2016 IL App (4th) 150670-U

NO. 4-15-0670

FILED
January 5, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: J.W., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v.	)	No. 14JA98
ELLA McAFEE,	)	
Respondent-Appellant.	)	Honorable
	)	Claudia S. Anderson,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the order terminating respondent's parental rights, concluding the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In July 2015, the trial court found respondent, Ella McAfee, unfit to parent her minor child, J.W., and also found it was in the minor's best interest to terminate respondent's parental rights. Respondent appeals, arguing the court's findings were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 19, 2014, the State filed a petition for adjudication of neglect in the interest of J.W., a newborn infant (born August 15, 2014) born to respondent. In the petition, the Illinois Department of Children and Family Services (DCFS) pursued the adjudication and disposition of neglect, as well as the termination of respondent's parental rights, because she (1)

failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2012)); and (2) demonstrated an inability to discharge parental responsibilities as supported by competent evidence from a psychologist of mental impairment, mental illness or mental retardation, or developmental disability, and there exists sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable period of time (750 ILCS 50/1(D)(p) (West 2012)).

¶ 5 At the time the petition was filed, respondent had been involved with prior DCFS cases relating to her other seven children. Not only was respondent mentally and developmentally disabled, but respondent and J.W.'s father, who died in February 2014, had a long history of severe domestic violence in the presence of the children. In fact, in October 2010, the decedent severely beat respondent, causing her to suffer a stroke and possible brain damage.

¶ 6 The case plan indicated respondent has "significant developmental delays" with a reported intelligence quotient (IQ) of 51. She is unable to read or write. J.W. was taken into protective custody soon after his birth due to respondent's cognitive and developmental delays and because respondent's rights had been terminated to all of her other children. In the past, she participated in services, but those services were terminated when DCFS determined she was unable to comprehend and internalize the material.

¶ 7 In July 2015, the trial court conducted a hearing on the State's petition for adjudication of neglect and termination of parental rights. The State called its expert witness, psychologist Dr. Michael Stern, to testify regarding the psychological evaluation he performed on respondent in January 2015. Dr. Stern testified he conducted a three-hour evaluation of respondent after reviewing her history and a 2010 psychological evaluation—an evaluation

performed before her brain injury. Dr. Stern's evaluation consisted of a clinical interview, a mental status examination, and multiple psychological tests. The results of the psychological tests revealed respondent was "far below average," functioning at the mental capacity of an eight-year-old child. The results were very similar to her 2010 psychological evaluation. Dr. Stern diagnosed respondent with a neurocognitive disorder, antisocial personality disorder, and intellectual disability. In his opinion, respondent was functioning at her pretrauma condition, finding her brain damage and seizure activity had resolved.

¶ 8 According to Dr. Stern, respondent's diagnoses affect her ability to parent in that she (1) is unable to bond or feel empathy toward her child; (2) is very self-focused and narcissistic, meaning she is unable to put her needs beneath those of her child's; (3) acts impulsively, with difficulty controlling her anger or behavior; (4) does not have the ability to reason, form good judgment, or solve problems; and (5) is unable to adequately verbally communicate or comprehend various day-to-day situations. Dr. Stern described these affects as chronic conditions, "impervious to any kind of intervention." In Dr. Stern's opinion, within a reasonable degree of psychological certainty, respondent suffers from a mental disability that affects her ability to parent. He said, in other words, she is not cognitively capable of parenting.

¶ 9 The State next called Anna Foote, a child-protection investigator at DCFS, who testified she received the hotline call regarding J.W.'s birth. Due to respondent's prior indicated findings, and after speaking with respondent, Foote decided to take custody of J.W. However, J.W. remained in the hospital with respiratory problems due to congenital heart disease for approximately two weeks after his birth.

¶ 10 Paul Wilkinson, the caseworker, testified J.W. was born in Danville, moved to Champaign, and then moved to Peoria for treatment shortly after his birth. He said respondent

was homeless at the time of J.W.'s birth, so Wilkinson summoned the assistance of Illinois Mentor to help respondent with her life skills. Respondent visited with J.W. through March 2015, when she decided to stop visiting.

¶ 11 After the presentation of evidence and arguments from counsel, the trial court found the State had sufficiently proved J.W. was a neglected minor. The court further found the State sufficiently proved respondent was an unfit parent based upon her inability to discharge parental responsibilities as supported by competent evidence from Dr. Stern of respondent's mental impairment, mental illness or mental retardation, or developmental disability. The court found respondent's inability to discharge parental responsibilities would extend beyond a reasonable period of time. See 750 ILCS 50/1(D)(p) (West 2012). The court found the State did not sufficiently prove respondent had failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare. See 750 ILCS 50/1(D)(b) (West 2012).

¶ 12 The trial court proceeded immediately to the best-interest hearing, where Wilkinson testified J.W. has been placed in a traditional foster home with two of his siblings since September 2014. He was placed in this foster home upon his release from the hospital after his birth. The foster family is willing to provide permanency through adoption. J.W. appears bonded with the foster parents. Wilkinson testified J.W. no longer has a heart murmur or respiratory distress. He does suffer chronic ear infections, but the foster parents are ready and able to address any medical concern. According to Wilkinson, it is in J.W.'s best interest to remain permanently in this placement.

¶ 13 Based upon the evidence presented, the trial court found it to be in J.W.'s best interest to terminate respondent's parental rights. The court awarded DCFS custody and guardianship of J.W.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 In a proceeding to terminate parental rights, the State must first prove by clear and convincing evidence the parent is unfit. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). In making such a determination, the court considers whether the parent's conduct falls within one or more of the unfitness grounds described in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). *In re D.D.*, 196 Ill. 2d 405, 417 (2001). A reviewing court will not disturb a trial court's unfitness finding unless it is against the manifest weight of the evidence. *D.D.*, 196 Ill. 2d at 417. "A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *D.D.*, 196 Ill. 2d at 417.

¶ 17 Under section 1(D)(p) of the Adoption Act, a parent may be found unfit if the parent suffers from a mental impairment which renders him or her unable to discharge a parent's normal responsibilities for a reasonable period of time. *In re R.C.*, 195 Ill. 2d 291, 305 (2001). A finding under section 1(D)(p) of the Adoption Act must be "supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist." 750 ILCS 50/1(D)(p) (West 2012).

¶ 18 Respondent urges this court to reverse the trial court's finding she was an unfit parent. However, her argument in support consists solely of one sentence. She contends: "The State's witness had not witnessed [respondent] parenting J.W. and could not have determined beyond a reasonable certainty that she could not parent based on a psychological evaluation alone." Without providing authoritative support for her position, respondent claims Dr. Stern should have actually witnessed her interact with the minor before stating such an opinion.

¶ 19 As this court has previously held, "[i]t is a rudimentary rule of appellate practice that an appellant may not make a point merely by stating it without presenting any argument in support. See *Girard v. White*, 356 Ill. App. 3d 11, 17 *** (2005) ('bare contentions that fail to cite any authority do not merit consideration on appeal')." *Housing Authority of Champaign County v. Lyles*, 395 Ill. App. 3d 1036, 1040 (2009). Nevertheless, in light of the importance of the issue presented, we will review the merits of respondent's claim.

¶ 20 In this case, respondent stipulated that Dr. Stern was a licensed clinical psychologist and an expert in his field. Dr. Stern testified respondent's IQ of 51 fell into the mildly mentally deficient range, formerly referred to as "mentally retarded." Dr. Stern concluded respondent was unable to perform minimally appropriate parenting and this inability would extend beyond a reasonable period of time. Dr. Stern had performed a psychological evaluation on respondent and testified her mental condition impaired her basic ability to care for the minor. Although he never witnessed respondent interact with J.W., Dr. Stern was able to find, based upon his personal examination of respondent, his expertise, and a review of respondent's prior records, that respondent's cognitive deficits would absolutely prevent her from responsibly and safely parenting her child.

¶ 21 In light of Dr. Stern's uncontroverted testimony, the trial court's determination respondent was unfit within the meaning of section 1(D)(p) of the Adoption Act was not against the manifest weight of the evidence. See *In re Michael M.*, 364 Ill. App. 3d 598, 608 (2006) (for the court to find a parent unfit under subsection (D)(p), the State must prove the parent suffers from a mental impairment sufficient to prevent the discharge of normal parental responsibilities and that the inability to parent will extend beyond a reasonable period of time). We affirm the court's finding of unfitness.

¶ 22 Respondent also contends the trial court erred in finding it was in J.W.'s best interest to terminate her parental rights. She claims, because she was not given the opportunity to demonstrate her parenting skills, the court could not make the determination that it was in J.W.'s best interest to terminate her parental rights.

¶ 23 After the trial court determines a parent is unfit, it must next determine whether it is in the minor's best interest to terminate parental rights. *In re D. T.*, 212 Ill. 2d 347, 364 (2004). The State must prove by a preponderance of the evidence that termination is in the best interest of the minor. *D.T.*, 212 Ill. 2d at 366. The court's finding will not be disturbed unless it is against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005). At this stage, the paramount consideration is the best interest of the minor, not the parent. *T.A.*, 359 Ill. App. 3d at 959.

¶ 24 Here, the record demonstrates J.W. is thriving in his foster home. According to the caseworker, although he is an infant, he appears to have developed a bond with his foster parents. Further, the foster parents are ready and able to effectively provide the care necessary to address J.W.'s specific and individual needs. Most importantly, the foster parents have expressed their willingness to adopt and make J.W., along with two of his siblings, permanent members of their family.

¶ 25 Conversely, the record demonstrates respondent is unable, at this time or in the near future, to provide the minor with permanency. Respondent's mental and developmental deficits affect her in such a way as to render her incapable of carrying out parental duties. Because J.W. is thriving in his foster-care environment and respondent cannot provide permanency to him in the foreseeable future, we conclude the court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 26 III. CONCLUSION

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

¶ 28 Affirmed.