2015 IL App (4th) 150558-U

NOS. 4-15-0558, 4-15-0559 cons.

FILED
November 12, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Brax. D. and Bray. D., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v. (No. 4-15-0558)	)	No. 14JA32
KENLEY JONES,	)	
Respondent-Appellant.	)	
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In re: Brax. D. and Bray. D., Minors,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-15-0559)	)	Honorable
SHAYNE DELONG,	)	Brett N. Olmstead,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Pope and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's finding it was in the minor children's best interest to have the parental rights of both parents terminated was not against the manifest weight of the evidence.

¶ 2 In January 2015, the State filed a petition for the termination of the parental rights of respondents, Kenley Kenley and Shayne Delong, as to their minor children, Brax. D. (born in 2011) and Bray. D. (born in 2010). In April 2015, the Champaign County circuit court found both respondents unfit. After a July 2015 hearing, the court concluded it was in the minor children's best interest to terminate the parental rights of both respondents.

¶ 3 Both Kenley and Shayne appealed the circuit court's judgment, and their appeals

have been consolidated. On appeal, both respondents assert the circuit court erred by finding it was in the minor children's best interest to terminate their parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In May 2014, the State filed a petition for adjudication of wardship, which alleged Brax. D. and Bray. D. were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2014)) in that their environment was injurious to their welfare when they resided with respondents because that environment exposed them to substance abuse. At a July 10, 2014, adjudicatory hearing, respondents stipulated the minor children were neglected as alleged in the petition. The circuit court accepted the stipulation. After an August 2014 dispositional hearing, the court found respondents were unfit and unable to care for the minor children. The court made the minor children wards of the court and appointed the Department of Children and Family Services (DCFS) as their guardian. On August 22, 2014, the court entered a written dispositional order.

¶ 6 On January 6, 2015, the State filed an expedited motion to terminate both respondents' parental rights as to their minor children. The motion asserted respondents were unfit because they failed to maintain a reasonable degree of interest, concern, or responsibility for the minor children's welfare (750 ILCS 50/1(D)(b) (West 2014)). On April 8, 2015, the circuit court commenced the fitness hearing. Shayne was present at the hearing, but Kenley was not. The State presented the testimony of the three caseworkers in this case, and Shayne testified on his own behalf. On April 20, 2015, the circuit court entered a written order, finding both respondents unfit.

¶ 7 On July 6, 2015, the circuit court held the best-interest hearing, at which both respondents appeared. The State presented the best-interest report. That report indicated that,

according to DCFS records, Yvonne Hyre, the minor children's "maternal step-grandmother," had temporary guardianship of Brax. D., which had been scheduled to lapse in July 2014. Respondents had child-protective-services investigations pending in both Illinois and Indiana and histories of substance abuse. In April 2014, Hyre allowed Brax. D. to visit Kenley, and Kenley wanted to keep him. Hyre contacted Indiana Child Protective Services, which determined Kenley' home was not a safe placement for Brax. D. Brax. D. returned to Hyre, who agreed to allow him to stay with Shayne's sister, Shirlea Delong. The reported indicated respondents had allegedly harassed Hyre because they wanted Brax. D to live with Shirlea. After a week in Shirlea's care, DCFS was contacted when Shirlea left Brax. D. in the care of an 11-year-old girl while Shirlea drove under the influence to take her boyfriend to a hospital. Bray. D. had been living with another relative.

¶ 8 The best-interest report indicated Kenley had not been involved in the case since its opening. The caseworkers had made diligent efforts in trying to contact her. A caseworker did learn Kenley was incarcerated in the Montgomery County jail for a period but was released in May 2015. Kenley had not attempted to contact any of the caseworkers in this case.

¶ 9 As to Shayne, the report noted he was uncooperative at the beginning of the case. Shayne indicated that was due to his incarceration. In March 2015, he contacted the caseworker and expressed his desire to engage in services since he was no longer in jail. Shayne also told the caseworker he was involved with Choices Counseling Center (Center). In April 2015, Shayne completed the integrated assessment and a substance-abuse assessment. As a result of the substance-abuse assessment, he was attending weekly counseling. The caseworker did not hear from Shayne from April 17, 2015, to June 24, 2015. In June 2015, Shayne reported he had completed counseling and just had to complete " 'Healthy Fathers.' " The caseworker noted

Shayne had not asked about the well-being of his children in over 1 1/2 months.

¶ 10 Regarding the minor children, DCFS placed them together with a paternal aunt at the beginning of the case. Both minor children have bonded with their aunt and enjoy living together. The caseworker stated both minor children have adjusted very well to their placement. The aunt was "more than willing to provide permanency" for the minor children. Both minor children are current on their immunizations, which they were not before being placed with the aunt. The report stated the aunt has been a great caregiver and gone above and beyond in making sure the minor children's needs are met. Both minor children refer to the aunt as "mom," and Bray. D., the older child, had expressed a desire to continue to reside with the aunt. Additionally, Bray. D. was in weekly counseling sessions and seeing a behavior-modification therapist to address his defiant behavior. He had made positive changes in his behavior. Last, Bray. D. had not lived with respondents since October 2012.

¶ 11 Without objection, Kenley' counsel noted that, once Kenley was released from the Montgomery County jail, she was incarcerated in the Fountain County jail. She was released from the Fountain County jail the morning of the best-interest hearing and came straight to the hearing. It was Kenley' intention to go into in-house treatment for drug problems through her probation as soon as everything was straightened out.

¶ 12 Shayne submitted three documents. One was a certificate of participation and completion in substance-abuse treatment at the Center. The second one was a certificate of participation and completion in the "True Thoughts Program" at the Center. The last document was a letter from Robert Chrisman of the Center. Chrisman noted Shayne had completed the intensive outpatient program on June 30, 2015. During the program, Shayne attended all of his scheduled group sessions and participated very well by contributing freely in discussions.

Chrisman stated Shayne had made significant changes in his lifestyle, belief system, peer associations, employment, and family obligations. Shayne's team at the Center opined he had made great steps toward a "responsible sober lifestyle." The letter also noted Shayne was enrolled in the "Healthy Fathers Group."

¶ 13 After hearing the parties' evidence and arguments, the circuit court found it was in the minor children's best interest to terminate the parental rights of both respondents. On July 7, 2015, the court entered a written order terminating respondents' parental rights to Brax. D. and Bray. D. On July 10, 2015, Kenley and Shayne both filed timely notices 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 of both appeals pursuant to Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010).

¶ 14 II. ANALYSIS

¶ 15 On appeal, both respondents only challenge the circuit court's best-interest determination.

¶ 16 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2014)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the circuit court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the children's best interest that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 17 Since the circuit court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). Further, in matters involving minors, the circuit court receives broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a reviewing court will not disturb a circuit court's best-interest determination unless it is contrary to the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). A circuit 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).

¶ 18 During the best-interest hearing, the circuit 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 2014)) 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 2014).

¶ 19 We note a parent's unfitness to have custody of his or her children does not automatically result in the termination of the parent's legal relationship with the children. *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). As stated, the State must prove by a preponderance of the evidence the termination of the respondents' parental rights is in the minor children's best interest. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "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).

¶ 20 At the best-interest hearing, the minor children, who were three and four years old, had lived for more than a year with their aunt. Before being placed with their aunt, they had lived with other relatives, not respondents, and had not lived with each other. The evidence showed the minor children's ties and attachments are to their aunt, whom they refer to has "mom." The aunt had provided a home for both minor children, which facilitated their sibling relationship. She loved the minor children and wanted to provide a permanent home for them. The record suggests respondents were not very involved in their minor children's lives as the minor children were not even living with them before placement with the aunt. Moreover, Kenley had just gotten out of jail and had yet to begin the process of straightening her life out. Shayne had made steps in straightening out his life but had yet to show he could provide a long-term, stable home for the minor children. In this case, the section 1-3(4.05) factors favor the termination of the parental rights of both respondents.

¶ 21 Accordingly, we find the circuit court's conclusion it was in the minor children's best interest to terminate respondents' parental rights was not against the manifest weight of the

evidence.

¶ 22 III. CONCLUSION

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

¶ 24 Affirmed.