best-interest determi-

nations were against the manifest weight of the evidence. Respondent also argues that he was deprived of his constitutional right to the custody of C.B. and T.B. without due process of law. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Events Preceding the State's Motion To Terminate Parental Rights

¶ 6 In January 2014, the State filed a petition for adjudication of wardship, alleging that C.B. and T.B. were abused and neglected minors under section 2-3 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3 (West 2014)). Specifically, the State alleged that the biological mother, Kelly Bales, inadequately supervised her children, A.C. (who at that time was seven years old), C.B., and T.B., by leaving them unattended or in the company of "others" for extended periods. The State also alleged that Bales struck A.C. because he would not fight another child. The State's wardship petition listed respondent as the biological father of C.B. and T.B., noting that—at that time—he was incarcerated at the Illinois River Correctional Center. (This appeal does not pertain to A.C.)

¶ 7 In February 2014, the State filed a motion for shelter care, alleging that (1) Bales failed to cooperate with the Department of Children and Family Services' (DCFS') attempts to open an intact case, (2) DCFS could not locate Bales, and (3) C.B. and T.B. were being cared for by Nicole Smith, Bales' friend. At a shelter-care hearing held shortly thereafter, the trial court granted the State's motion, finding that an immediate and urgent necessity required the placement of C.B. and T.B. into shelter care.

¶ 8 Following an April 2014 adjudicatory hearing, the trial court determined that C.B. and T.B. were abused and neglected minors based on evidence that showed Bales (1) had been indicated by DCFS on three previous occasions for lack of supervision of A.C., C.B., and T.B.;

(2) left her children in the care of others without providing a care plan, (3) failed to provide DCFS with her contact information, and (4) was convicted of domestic battery based on an incident in which she struck A.C. Following a May 2014 dispositional hearing, the court made C.B. and T.B. wards of the court and maintained DCFS as their guardian.

¶ 9 B. The State's Petition To Terminate Respondent's Parental Rights

¶ 10 In May 2014, the State filed a petition to terminate respondent's parental rights, alleging that he was unfit within the meaning of section 1(D) of the Adoption Act in that he failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of C.B. and T.B. (750 ILCS 50/1(D)(b) (West 2014)).

¶ 11 1. *The June 2015 Fitness Hearing*

¶ 12 a. The State's Evidence

¶ 13 Gina Aschemann, a child-welfare specialist with Chaddock (a DCFS contractor) testified that in February 2014, she began managing the children's case. At that time, respondent was incarcerated, but he had completed an integrated assessment over the phone. Aschemann explained that the purpose of an integrated assessment is to recommend appropriate DCFS services based on (1) a parent's specific social history and (2) the circumstances that caused DCFS' involvement.

¶ 14 In her March 2014 written integrated-assessment report—which the trial court took judicial notice of—Aschemann documented that respondent, who was then 32 years old, had fathered eight different children with six different women. The ages of those children, which included C.B. and T.B., ranged from 5 to 16 years old. Aschemann noted that respondent (1) did not graduate from high school; (2) had been employed in a variety of short-term jobs involving food service, farming, or snow removal; and (3) admitted a "history" of cannabis use,

which caused Aschemann to question respondent's parenting ability. Aschemann also noted that respondent's criminal history "involve[d] charges of aggravated [driving under the influence] and battery." Respondent was then serving a prison sentence for aggravated battery.

¶ 15 Based on her discussion with respondent, Aschemann surmised that although the extent of respondent's relationship with all his children remained "unclear," his parenting of C.B. and T.B. was minimal. Aschemann recommended that respondent (1) participate in an assessment to determine his ability to recognize and satisfy the developmental and emotional needs of C.B. and T.B., (2) complete a substance-abuse assessment, (3) comply with substance-abuse-treatment recommendations, (4) attend parenting classes, (5) participate in counseling designed to address respondent's "feelings and lack of positive *** parenting experiences [to] include age appropriate non-physical forms of discipline," and (6) receive treatment to address exhibited "signs of detachment and avoidance in relationships."

¶ 16 Aschemann noted that respondent's initial March 2014 client-service plan, which she authored, did not recommend any tasks because he would not have been able to complete them due to his incarceration.

¶ 17 Aschemann testified that respondent's August 2014 client-service plan recommended the following task:

> "That [respondent] agrees to complete treatment recommended through the integrated assessment of the correctional facility, which could include, but is not limited to, parenting, education, substance abuse, and mental-health services."

Aschemann explained that DCFS and Chaddock customarily used the aforementioned general language in client-service plans for incarcerated parents, which she referred to as an "umbrella

task" called "cooperation." Despite providing respondent her phone number and address during the integrated assessment, Aschemann noted that throughout his incarceration—which lasted until June 1, 2015—and thereafter, respondent did not contact her. (The instant fitness hearing was conducted on June 8, 2015.) In the summer of 2014, Aschemann contacted the prison and was informed that respondent (1) "had participated in a parenting class" and (2) attended a class concerning parenting for incarcerated fathers. Aschemann acknowledged that respondent (1) was provided his client-service plans through the mail, (2) did not provide any documentation showing that he completed any pertinent services, (3) did not provide any financial support for T.B., and (4) did not forward any correspondences for T.B.

¶ 18 b. Respondent's Evidence

¶ 19 Respondent testified that he did not receive any client-service plans, but he had sent Aschemann two letters, two Christmas cards, and "Sesame Street" digital video discs (DVDs) for C.B. and T.B. Respondent mailed the DVDs during the summer of 2014 and the letters in November 2014 and February 2015, respectively. During his incarceration, defendant stated that he (1) completed a 90-day anger-management class that met three days a week; (2) completed a two-month parenting class; and (3) attended adult-education classes from June 2014 to May 2015, which he characterized as "just a class to take school." During defendant's integrated assessment, which he estimated occurred in March 2014, he asked Aschemann about visitation with C.B and T.B. Respondent stated that Aschemann responded that she did not "think it was a good idea, but she'll see."

¶ 20 After his integrated assessment, respondent received Aschemann's address but could not recall that Aschemann advised him about the importance of maintaining contact. Respondent acknowledged that during the integrated assessment, Aschemann recommended certain

services defendant should complete, but he did not know why he did not provide proof, in the form of certifications, showing that he completed certain pertinent services. Respondent acknowledged that he last saw C.B. and T.B in June 2013.

¶ 21 c. The Trial Court's Fitness Determination

¶ 22 Following the presentation of argument, the trial court found respondent father unfit in that he failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of C.B. and T.B. Specifically, the court noted the following deficiencies:

> "If everything the [respondent] has testified to here today would be taken as true, the bottom line would be that he still has not done those things which would show a reasonable degree of interest, concern, or responsibility as to the minors[.]
>
> The statute contemplates [that] to satisfy that requirement, a person would need to do specific, consistent things to show a concern for the minors, to support them financially and emotionally, and in every other way that a child needs to be supported.
>
> That has not happened here."

¶ 23 2. *The Best-Interest Hearing*

¶ 24 At a best-interest hearing conducted immediately thereafter, the trial court considered the following evidence provided by the State.

¶ 25 Aschemann testified that in March 2014, A.C., C.B., and T.B. were placed with Smith, Bales' friend, where they remained until January 2015. C.B. and T.B. were then placed with Aleshia and Kody Gerding, a different foster-care family. Aschemann explained that in April 2015, Brian and Ashley Byquist, the foster family that was caring for A.C., inquired about

C.B. and T.B. The Byquists knew the Gerdings, and, together, the two families coordinated extra sibling visits on their own initiative. After several weeks of conversation and consideration, the Byquists informed Aschemann that they were "steadfast in their commitment to pursue keeping the family together." In May 2015, C.B. and T.B. were reunited with A.C. In the short time that Aschemann had observed all three children in the Byquists' home, Aschemann opined that "the Byquists are very equipped to deal with [C.B. and T.B.] and [A.C.] seems very happy to have his sisters there." The Byquists also pledged their commitment to adopting the children. (The record reveals that Bales gave birth to a fourth child that the Byquists were also fostering.) Aschemann also noted that along with "the parents of Ashlee and Brian," Brian is employed by a local church, which affords them "a humongous extended family *** that are very involved with the children." Aschemann recounted that church members had brought meals to welcome C.B. and T.B. into their congregation.

¶ 26 Respondent did not provide any evidence.

¶ 27 Following argument, the trial court found that it was in the best interest of C.B. and T.B. that respondent's parental rights be terminated.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 A. The Trial Court's Fitness Determination

¶ 31 1. *The Applicable Statute, Reasonable Progress, and the Standard of Review*

¶ 32 Section 1(D) of the Adoption Act provides, in pertinent part, as follows:

> "D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are

> any one or more of the following, except that a person shall not be considered an unfit person for the sole reason that the person has relinquished a child in accordance with the Abandoned Newborn Infant Protection Act:
>
> * * *
>
> (b) Failure to maintain a reasonable degree of interest, concern[,] or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2014).

¶ 33 A parent may be found unfit for failing to maintain interest, concern, or responsibility as to their children; proof of all three is not required. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 124-25 (2004). "Noncompliance with an imposed service plan, a continued addiction to drugs, a repeated failure to obtain treatment for an addiction, and infrequent or irregular visitation with the child have all been held to be sufficient evidence warranting a finding of unfitness under subsection (b)." *Id.* at 259, 810 N.E.2d at 125. " 'If personal visits were somehow impractical, courts consider whether a reasonable degree of concern was demonstrated through letters, telephone calls, and gifts to the child, taking into account the frequency and nature of those contacts.' " *In re Konstantinos H.*, 387 Ill. App. 3d 192, 204, 899 N.E.2d 549, 559 (2008) (quoting *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064, 859 N.E.2d 123, 135 (2006)).

¶ 34 "The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not reverse a trial court's fitness finding unless it is contrary to the manifest weight of the evidence, meaning that the opposite conclusion is

clearly evident from a review of the record. *Id*.

¶ 35 2. *Respondent's Fitness Claim*

¶ 36 Respondent argues that the trial court's fitness determination was against the manifest weight of the evidence. We disagree.

¶ 37 In this case, the evidence presented showed that during the 17 months that passed between the State's January 2014 petition for adjudication of wardship and the June 2015 fitness hearing, respondent exerted minimal effort toward being a parent to C.B. and T.B., a pattern which Aschemann documented in her March 2014 written integrated-assessment report. Specifically, respondent (1) inquired about visitation with C.B. and T.B. once during his initial February 2014 contact with Aschemann; (2) never contacted Aschemann during the 16 months that followed his integrated assessment; (3) could not explain why he did not send certifications to Aschemann documenting his completed services; (4) sent Aschemann two cards, two letters, and DVDs for T.B. (that Aschemann testified she never received); and (5) after his initial February 2014 integrated assessment, did not, thereafter, contact Aschemann or inquire about visitation with C.B. and T.B., which included the week that followed his June 1, 2015, prison release.

¶ 38 In considering the aforementioned evidence, the trial court found that even if respondent's assertions regarding his efforts at maintaining a parent-child relationship with C.B. and T.B. were true, those efforts—within the period in which they occurred—failed to demonstrate a reasonable degree of interest, concern, or responsibility as to the welfare of C.B. and T.B. Given our standard of review, we conclude that the court's fitness finding was not against the manifest weight of the evidence.

¶ 39 B. The Trial Court's Best-Interest Determination

¶ 40 1. *Standard of Review*

¶ 41 At the best-interest stage of parental-termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 42 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 43 2. *The Trial Court's Best-Interest Finding in This Case*

¶ 44 In this case, the evidence presented at the June 2015 best-interest hearing showed that although C.B. and T.B. had been placed with the Byquists for only a month, they were in a loving family environment where they were reunited with their sibling, A.C. Further, the Byquists (1) pledged to provide C.B. and T.B., as well as their two other siblings, stability and permanency and (2) demonstrated that commitment through their actions to reunite C.B. and T.B. with their two additional siblings. In addition, Aschemann expressed her confidence in the foster parents' ability and commitment to ensuring the children's best interest. Respondent, on the other hand, having just been released from prison, was not reasonably capable of caring for T.B. in the foreseeable future.

¶ 45 Based upon the evidence presented, we agree with the trial court's finding that the evidence favored termination of respondent's parental rights.

¶ 46 C. Respondent's Constitutional Claim

¶ 47 Respondent also argues that he was deprived of his constitutional right to the custody of C.B. and T.B. without due process of law. Specifically, respondent bases his constitutional claim on his allegation that DCFS refused to permit him visitation with C.B. and T.B. during his prison incarceration. In support, respondent relies on *In re O.S.*, 364 Ill. App. 3d 628, 848 N.E.2d 130 (2006). Respondent's reliance, however, is misplaced.

¶ 48 "Parents have a constitutional right to the custody of their children with all the rights and responsibilities that custody entails," but this fundamental right "is not absolute." *Id.* at 637, 848 N.E.2d at 137. Deprivation of a parent's constitutional right to his or her children must comply with due process. *Id.* "Due process in this instance is achieved by compliance with the provisions of the Juvenile Court Act and fundamental fairness." *Id.* at 638, 848 N.E.2d at 138.

¶ 49 In *O.S.*, the appellate court considered the propriety of the trial court's best-interest determination under the following factual scenario:

> "[A]fter the [the respondent's] release [from prison] and after not being allowed any physical contact with [O.S.] for the full two years of her incarceration, visitation with O.S. was resumed by court order. However, [the respondent] and son could only meet at the [Lutheran Social Services] office and O.S. was not allowed to know that [respondent] was his mother. [The respondent] was not permitted to refer to herself as [O.S.'s] mother and he was not allowed to call [the respondent] anything but 'Jenny.' Only two visits per month were authorized rather than once or twice a week as the psychologist had recommended, although the twice weekly

phone calls with 'Jenny' could continue.

> O.S. had regular visits with his sisters and, although he knew that [the] respondent was their mother and they were his sisters, they were forbidden to let O.S. know that [the respondent] was his mother as well. Indeed, the trial court ordered [the] respondent, under threat of termination of family visits, to secure her daughters' compliance with the deception that she was not their brother's mother. Despite her compelled concealment of their mother-child relationship, [the] respondent never missed a scheduled visit with O.S.
>
> Not surprisingly, the bonding assessment showed that O.S.'s primary attachment was to his foster parents and his relationship to the [respondent] was akin to that of a child to an aunt." (Emphases omitted.) *Id*. at 632-33, 848 N.E.2d at 133-34.

¶ 50 The evidence also showed that while the respondent was incarcerated, she earned certificates of completion in classes on (1) anger management, (2) domestic violence, (3) substance-abuse education and treatment, (4) advanced parenting, (5) recovering from addictive thinking, (6) codependency, (7) lifestyle redirection, (8) inner-child healing, (9) the [general education development] constitution test, and (10) acceptance and endurance training. *Id*. at 636, 848 N.E.2d at 136. In addition, after her release from prison, the respondent had maintained her sobriety, received positive counseling reports, maintained gainful employment, had her own residence, and routinely attended church. *Id*.

¶ 51 In reversing the trial court's order terminating the respondent's parental rights, the

appellate court took issue with the court-sanctioned deception, as follows:

> "In the present case, the impact of the deception on the best interest determination was two-fold: (1) it allowed the potential adoptive parents additional time, *unimpeded by maternal claims of respondent*, to further cement their ties with O.S. and (2) it denied [the] respondent the right (and reasonable opportunity) to pursue efforts to restore her parental bond with her son and to achieve the family unification that she was making substantial efforts and progress to regain. To allow the best interest finding to stand in these circumstances rewards the deception, is unfair and unjust, and violates both the statutory scheme [of the Juvenile Court Act] and public policy." (Emphasis in original.) *Id*. at 640-41, 848 N.E.2d at 140.

¶ 52 We reject respondent's contention that the aforementioned factual scenario in *O.S.* is analogous to the facts presented in the instant case. Simply put, for the reasons already mentioned, respondent's efforts at maintaining a reasonable degree of interest, concern, or responsibility for the welfare of C.B. and T.B. were practically nonexistent. Other than one initial request in January 2014 regarding visitation, which we note Aschemann did not directly refuse, respondent made no further inquires about visitation with C.B. and T.B., which included the week after his release from prison. More important, our overall review of the procedures employed in this case reveal that respondent received all the due process to which he was entitled under the Juvenile Court and Adoption Acts. Accordingly, we reject respondent's claim that he was deprived of his constitutional right to the custody of C.B. and T.B. without due process of law.

¶ 53 III. CONCLUSION

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

¶ 55 Affirmed.