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2016 IL App (3d) 160106-U

Order filed July 11, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

<i>In re</i> J.M.,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
a Minor,)	Rock Island County, Illinois,
)	
(The People of the State of Illinois,)	
)	Appeal No. 3-16-0106
Petitioner-Appellee,)	Circuit No. 11-JA-69
)	
v.)	
)	
Antavious B.,)	Honorable
)	Theodore G. Kutsunis,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding that it was in the best interest of the child to terminate father's parental rights was not against the manifest weight of the evidence.
- ¶ 2 On May 27, 2011, the State filed a petition for adjudication of wardship and a petition for temporary custody of J.M., born April 3, 2011. Mother signed a final and irrevocable surrender for purposes of adoption for the child. After finding father unfit, the court found it was in the

best interest of the child to terminate father’s parental rights. Father appeals the trial court’s finding resulting in the termination of his parental rights. We affirm.

¶ 3

BACKGROUND

¶ 4

On May 27, 2011, the State filed a petition for adjudication of wardship (Petition) and a petition for temporary custody of J.M., born April 3, 2011. The Petition alleged that J.M. was a neglected minor because his mother provided an environment injurious to his welfare.

¶ 5

At a hearing held on June 24, 2011, the court found the minor to be neglected after mother stipulated to the allegations contained in an amended petition. Father failed to appear. Prior to the August 19, 2011, dispositional hearing where J.M. was formally adjudicated neglected, Lutheran Social Services of Illinois (LSSI) prepared and filed a dispositional report with the court on August 5, 2011. According to the dispositional report, on May 25, 2011, the Department of Children and Family Services (DCFS) received information that mother “was ‘running around’ with her newborn son at all hours of the day and night.” The report indicated mother suffered from mental health issues including substance abuse, anger management problems, and parenting issues. At the time of the report, father was interested in becoming a good parent for J.M. but his paternity had not been established by court order.

¶ 6

On February 24, 2012, the court entered an order establishing father’s paternity as part of the permanency review hearing. The court recognized father “is just now found to be the legal father and has not had goals until today.” The court filed a supplemental order requiring father to “cooperate with services, service providers and follow the 497 Client Service Plan,” as well as, sign all necessary releases, attend and successfully complete parenting classes, and obtain a substance abuse evaluation and follow any recommendations for treatment, including random drug testing. At the permanency hearing on August 31, 2012, the goal was changed from return

home to private guardianship and the court found that “[t]he parents have not made progress towards return home of the minor and agree guardianship with the [maternal] grandmother is appropriate.” In December of 2012,¹ J.M. was removed from his maternal grandmother’s care and began residing with his paternal grandmother.

¶ 7 At the permanency hearing on June 27, 2014, father filed a final and irrevocable consent to adoption by a specified person, his mother and J.M.’s paternal grandmother. Similarly, mother filed a final and irrevocable surrender for adoption purposes on September 18, 2014. On November 6, 2015, the court entered an order stating that “[t]he permanency goal is changed to substitute care pending [d]etermination of [t]ermination of parental [r]ights (on father) as the minor no longer is placed with the person for whom to [sic] father previously signed consents [sic] to adopt.”

¶ 8 On November 30, 2015, the state filed an amended supplemental petition to terminate parental rights (Amended Petition), alleging that father was an unfit parent because father failed: to complete parenting classes, maintain appropriate housing, maintain employment, and failed or refused to take random urine drops. The Amended Petition also alleged that on April 9, 2012, father was charged with and later pled guilty to unlawful possession with intent to deliver cannabis. Further, the Amended Petition alleged that on June 14, 2013, father was charged with and later pled guilty to DUI.

¶ 9 The court conducted a hearing on the State’s Amended Petition to terminate father’s parental rights on January 22, 2016. Sara Nabb, the LSSI child welfare specialist assigned to J.M.’s case, testified that father completed a substance abuse evaluation and began treatment in

¹According to a permanency review report filed February 26, 2013, J.M. was placed with father’s mother on December 19, 2012. However, in Sara Nabb’s (the LSSI child welfare specialist’s) testimony at the January 22, 2016, fitness hearing, she testified that she did not “recall the exact date that [J.M.] was moved to the paternal grandmother. It was sometime in early 2013.”

February and March of 2012, respectively. Father was unsuccessfully discharged from treatment after being charged, on April 9, 2012, and subsequently convicted for unlawful possession with intent to deliver cannabis. Father was also unsuccessfully discharged from parenting classes in March of 2012.

¶ 10 Nabb testified that father was “not in contact with our agency” from May 20, 2012, to February 20, 2013, and he did not provide “verification of income, housing, [or] parenting education.” In February of 2013, father informed Nabb that he had started substance abuse treatment again in December of 2012 and completed it in February of 2013.

¶ 11 After J.M. was placed with his paternal grandmother in December of 2012,² father was able to visit J.M. more regularly. Although he self-reported that he began working at Hy-Vee in May of 2013, Nabb testified that father did not provide her with verification of employment until September of 2013.

¶ 12 Nabb testified, father was charged with DUI on June 14, 2013. Upon conviction, the court sentenced father to serve a period of probation and required him to obtain another substance abuse evaluation and to complete a relapse prevention program. Father completed these tasks in November of 2013.

¶ 13 Nabb testified that father signed a consent to adopt form on June 27, 2014. The form gave his consent for J.M. to be adopted by his mother, J.M.’s paternal grandmother. Nabb stopped monitoring father’s compliance with services after he signed this consent form. However, J.M. was removed from paternal grandmother’s care in June of 2015 due to an allegation of sexual abuse in paternal grandmother’s household.

¶ 14 J.M. moved to his current foster home in June 2015. This household includes a married couple, an adult son, and their adopted daughter, J.M.’s half sister.

²*Supra* footnote 1.

¶ 15

I. Best Interest Hearing

¶ 16

After finding father unfit for purposes of the Amended Petition to terminate father's parental rights on January 22, 2016, the best interest hearing began on February 26, 2016. Sara Nabb, the minor's caseworker, filed a best interest report on January 22, 2016.

¶ 17

According to the report, father regularly visited his son until June of 2015. Father also visited J.M. on November 30, 2015. Father missed a scheduled visit on December 14, 2015. At the time of the report, father did not attempt to contact the agency to initiate any additional visitation with J.M., after missing his scheduled visitation.

¶ 18

At the best interest hearing, Nabb explained J.M. was previously placed with his paternal grandmother beginning in December of 2012,³ but was removed in June of 2015 because of a "call from DCFS that there had been an allegation of sexual abuse between a minor residing in the home and a minor visiting the home, and they had requested that [LSSI] remove the child due to risk of harm."

¶ 19

According to Nabb's testimony, J.M. had been living with his maternal second cousin, Levon Harris, and his spouse, Kenneth Williams, since June of 2015. This household included the Harris' adult son, and the couple's adopted daughter, J.M.'s half sister. Harris worked at Project NOW in the Quad Cities and Williams was retired.

¶ 20

Nabb described J.M.'s current home as clean and appropriate and described the relationships between the foster family and J.M. as very good and strong. Nabb emphasized that LSSI finds it important to keep siblings together. J.M. and his half sister, also placed in this home, had a very close relationship. While in the care of his foster parents, J.M. had experienced some behavioral issues, and they were handled properly. Nabb did not express any concerns about the foster parent's ability to provide J.M. with his essential needs, such as food, water,

³ *Supra* footnote 1.

shelter, and medicine. J.M.'s foster parents had ensured that J.M. had gone to all of his appointments and sought services that had a positive impact upon J.M. J.M. referred to his current placement as his home and had never expressed any concerns about his home. J.M.'s current foster parents had expressed a desire to adopt J.M.

¶ 21 On cross-examination by the guardian *ad litem*, Nabb clarified J.M.'s behavioral issues. J.M. had defiance issues and a pediatrician diagnosed him with "ADHD and some ODD tendencies." J.M. saw a therapist for his behaviors. The foster parents reported the therapist raised concerns that J.M. could be a victim of sexual abuse because he exhibited some sexualized behaviors that were irregular for a child of J.M.'s age.

¶ 22 During cross-examination by father's attorney, Nabb testified that J.M. was initially placed with his maternal grandmother, but removed from her care and moved to his paternal grandmother's home in 2012.⁴ J.M. was removed from his paternal grandmother's care for a short time due to a licensing issue, and was returned to her care until 2015. Finally, due to allegations of sexual abuse in the paternal grandmother's household, J.M. was placed in his current foster home.

¶ 23 Kenneth Williams, one of J.M.'s foster parents, testified that he is married to Levon Harris and they adopted a daughter, J.M.'s half sister, who had been in their home for approximately 2.5 years. Williams testified that J.M. had a good relationship with everyone in the home and was especially bonded with J.M.'s biological half sister. Williams testified that he was willing to adopt J.M. and had no concerns about providing for the minor in the future. Finally, Williams said that he had no issue with allowing father's family to be involved in J.M.'s life going forward.

⁴*Supra* footnote 1.

¶ 24 J.M.'s paternal grandmother testified. She stated that J.M. saw his father and interacted with him every day while J.M. lived with her.

¶ 25 Father testified on his own behalf. Father stated that while he was with J.M. in his mother's home, he would play with J.M., give him baths and cook with him. Father testified that he would get the children, including J.M., ready for school, take them to school, and pick them up at noon. Father would come home and play games with the children. During this time, father would talk to J.M.'s teachers about meetings at school. At the time of the hearing, father was living with his girlfriend in a one-bedroom apartment with no children. Father reported that he was not currently on probation and had successfully completed probation in May of 2014. Father had no pending criminal cases. Father was employed and worked four days per week, and sometimes had two weeks off at a time.

¶ 26 Father testified that he missed a scheduled visit in December 2015 with J.M. because he was working. According to father, he missed a second scheduled visit because he was in the hospital with a blood clot.

¶ 27 The guardian *ad litem* agreed with the State's recommendation that father's parental rights should be terminated because of the success of J.M.'s placement in his current foster home.

¶ 28 The trial court found that J.M.'s health and physical welfare were being taken care of at his current placement. J.M. was attached to his foster fathers. J.M. was enrolled in school and was in a secure environment. The judge emphasized that one of J.M.'s current foster fathers was related to J.M.'s biological mother, so the placement was with family. The judge concluded by saying that J.M. needed a stable home life and found it critical that his foster parents had already

adopted a daughter, J.M.'s half sister, with whom J.M. had a very close relationship. Thus, the trial court found that it was in J.M.'s best interest to terminate father's parental rights.

¶ 29 On February 26, 2016, father filed a timely notice of appeal.

¶ 30 ANALYSIS

¶ 31 Father's argument on appeal focuses on the removal of J.M. from paternal grandmother's care as the precipitating event that severed his ties as a father to his child and was improper. The State contends that the trial court's finding that it was in the best interest of J.M. to terminate father's parental rights was not contrary to the manifest weight of the evidence and should be affirmed.

¶ 32 The judicial proceedings for a termination petition consist of a two-step, bifurcated process. 705 ILCS 405/2-29 (West 2014); 750 ILCS 50/1(D) (West 2014). The court first conducts a fitness hearing and, if the court adjudicates the parent unfit based on the allegations in the termination petition, the court then conducts a separate dispositional or "best interest" hearing to determine whether it is in the best interest of the child that the parent's rights be terminated. 705 ILCS 405/2-29(2) (West 2014); *In re D.F.*, 201 Ill. 2d 476, 494-95 (2002). In the present case, father is only challenging the trial court's best interest finding.

¶ 33 During the best interest hearing, the State had to prove by a preponderance of the evidence that it was in the child's best interest to terminate father's parental rights. *In re D.T.*, 212 Ill. 2d 347, 365 (2004). A trial court's best interest finding will not be disturbed on appeal unless the finding is contrary to the manifest weight of the evidence. *In re S.D.*, 2011 IL App (3d) 110184, ¶ 33. A trial court's ruling will be found to be against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 34 Following a finding of unfitness, the focus of the proceedings shift to consider only the best interests of the child. *In re D.T.*, 212 Ill. 2d at 364. Therefore, at the best interests hearing, “the parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life.” *Id.*; *S.D.* at ¶ 34.

¶ 35 In making this determination, the court considers statutory factors “in the context of the child’s age and developmental needs.” 705 ILCS 405/1-3(4.05) (West 2014). These statutory factors include: (1) the child’s physical safety and welfare; (2) the development of the child’s identity; (3) the child’s familial, cultural and religious background; (4) the child’s sense of attachment, including love, security, familiarity, continuity of relationships with parent figures; (5) the child’s wishes and goals; (6) community ties; (7) the child’s need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the person available to care for the child. *Id.*

¶ 36 Here, it is clear that, in making its best interest determination, the trial court considered the relevant statutory factors. The record reveals J.M. calls his foster fathers “dads” and has closely bonded with his half sister. J.M. is enrolled in school and is doing very well. Further, at the best interest hearing, J.M.’s foster father said that the couple desires to adopt J.M. and is not opposed to allowing J.M. to have a relationship with father’s side of the family, if this relationship is in J.M.’s best interest.

¶ 37 After carefully reviewing this record, we conclude the trial court’s decision that it was in the best interest of J.M. to terminate father’s parental rights was not against the manifest weight of the evidence.

¶ 38

CONCLUSION

¶ 39

For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

¶ 40

Affirmed.