2015 IL App (4th) 150600-U

NO. 4-15-0600

FILED
December 18, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: D.W. and J.W., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	No. 13JA20
BARBARA HARRIS,	)	
Respondent-Appellant.	)	Honorable
	)	Kevin P. Fitzgerald,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

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

¶ 2 In March 2015, the State filed a petition to terminate the parental rights of respondent, Barbara Harris, as to her sons, D.W. (born May 28, 2006) and J.W. (born March 12, 2005). Following a May 2015 fitness hearing, the trial court found respondent unfit. At a best-interest hearing conducted shortly thereafter, the court terminated respondent's parental rights.

¶ 3 Respondent appeals, arguing that the trial court's best-interest determination was against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

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

¶ 6 On March 14, 2013, the State filed a petition for adjudication of wardship, alleg-

ing that D.W. and J.W. were neglected minors under section 2-3(1)(d) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(d) (West 2012)). At a shelter-care hearing held the next day, respondent stipulated that an immediate and urgent necessity required the placement of D.W. and J.W. into shelter care. The court subsequently entered a stipulated temporary custody order, granting the Department of Children and Family Services (DCFS) temporary custody of D.W. and J.W.

¶ 7 Following a May 2013 adjudicatory hearing, the trial court found that D.W. and J.W. were neglected as defined by the Juvenile Court Act based on respondent's admission that she had left them unsupervised on more than one occasion. In addition, respondent did not challenge the account provided by D.W. and J.W. that she regularly left them unsupervised from (1) 3 a.m. until they went to school and (2) 3 to 6 p.m. after they returned from school. Following a July 2013 dispositional hearing, the court made D.W. and J.W. wards of the court and maintained DCFS as their guardian.

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

¶ 9 In March 2015, the State filed a petition to terminate respondent's parental rights, alleging that she was unfit within the meaning of section 1(D) of the Adoption Act. Specifically, the State alleged that respondent failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the welfare of D.W. and J.W. (750 ILCS 50/1(D)(b) (West 2014)) and (2) protect D.W. and J.W. from conditions within their environment that were injurious to their welfare (750 ILCS 50/1(D)(g) (West 2014)).

¶ 10 1. *The May 2015 Fitness Hearing*

¶ 11 Because respondent does not challenge the trial court's fitness finding, we provide only a brief summary of the evidence presented at respondent's fitness hearing.

¶ 12 Testimony provided by (1) a DCFS child-protection specialist, (2) police officers, (3) a family counselor, and (4) DCFS caseworkers showed that DCFS first had contact with respondent in April 2009. DCFS received a hotline call from a local hospital in which medical personnel observed respondent hitting D.W., who was then two years old, because he could not put on his shoes. When a DCFS child-protection specialist arrived at the hospital to investigate, she saw respondent hit D.W.'s head with her elbow because D.W. had yet to put on his shoes. When the specialist identified herself, respondent became rude and argumentative. Ultimately, the specialist issued a formal written report—which the trial court admitted into evidence—in which the specialist made an "indicated" finding that sufficient evidence existed to believe that abuse had occurred.

¶ 13 DCFS again had contact with respondent in the instant case. Specifically, in response to a March 2013 hotline call, the specialist determined that respondent left her home between 3 to 5 a.m. each morning, leaving D.W. and J.W. unsupervised. Respondent would later call to inform J.W. when he and D.W. should leave for school. The specialist noted that D.W. and J.W. were responsible for preparing themselves to attend school, which included taking specialized medication for their respective attention deficit hyperactivity disorders (ADHD). Upon their return from school, respondent would arrive home at about 6 p.m. but, sometimes, she did not do so until 9 p.m. Respondent denied that D.W. and J.W. were unsupervised because when she left on the morning at issue, a babysitter was present. The specialist spoke to the identified babysitter, who confirmed that although she had supervised D.W. and J.W. in the past, she was not present on the day in question because respondent had earlier terminated her employment.

¶ 14 In June 2014—during the instant case—respondent regained custody of D.W. and J.W. subject to DCFS' monitoring. In October 2014, DCFS received a hotline call regarding in-

juries D.W. sustained to his buttock and leg. D.W. told police that respondent struck him with a belt and the associated buckle because he had received low grades on his school report card. Although respondent denied the injuries occurred, photographic evidence—which the trial court admitted into evidence—revealed the extent of the injuries D.W. sustained.

¶ 15 James Leeds, respondent's caseworker noted that respondent had successfully completed two parenting classes but was not able to parent D.W. and J.W. without using corporal punishment. Leeds added that respondent's remaining task concerned attending individual counseling sessions, which she failed to accomplish. Respondent's counselor, who had been counseling respondent prior to 2010, noted that throughout his interaction with respondent, he never had more than a "guarded" outlook as to her ability to parent D.W. and J.W. The counselor explained that respondent was not "accountable" for her actions, which—in his experience—presented a greater risk for repeating the offending behavior.

¶ 16 Based on the aforementioned circumstances, the trial court found respondent unfit in that she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the welfare of D.W. and J.W. and (2) protect D.W. and J.W. from conditions within their environment that were injurious to their welfare.

¶ 17 2. *The Best-Interest Hearing*

¶ 18 a. The State's Evidence

¶ 19 Linda Castellano, the 47-year-old paternal grandmother of D.W. and J.W., testified that she was married to her 43-year-old husband, David, for 23 years. They lived in a three-bedroom home with their 17-year-old son and 15-year-old daughter. Linda and David were gainfully employed and did not have any health concerns. In October 2014—after D.W. and J.W. were removed from respondent's care for the third time—DCFS placed D.W. and J.W. with

the Castellanos. D.W. and J.W. shared a bedroom that the Castellanos' son vacated so that he could relocate to a converted first floor study.

¶ 20 Initially, when D.W. and J.W. were placed with the Castellanos, J.W. expressed trepidation that over time "people get mean." In the approximately seven months since that placement, J.W. informed Linda that he "would be happy to stay with the [Castellanos]." Just prior to the fitness hearing, J.W. expressed his desire to visit respondent for the night and then come back to the Castellanos' home. Throughout this time, D.W. has maintained his stance that he was going to stay with the Castellanos "forever."

¶ 21 Linda noted that since their placement, D.W. and J.W. had (1) a structured daily routine; (2) improved their school grades; (3) strengthened extended family relationships; (4) received their ADHD medication on a regular schedule; and (5) been seeing a counselor twice a week, which Linda opined was a necessary outlet. Linda characterized the relationship between her children, D.W., and J.W. as loving and playful and noted that her older children were positive role models for D.W. and J.W. to emulate. Linda pledged her family's commitment to adopt D.W. and J.W. if respondent's parental rights were terminated.

¶ 22 Linda noted that even if her family adopted D.W. and J.W., she intended to include respondent in family functions and holidays celebrations. Linda explained that she had a good relationship with respondent and thought it was important that respondent maintain contact with D.W. and J.W. Linda added that she believed that respondent "did the best that she could do" under the circumstances.

¶ 23 Leeds testified that at the time of the best-interest hearing, D.W. was 10 years old and J.W. was almost 9 years old. During their lifetime, D.W. and J.W. had spent approximately 56 months in some type of foster care. Leeds did not dispute Linda's previous testimony regard-

ing the circumstances surrounding the current foster-care placement of D.W. and J.W. and opined that it was in their best interest that respondent's parental rights be terminated.

¶ 24 Leeds acknowledged that D.W. and J.W. love respondent and, in turn, respondent shows them genuine love and affection. Leeds noted, however, that despite this loving relationship, returning D.W. and J.W. back to respondent's care would be disruptive because (1) D.W. and J.W. had been removed from respondent's care on three previous occasions, (2) the length of time D.W. and J.W. had spent away from respondent based on those removals, and (3) respondent had unresolved parenting issues. Leeds confirmed that Linda regularly provided updates of the well-being of D.W. and J.W. and that the children were doing well in school. Leeds estimated that if respondent's parental rights were not terminated, it would take, at a minimum, a year before respondent could be found fit to parent D.W. and J.W. unsupervised.

¶ 25 b. Respondent's Evidence

¶ 26 Respondent testified that she (1) missed her individual counseling sessions because she lacked transportation as a result of a car accident, (2) was willing to resume her individual counseling sessions, and (3) would take another parenting class.

¶ 27 Respondent admitted that she had "whooped" D.W. on previous occasions but denied striking him with a belt in October 2014. Respondent estimated that after she regained custody of D.W. and J.W. in June 2014, she had whooped D.W. approximately four times, adding that D.W. "has gotten whooped with a belt before," but she denied ever striking him with a belt buckle. Respondent used that type of discipline because that was how she was raised. Respondent loved D.W. and J.W. and stated her intent to comply with any task to regain their custody. Respondent acknowledged that Linda (1) loves D.W. and J.W. and (2) would be a good caretaker if respondent's parental rights were terminated.

¶ 28 c. The Trial Court's Best-Interest Finding

¶ 29 Following arguments, the trial court found that it was in the best interest of D.W. and J.W. that respondent's parental rights be terminated.

¶ 30 This appeal followed.

¶ 31 II. THE TRIAL COURT'S BEST-INTEREST DETERMINATION

¶ 32 1. *Standard of Review*

¶ 33 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).

¶ 34 Section 1-3(4.05) of the Juvenile Court Act lists the following factors that a trial court must consider when determining whether termination of parental rights is in the minor's best interest: (1) the physical safety and welfare of the child, (2) the development of the child's identity, (3) the child's background and ties, (4) the child's sense of attachments, (5) the child's wishes, (6) the child's community ties, (7) the child's need for permanence, (8) the uniqueness of every family and child, (9) the risks attendant to entering and being in substitute care, and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1–3(4.05) (West 2014). "Additionally, the court may consider the nature and length of the child's relationship with her present caretaker and the effect that a change in placement would have upon her emotional and psychological well-being." *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19, 8 N.E.3d 1258. "The [juvenile] court's best[-]interest determination need not contain an explicit

reference to each of these factors, and a reviewing court need not rely on any basis used by the [juvenile] court below in affirming its decision." *Id.*

¶ 35 "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.*

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

¶ 37 We note that before finding that termination of respondents' parental rights was in the best interest of D.W. and J.W., the trial court considered the aforementioned statutory factors listed in section 1-3(4.05) of the Juvenile Court Act. In so doing, the court stated, as follows:

> "[T]he most important factor in this case is permanency for the children. These kids have been in care over half their lives, and they've had [been removed] three times[.] *** [T]hat does have to create some insecurity in them. [D.W. and J.W.] need and *** deserve to be in a permanent place. [The court does not] know how long it would take [respondent] to get fit. It would have to be *** a very extensive period of time. [The court does not] know how many parenting classes [a person] has to go through to know that you can't use excessive corporal punishment. *** [The court does not] know why you would need another parenting class to understand that quite honestly."

¶ 38 In her brief to this court, respondent does not challenge the trial court's specific findings in support of its decision that the best interest of D.W. and J.W. would be achieved by

terminating her parental rights. Instead, the crux of respondent's challenge pertains to her claim that while in DCFS' care, the behavior of D.W. and J.W. "got worse" and thus, DCFS failed in its responsibility to return "well-adjusted children" to her care. The record shows, however, that D.W. and J.W. were removed from respondent's care on three separate occasions because respondent either left D.W. and J.W. unsupervised or used inappropriate contact to discipline them. During the 56 months that D.W. and J.W. were in DCFS's care, DCFS provided services to respondent to facilitate their return. As the evidence showed, respondent failed to attend her individual counseling session. Although respondent successfully completed parenting classes on two separate occasions, and had D.W. and J.W. returned to her care twice, respondent could not successfully implement the received training, as demonstrated by her inability to appropriately supervise or discipline D.W. and J.W. during that time period. In essence, respondent attempts to blame DCFS for her failure to effectively parent D.W. and J.W. We reject any such notion.

¶ 39 In this case, the evidence presented at the May 2015 best-interest hearing showed that in a mere seven months, D.W. and J.W. were thriving together in a loving family environment provided by the Castellanos, who pledged to provide D.W. and J.W stability and permanency. In addition, Leeds had no concerns regarding the placement of D.W. and J.W. with the Castellanos, opining that it was in the best interest of D.W. and J.W. that respondent's parental rights be terminated. We agree with the trial court's finding that the evidence presented favored termination of respondent's parental rights.

¶ 40 III. CONCLUSION

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

¶ 42 Affirmed.