2015 IL App (4th) 150652-U

NO. 4-15-0652

FILED
December 14, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: E.E., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Edgar County
v.	)	No. 13JA12
JOSEPH JOHNSON,	)	
Respondent-Appellant.	)	Honorable
	)	Matthew L. Sullivan,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's termination of respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 In December 2014, the State filed a motion to terminate respondent Joseph Johnson's parental rights to E.E. (born October 2, 2013), alleging respondent was an unfit parent under sections 1(D)(i) and 1(D)(r) of the Adoption Act (750 ILCS 50/1(D)(i), (D)(r) (West 2014)). In July 2015, the trial court entered an order terminating respondent's parental rights, finding (1) respondent was an unfit parent under sections 1(D)(i) and 1(D)(r) of the Adoption Act (750 ILCS 50/1(D)(i), (D)(r) (West 2014)), and (2) it was in E.E's best interest to terminate respondent's parental rights. Respondent appeals, arguing the trial court erred in finding (1) he was an unfit person under section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West

2014)), and (2) it was in E.E's best interest to terminate his parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On December 9, 2014, the State filed a motion to terminate respondent's parental rights to E.E., alleging respondent was an unfit parent under sections 1(D)(i) and 1(D)(r) of the Adoption Act (750 ILCS 50/1(D)(i), (D)(r) (West 2014)).

¶ 5 A. The Fitness Hearing

¶ 6 On March 24 and June 26, 2015, the trial court held a fitness hearing on the State's motion to terminate respondent's parental rights. At the conclusion of the hearing, the court found respondent was an unfit parent under sections 1(D)(i) and 1(D)(r) of the Adoption Act (750 ILCS 50/1(D)(i), (D)(r) (West 2014)). The following relevant evidence was introduced at the hearing.

¶ 7 On September 6, 2013, respondent was placed in the Douglas County jail on charges of methamphetamine manufacturing and delivery. On October 2, 2013, while respondent was incarcerated, E.E. was born. That same month, E.E. was taken into temporary custody of the Illinois Department of Children and Family Services (DCFS).

¶ 8 Following his pleas of guilty on charges for methamphetamine manufacturing and delivery, on April 29, 2014, respondent was transferred to the Illinois Department of Corrections (DOC) and began serving concurrent seven-year prison sentences. Respondent's "projected parole date" was March 11, 2017.

¶ 9 Respondent's first visit with E.E. was at the Douglas County jail on November 8, 2013, and visits continued through respondent's April 29, 2014, transfer to DOC. Initially, respondent met with E.E. weekly. Visits lasted 15 minutes and were no-contact, requiring E.E.

to be held up behind glass to see respondent. Later, visitation was changed to every other week due to E.E.'s age. Respondent provided no financial support to E.E.

¶ 10 B. The Best-Interest Hearing

¶ 11 On June 26, 2015, the trial court held a best-interest hearing. Respondent testified he was serving a seven-year sentence and his "projected parole date" was March 11, 2017. Respondent acknowledged he was unable to feed E.E., change E.E.'s diapers, or take E.E. to the doctor. Respondent did not have a place for E.E. to live. Respondent was incarcerated when E.E. was born, and he only visited with E.E. while incarcerated. Respondent acknowledged E.E. did not recognize him as his father. Respondent had been convicted of at least 10 felonies over the previous 20 years and continued to have substance-abuse issues. Respondent previously had his parental rights to his other children terminated.

¶ 12 Miranda Williams, a caseworker with One Hope United, testified, since April 2014, respondent visited with E.E. on six occasions. Williams testified E.E. did not appear to recognize respondent or have a significant relationship with him.

¶ 13 Williams testified E.E. was initially placed in foster care with an elderly foster mother and later, in September 2014, he was placed with his then foster parents, Mark and Karen Davis. E.E. exhibited a bond with his first foster mother, whom he continued to see once per week after being placed with the Davises. E.E. also attached and bonded with the Davis family, and his needs were being met. E.E. referred to Mark as "dad" and Karen as "mom." The Davis family provided stability and affection. Williams believed E.E. staying with the Davis family was the least-disruptive placement alternative and the termination of respondent's parental rights was in E.E.'s best interest.

¶ 14 Foster mother Karen Davis testified she raised four children, including two great-nephews. The Davis family paid for E.E.'s food, shelter, and clothing. The Davis family had the financial means to raise E.E. E.E. referred to Karen as "mom" and Mark as "dad." E.E. was developing well. E.E. had his own room and exhibited a sense of security with the family. The Davis family treated E.E. as one of their own. Mark and Karen intended to adopt E.E.

¶ 15 After hearing the evidence and considering the statutory best-interest factors found in section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2014)), the trial court found it was in E.E.'s best interest to terminate respondent's parental rights.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, respondent argues the trial court erred in finding (1) he was an unfit person under section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2014)), and (2) it was in E.E's best interest to terminate his parental rights.

¶ 19 A. Fitness Finding

¶ 20 The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Id.* A decision will be found to be against the manifest weight of the evidence only if the facts clearly demonstrate the court should have reached the opposite conclusion. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 21 The trial court found respondent was an unfit parent under sections 1(D)(i) and 1(D)(r) of the Adoption Act (750 ILCS 50/1(D)(i), (D)(r) (West 2014)). Respondent asserts the

court's finding under section 1(D)(i) was against the manifest weight of the evidence. Respondent does not address the court's finding under section 1(D)(r). Only one ground for a finding of unfitness is necessary if it is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005); *In re M.R.*, 393 Ill. App. 3d 609, 613, 912 N.E.2d 337, 342 (2009). By challenging only one of the two grounds on which the court found him unfit, respondent has conceded his unfitness on the unchallenged ground of unfitness (*In re D.L.*, 326 Ill. App. 3d 262, 268, 760 N.E.2d 542, 547 (2001)), and he has forfeited any argument he may have had on the unchallenged ground by failing to raise it in his brief (see Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *In re K.J* ., 381 Ill. App. 3d 349, 353, 885 N.E.2d 1116, 1120 (2008)).

¶ 22 Forfeiture aside, the trial court's finding respondent was an "unfit person" within the meaning of section 1(D)(r) of the Adoption Act (750 ILCS 50/1(D)(r) (West 2012)) was not against the manifest weight of the evidence. Under section 1(D)(r), a single incarceration makes a parent an "unfit person" under the following circumstances:

> "[(1)]The child is in the temporary custody or guardianship of [DCFS], [(2)] the parent is incarcerated as a result of criminal conviction at the time the petition or motion for termination of parental rights is filed, [(3)] prior to incarceration the parent had little or no contact with the child or provided little or no support for the child, and [(4)] the parent's incarceration will prevent the parent from discharging his or her parental responsibilities for the child for a period in excess of 2 years after the filing of the petition

or motion for termination of parental rights." 750 ILCS 50/1(D)(r) (West 2014).

¶ 23 In his appellate brief, respondent explicitly concedes the first, second, and fourth conditions set forth above: "Nor does [respondent] dispute that the minor child was in the temporary custody or guardianship of [DCFS], or that his incarceration was due to a criminal conviction at the time the petition or motion for termination of parental rights is filed, and that his incarceration will prevent him from discharging his parental responsibilities for the minor child for a period in excess of [two] years after the filing of the petition or motion for termination of parental rights."

¶ 24 Although respondent does not address the third condition, any argument the State failed to prove this condition would be meritless. The third condition "is phrased in the disjunctive: either little or no contact before being incarcerated *or* little or no support before incarceration." (Emphasis in original.) *In re M.H.*, 2015 IL App (4th) 150397, ¶ 28. Respondent had little contact with E.E. prior to his incarceration for his criminal convictions. See *Id.* ("Whenever section 1(D)(r) speaks of 'incarceration,' it must mean the 'incarceration' to which it referred at the beginning: 'incarcera[tion] as a result of a criminal conviction.' "). Respondent initially visited with E.E. in the Douglas County jail weekly, then every other week, from November 8, 2013, through April 29, 2014. These visits lasted 15 minutes and were no-contact, requiring E.E. to be held up behind glass to see respondent. Respondent also provided no financial support for E.E. prior to his incarceration for his criminal convictions. As respondent has explicitly conceded the first, second, and fourth conditions, and any argument regarding the third condition would be meritless, the trial court's finding respondent conformed

to the definition of an "unfit person" in section 1(D)(r) of the Adoption Act (750 ILCS 50/1(D)(r) (West 2014)) was not against the manifest weight of the evidence.

¶ 25 As only one ground for a finding of unfitness is necessary to uphold the trial court's judgment, we need not review the second basis for the court's unfitness finding. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004).

¶ 26 B. Best-Interest Finding

¶ 27 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interest of the minor to terminate parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). At the best-interest stage, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). The State must prove by a preponderance of the evidence termination is in the child's best interest. *Id.* at 366, 818 N.E.2d at 1228.

¶ 28 The trial court must consider the following factors, in the context of the minor's age and developmental needs, in determining whether termination is in a child's best interest: (1) the physical safety and welfare of the child, including food, shelter, health, and clothing; (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; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) 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; (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).

¶ 29 On review, this court will not reverse a trial court's best-interest finding unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). As previously stated, a decision will be found to be against the manifest weight of the evidence only if the facts clearly demonstrate the court should have reached the opposite conclusion. *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 30 Since September 2014, E.E. had been living with the Davis family. E.E. had become attached and bonded to the family. E.E. called Karen "mom" and Mark "dad." The Davises paid for E.E.'s food, shelter, and clothing. E.E. had his own room and exhibited a sense of security with the family. The Davises indicated they intended to adopt E.E.

¶ 31 Conversely, respondent was serving a seven-year prison sentence, which prevented him from caring for E.E. Respondent had been convicted of at least 10 felonies over the previous 20 years and had substance-abuse issues. Respondent was incarcerated when E.E. was born, visited with E.E. only while incarcerated, and E.E. did not recognize respondent as his father.

¶ 32 When considering the evidence presented, the trial court's determination it was in E.E.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 33 III. CONCLUSION

¶ 34 We affirm the trial court's judgment.

¶ 35 Affirmed.