2016 IL App (2d) 160535-U
Nos. 2-16-0535, 2-16-0538(Consl.)
Order filed November 17, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re S.H. & R.H., Minors	)	Appeal from the Circuit Court
	)	of Lake County.
	)	
	)	Nos. 14-JA-49, 14-JA-50
	)	
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Shauntaye H.,	)	Valerie Ceckowski,
Respondent-Appellant.)	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Schostok and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's finding that it was in the best interest of S.H. and R.H that Shauntaye H.'s parental rights be terminated.

¶ 2 This case involves the termination of respondent, Shauntaye H.'s, parental rights of her minor children, S.H. and R.H. The trial court found that respondent was an unfit parent on February 25, 2016. On June 7, 2016, the trial court found that it was in the best interest of the minor children to terminate respondent's parental rights. Respondent challenges only the best interests portion of the trial court's findings and argues that the State failed to prove by a

preponderance of the evidence that termination of her parental rights was in the best interest of the minor children. We affirm.

¶ 3 I. BACKGROUND

¶ 4 S.H. was born on June 24, 2011. On May 31, 2012, the trial court found S.H. to be dependent and made her a ward of the court. The Department of Children and Family Services (DCFS) was granted guardianship. R.H. was born on September 30, 2012. On April 2, 2013, the court found R.H. to be dependant and made him a ward of the court. DCFS was granted guardianship. The record reflects that respondent has a full scale I.Q. of 63 and she has been diagnosed with attention deficit hyperactivity disorder, oppositional defiant disorder, intermittent explosive disorder, learning disabilities and unspecified mood disorder.

¶ 5 On May 19, 2014, the Lake County State's Attorney's Office filed a petition for termination of parental rights against respondent. The petition alleged that respondent was an unfit parent on grounds that she failed to make reasonable efforts to correct the conditions which were the basis for the removal of her children; failed to make reasonable progress towards the return of her children within 9 months after adjudication of a dependent minor; and respondent is unable to discharge parental responsibilities due to mental impairment or developmental disability. The petition also alleged that there is sufficient justification to believe that her inability to discharge parental responsibilities will extend beyond a reasonable period of time. 750 ILCS 50/1 (D)(m), (p) (West 2014).

¶ 6 On November 18 and 19, 2015, the trial commenced on the petition. The State called a variety of witnesses to testify to their interactions with respondent and the minor children. Jenni Jaroscak, a program director and independent clinical psychiatrist at Child Adolescent Recovery Center, testified to her interactions with respondent, beginning in 2012 when respondent was

fourteen years old. Jaroscak testified that respondent had academic concerns, emotional management concerns and behavior problems at school. Additionally, Jaroscak noted that respondent had been diagnosed with attention deficit hyperactivity disorder, oppositional defiant disorder, intermittent explosive disorder, learning disabilities and unspecified mood disorder. She stated that while in therapy with respondent, they worked on emotion regulation, peer interaction, anger management, coping and parenting skills, and hygiene. She observed respondent's educational level to be below expectations as well as escalating behavior issues. During Jaroscak's time with her, respondent had received four in-school suspensions, placed on therapeutic hold twice, and psychiatrically hospitalized three times. It was her opinion that respondent was a danger to other students and staff. Although she had observed some de-escalation in respondent's behaviors in the beginning of 2014, Jaroscak referred respondent to residential placement due to chronic violent outbursts on school premises.

¶ 7 The State next called Nancy Elenbaas. Elenbaas worked with respondent as her parenting coach from January through November 2013. She was referred by respondent's DCFS caseworker, Sunny Kherian, based on respondent's developmental delays, emotional issues, and mental health diagnoses. Elenbaas testified that respondent was fifteen years old with two children, S.H. and R.H.; 1.5 years and 4 months old, respectively, when she began work with respondent. Between January and April 2013, Elenbaas conducted weekly sessions with respondent at the DCFS office in Waukegan. After that, the sessions were conducted at the home of Doris Bacon, respondent's mother, weekly for one hour. During the sessions, Elenbaas would explain to respondent how she wanted her to interact with the children. She suggested singing, but respondent refused. She testified that respondent talked minimally to the children and that her mood affected her interactions with them. When respondent was happy she engaged

more with the children. When not, she would barely interact with them at all and scowl at them. Elenbaas explained that respondent could change diapers and help the children to the bathroom but could not ensure the safety of the child she was not attending to. Respondent sometimes brought the children candy bars or popsicles when told to bring nutritious snacks. Elenbaas observed respondent to be distracted during visits, concerned more with her phone or when her ride was to arrive than with the immediate tasks of the session with her children. Elenbaas also observed aggression on the part of respondent towards her siblings as well as the family kitten. She noted that respondent's mother's home contained cockroaches, smelled bad, and was poorly lit with little air circulation as blankets covered the windows of the home. In September 2013, Elenbaas recommended that her sessions with respondent cease as respondent was making no progress. Elenbaas stated that it was her opinion that respondent's inability to retain the skills necessary for parenting the children made it unsafe for her to be alone with them.

¶ 8 Respondent's DCFS caseworker, Sunny Kherian, was the State's next witness. He was assigned to respondent's case in January 2013 and worked with her through April 2014. Via respondent's DCFS file, he was aware of respondent's mental health and psychiatric diagnoses. During his time with respondent, Kherian put numerous services in place including a parenting capacity assessment, family therapy, individual therapy, psychiatric care, and a mandate to comply with medication. In addition to reiterating Elenbaas' testimony concerning respondent's lack of progress in parenting skills, Kherian testified that respondent's family therapy sessions were terminated due to a lack of progress. While he was respondent's caseworker, she was hospitalized four times for psychiatric problems. Kherian stated that respondent's service plan was evaluated and rated in both April 2013 and October 2013; both ratings proved

unsatisfactory. Kherian testified that he observed respondent and the children in the DCFS office and respondent's mother's home at least once a month while engaged as her caseworker.

¶ 9 The second day of testimony began with the State calling Dr. Valerie Bouchard. Dr. Bouchard testified that she was referred to respondent by DCFS and tasked with performing a parenting capacity assessment. Her assessment consisted of a clinical interview of respondent, a mental health examination, mental status assessment of the children, and a parenting measure and observation session between respondent and the children. Dr. Bouchard testified that respondent told her that she did not know why DCFS was involved with her and her children. Respondent also told Dr. Bouchard that she had the mind of a nine-year old. Dr. Bouchard had observed through interviews and interaction with respondent that her judgment and insight, as well as personal hygiene, were poor. After reviewing respondent's records and conducting interviews with her, Dr. Bouchard testified that it was her opinion that respondent would be unable to function independently with the children as she did not understand the children's individual developmental needs nor the capacity to parent or respond to their emotional needs. Dr. Bouchard then testified to three recommendations. First, she stated it was her opinion that respondent be removed from consideration due to diminished capacity and the findings of the parenting assessment. Second, she recommended that respondent continue with psychiatric care, counseling services, and parenting coaching. Third, Dr. Bouchard recommended that respondent's mother be explored as an option for guardianship of the children based on a prior parenting capacity assessment. However, it was Dr. Bouchard's ultimate opinion that respondent would not be capable of improving her parenting ability due to her diminished capacity.

¶ 10 The State's next witness was DCFS Child Welfare Specialist, Tania Miller. Miller testified that she was assigned to respondent's case in January 2015, with the goal of substitute

care pending termination of parental rights. Miller stated that since being assigned to the case, her recommendations regarding substitute care pending termination of parental rights had not changed.

¶ 11 The parties then stipulated to the testimony of Dr. Badr S. Javed and his testimony was read into the record. Dr. Javed is employed as a staff psychiatrist by the Lake County Health Department, and the Medical Director of Out-Patient Mental Health Services for Lake County. He met with respondent monthly since approximately January 2009, in the presence of respondent's mother each time. During her time in Dr. Javed's care, respondent was diagnosed with ADHD, mood disorder, severe aggression, explosive anger disorder, intermittent explosive disorder, and oppositional defiant disorder, bipolar disorder, and major depression. Dr. Javed had never observed respondent with her children but stated that respondent continues to suffer from bipolar disorder, ADHD, and major depression. He recommended that respondent continue with medications prescribed for those disorders and psychotherapy.

¶ 12 The State's final witness was Dr. Poonam Jha, an attending physician at Lurie Children's Hospital. Dr. Jha was under contract with the Juvenile Protective Association Parenting Assessment Team as an evaluator of parents with active DCFS cases when she first came into contact with respondent. At the time of Dr. Jha's assessment, she testified that S.H. was one year old and respondent was pregnant with R.H. She testified that the parenting competency evaluation performed by the assessment team consisted of three elements; a psychiatric evaluation of respondent, a psychological and developmental evaluation of respondent, and a psychosocial and interactional evaluation. With respect to respondent's case, Dr. Jha testified that she performed the psychiatric evaluation. Dr. Jha explained that she met with respondent for two hours sometime in May or June 2013. Respondent's mother was present at this meeting.

After extensive examination consisting of questions and observation, Dr. Jha testified that the following recommendations were made: (1) respondent's parenting weaknesses outweighed her strengths which placed the minor child at risk in her care, (2) it was not likely that respondent would be able to progress to the point that she would be able to be a primary caregiver for S.H., (3) respondent should be evaluated for parenting the unborn R.H., (4) respondent should continue psychiatric treatment and be reevaluated for medication following her pregnancy, (5) respondent should undergo counseling to address anger management, social skills, and daily life skills, (6) address family planning options, and (7) that supervision during after-school hours be provided. Dr. Jha concluded in her assessment that respondent could not care for S.H. and that S.H. would be at risk if returned to respondent's care.

¶ 13 Following Dr. Jha's testimony, the State rested. Neither respondent nor the minor children's guardian *ad litem* (GAL) presented any witnesses. After closing arguments were presented, the court took the matter under advisement before reconvening on February 25, 2016, where the trial court held that the State had proven by clear and convincing evidence that respondent was unfit pursuant to subsections (m)(ii), (m)(iii) and (p) of the Adoption Act.

¶ 14 The trial court conducted a best interests hearing on April 20, 2016. The State again called Nancy Elenbaas who testified in largely the same manner as on November 18, 2015. She reiterated her recommendation that she would be very concerned if the minor children were left alone with respondent.

¶ 15 Child Welfare Specialist, Tania Miller, of DCFS was again called by the State. In addition to restating her assignment to the case with the recommendation of substitute care pending termination of parental rights, Miller testified that the children had been place together in a traditional foster home. Miller stated that this was the sixth placement for S.H. and the fifth

for R.H. Miller testified that prior to placement into the current foster home, the children engaged in transitional visits with the foster family over a two-month period. Miller opined that although the children had only been with the foster family for approximately three weeks, the children were doing well in the home. She went on to state that the foster family is able to provide food, clothing, shelter, and had expressed a desire to adopt S.H. and R.H. Miller said that she had observed both children in the foster home and witnessed them refer to their foster parents as "mommy" and "daddy." Miller had observed the foster parents interacting positively with the children and said that the foster parents exhibited love and affection towards S.H. and R.H. She went on to explain that the foster parents have an extensive network of support via extended family, friends, and their church. Ms. Miller concluded that it was her opinion that termination of respondent's parental rights was in the best interest of S.H. and R.H. so they would be able to be available for adoption.

¶ 16 On cross-examination regarding respondent's mother as a viable placement for the children, Miller testified that she believed the maternal grandmother would be ruled out by DCFS's licensing process due to her husband's criminal background (a conviction for attempted homicide), as well as an open DCFS case involving another one of her own children.

¶ 17 Following Ms. Miller's testimony, and both the State and GAL indicating that they had no further witnesses to present, the court continued the hearing and requested the presence of the foster parents and a CASA worker at the next hearing in order to ensure the court had all necessary information to determine the best interests of the minor children. On May 18, 2016, the State called Ryan, the current foster father, to testify.

¶ 18 Ryan testified that he and his wife first met S.H. and R.H. in January 2016. They visited with the children on weekends between January and March 2016. On April 2, 2016, the children

were placed in their home. Ryan stated that he and his wife had no other children nor had they been foster parents to any other children. As both Ryan and his wife worked outside the home, both children had been attending daycare while in their care. Ryan stated that S.H. was attending a pre-kindergarten program and will begin kindergarten in the fall of 2016. He testified that R.H. suffers from delayed speech and has some difficulty communicating with him. Ryan and his wife were concerned about R.H.'s speech therapy as their home school district had a lack of space with their speech therapy services. Ryan testified that DCFS was attempting to get additional speech services in place for R.H. and was confident that they would be able to accomplish that goal.

¶ 19 Ryan testified that S.H. had been performing well in school after some early struggles but was concerned about reports of R.H.'s negative behavior at daycare. Ryan was especially concerned about those negative behaviors being replicated in the home. Ryan stated that R.H. was at times violent, defiant, and destructive. He testified that these concerns had been voiced to DCFS and solutions for correcting this behavior had been discussed but Ryan was still very concerned. He stated, however, that he and his wife would be committed to working with DCFS to get all necessary services in place for both children.

¶ 20 On cross-examination, Ryan stated that he knew the children were very bonded. He went on to testify that he could not give a definitive answer regarding the adoption of S.H. and also stated that he could not guarantee the adoption of R.H. He did state that he and his wife would be more confident in adopting both children if services could be implemented to stabilize R.H.'s behavior.

¶ 21 The court asked Ryan if he and his wife had a plan on how to raise African-American children, as Ryan and his wife were Caucasian. Ryan testified that his home area and school district are diverse but the daycare facility and the family's church were less so.

¶ 22 The State's final witness was Debora Ludolph, the CASA worker for the minor children since December 2012. Ludolph testified that she had seen the children monthly since first coming into contact with the case but had only seen them on a limited basis since being placed in their new foster home. Ludolph opined that she had been a constant in the lives of the children throughout their various placements and caseworkers. Ludolph described observing interactions between S.H. and respondent outside the courtroom on several occasions. She stated that it was her opinion that S.H. has not seemed to care when respondent greets her, nor had she observed S.H. run up to greet or hug respondent. Ludolph further opined that no strong bond existed between S.H. and respondent.

¶ 23 Ludolph also testified to having observed the children in their current foster home. She testified to the home being in a great neighborhood populated with other children. She stated that it seemed her current foster family could provide adequate food, clothing, and shelter. Her observation of the children with the foster father was also positive as she had seen the children go to his lap and interact well with him. She stated that she had no concerns for the children in the foster home.

¶ 24 As to R.H., Ludolph testified that she had seen some regression in his speech and had trouble understanding him as opposed to previous meetings with him. She stated that the foster parents relayed their frustrations with the lack of services for R.H. at that time. However, Ludolph said that it was her opinion that respondent would not be able to care for the children and that it was in their best interest that they be made available for adoption.

¶ 25 Neither respondent, nor the GAL presented any additional evidence and the court took the matter under advisement. The trial court reconvened on June 7, 2016 and found that the state had proven by a preponderance of the evidence that it was in the best interest of S.H. and R.H. that respondent's parental rights be terminated. Respondent timely appealed.

¶ 26 II. ANALYSIS

¶ 27 Respondent's contention in this appeal is that the trial court erred in finding that it is in the best interests of R.H. and S.H. to terminate respondent's parental rights. Respondent does not challenge the trial court's decision that the State proved by clear and convincing evidence that she is an unfit parent of the children pursuant subsections (m)(ii), (m)(iii), and (p) of the Adoption Act. 750 ILCS 50/1(D)(m)(ii-iii), and (p) (West 2014). The trial court's findings that the State's evidence demonstrated respondent to suffer extremely low cognitive functioning combined with numerous diagnosed mental health illnesses and behavior problems making respondent incapable of caring for the minor children are unchallenged by respondent here.

¶ 28 The Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2014)) provides a two-step process for the involuntary termination of parental rights. *In re C.W.*, 199 Ill. 2d 198, 210 (2002); *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 28. First, the State must prove by clear and convincing evidence that the parent is unfit under any single ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1 (D) (West 2014)). 705 ILCS 405/2-20 (2) (West 2014). If the trial court finds that the parent is unfit, it must conduct a second hearing, during which the State must prove by a preponderance of the evidence that it is in the best interest of the minor to terminate parental rights. *In re D.T.*, 212 Ill. 2d 347, 352, (2004). A reviewing court will not disturb the trial court's findings regarding parental unfitness or the best interest of the minor unless those finding are against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92,

104 (2008); *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24. "A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 29 Respondent first argues that there is no guarantee that the current foster home is committed to adopting S.H. and R.H. Respondent points out the children are of tender age and have endured multiple placements along with only being in the current foster home for six weeks prior to the hearing. Additionally, respondent asserts that foster father Ryan's testimony illustrated that he and his wife are not fully committed to adopting the children, raising concern about S.H. and R.H.'s long-term placement in the home.

¶ 30 We believe it is clear from the trial court's findings that Ryan's lack of a full commitment to adoption of the children was given appropriate consideration. The trial court stated in relevant part, "while this lack of 100 percent assurance of a permanent placement with the foster family does concern this court, it is apparent that mom will never be able to parent and that the dads just don't care." This point notwithstanding, the lack of a guaranteed adoption by a current foster family does not preclude termination of parental rights. *In re D.M.*, 336 Ill. App. 3d 766, 774-775 (2002). A child's need for long-term stability can outweigh the need for an adoptive home to be immediately available. *Id*.

¶ 31 The trial court also determined in its findings that the children's current foster parents' provide a "loving home" committed to providing the "nurturing they deserve." The trial court went to find that the foster parents had been "outspoken advocates for the children," and they are "committed to trying to obtain the appropriate services," for the children. Foster father Ryan testified that he and his wife were completely committed to working with DCFS to get services in place for both children. The trial court was also provided with an addendum to the best

interest report from DCFS that those services are being implemented.

¶ 32 Respondent also points out that the current foster parents are Caucasian with no plan on how to raise African-American children. Respondent maintains that this fact coupled with foster father Ryan's testimony that the daycare and church community that play a large role in their lives are not diverse. Respondent argues that these factors indicate that it is not in the best interest of the S.H. and R.H. to terminate respondent's parental rights.

¶ 33 The trial court heard testimony from foster father Ryan that he and his wife live in a very diverse area and there was no confusion by the difference in race between the foster parents and the children. Ryan also testified that he and his wife were committed to handling cultural situations as they come up on a case by case basis. We believe it's clear from this testimony that the children will be exposed to other children of their race in the area in which the foster parents live, if not at daycare or in the family's church. The trial court stated that it had considered the children's background, including "cultural" background when making its best interest findings.

¶ 34 Finally, respondent claims that the trial court erred in terminating her parental rights by not considering respondent's mother as a possible guardian for the children. Respondent maintains that testimony was unclear as to if or why maternal grandmother was being ruled out as a placement option. Respondent points to recommendations by several witnesses in parenting capacity assessments that maternal grandmother should have been considered as a possible long-term placement through guardianship, allowing respondent to remain involved in her children's lives even if incapable of being their primary caregiver.

¶ 35 In its best interest findings, the trial court stated that it had considered all statutory factors including the development of the children's identities and their familial background. Additionally, and perhaps most importantly, the trial court stated, "[u]nfortunately, maternal

grandmother is not an appropriate placement option at this time." That finding is supported by evidence introduced by the State. The addendum to the DCFS best interest report said that maternal grandmother was not a recommended placement because her husband had prior attempted homicide conviction, which will keep the home from meeting placement guidelines. Further, the DCFS report said that maternal grandmother had only three bedrooms in her home. If S.H. and R.H. were placed in the home, there would be nine people residing there. This would also keep maternal grandmother's home from meeting placement guidelines. The trial court also heard evidence that maternal grandmother had an open DCFS case concerning another of her children, which would preclude her home from placement of S.H. and R.H. There was also testimony that respondent was subject to continuous violent episodes and maternal grandmother had raised concerns that respondent was consistently being administered medication at home to quell these episodes.

¶ 36 We believe that the facts set forth at trial and the findings made by the trial court considering all statutory factors support the termination of respondent's parental rights. The State proved by a preponderance of the evidence that it was in the children's best interests to terminate respondent's parental rights, and the trial court's decision was not against the manifest weight of the evidence.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 39 Affirmed.