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2016 IL App (4th) 160032-U

NO. 4-16-0032

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 27, 2016

Carla Bender

4th District Appellate Court, IL

In re: T.D. and C.D., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	McLean County
v.)	No. 13JA55
CARNELL DAVIS,)	
Respondent-Appellant.)	Honorable
)	Kevin P. Fitzgerald,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The trial court's best-interest determination was not against the manifest weight of the evidence.

¶ 2 In August 2015, the State filed a motion to terminate respondent Carnell Davis's parental rights to his children, C.D. (born in July 2008) and T.D. (born in January 2010). Following fitness and best-interest hearings, the trial court terminated his parental rights to both children. Respondent is not the father of a third minor living in the home (T.Y.). Mykia Davis is the mother of the children. Mykia, T.Y., and T.Y.'s father are not parties to this appeal.

¶ 3 Respondent appeals, arguing the trial court erred in finding it was in the minors' best interest to terminate his parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On August 12, 2013, the State filed a petition for adjudication of wardship

alleging the minors were neglected because they were residing in an environment injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2012)). That same day, the trial court entered a stipulated order for temporary custody, concluding (1) respondent and Mykia were the subject of an ongoing undercover investigation; (2) respondent admitted obtaining heroin and Mykia admitted selling it; (3) respondent and Mykia were arrested in the presence of the minors following a drug raid; and (4) respondent and Mykia were in jail pending felony drug charges. The minors were placed in the temporary custody of the Department of Children and Family Services (DCFS).

¶ 6 On October 2, 2013, respondent admitted the children were neglected.

¶ 7 At the October 30, 2013, dispositional hearing, the trial court was advised respondent had been sentenced to six years in the Illinois Department of Corrections (DOC). He was being sent to DOC the next day. The court's dispositional order found respondent and Mykia unfit to care for the minors and adjudicated the minors neglected, made them wards of the court, and placed their custody and guardianship with DCFS. The permanency goal was return home within 12 months.

¶ 8 On August 14, 2015, the State filed a petition to terminate the parental rights of respondent, Mykia, and T.Y.'s father. As to respondent, the petition alleged he was unfit because he failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) make reasonable efforts to correct the conditions that were the basis for the removal of the children from the parent during any nine-month period following the adjudication of neglect, abuse, and/or dependent minor under section 2-3 and/or 2-4 of the Juvenile Court Act of 1987 (Act), specifically the period from November 11, 2014, through August 11, 2015 (750 ILCS 50/1(m)(i) (West 2014)); and (3) make reasonable

progress toward the return of the children to the parent during any nine-month period following the adjudication of neglected, abused, and/or dependent minor under section 2-3 and/or 2-4 of the Act, specifically the period from November 11, 2014, through August 11, 2015 (750 ILCS 50/1(m)(ii) (West 2014)).

¶ 9 On December 16, 2015, the trial court held a fitness hearing on the petition to terminate. Because respondent's appeal does not challenge the trial court's findings of unfitness, we need not extensively recount the evidence presented at that hearing.

¶ 10 Helen Jones testified she had been the Center for Youth and Family Services (Center) foster-care caseworker during the life of this case. In the nine-month period between November 11, 2014, and August 11, 2015, respondent had two different service plans. At no time did Jones feel respondent had made overall appropriate progress toward having the children placed in his care. Jones acknowledged respondent participated in some services at DOC during that time frame, including parenting, substance-abuse, anger-management, and domestic-violence classes. While Jones was able to verify respondent was participating in these programs, she was denied any progress reports and was advised no certificates of completion would be provided by DOC until respondent was released from prison. Consequently, Jones had no way of knowing whether the classes respondent was taking were sufficient to meet DCFS requirements.

¶ 11 Respondent was released to a transitional center in Chicago on January 13, 2015. Respondent violated the work-release rules and had returned to DOC. Since respondent had been returned to DOC, Jones testified she had no contact with him because her obligation toward working with respondent for reunification changed on August 11, 2015, when the permanency goal changed from return home to substitute care.

¶ 12 The trial court found the State proved by clear and convincing evidence respondent had failed to (1) make reasonable progress toward return of the children and (2) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare. Therefore, the court found respondent unfit for termination purposes.

¶ 13 The best-interest hearing began on December 29, 2015. The court-appointed special advocate (CASA) filed a December 16, 2015, best-interest report, which reflected C.D. had been moved on August 22, 2015, from the relative foster placement he had been in since March 11, 2015, due to concerns with that home. He was briefly placed in the same foster home as T.Y. However, C.D. was then moved to the foster home where T.D. lives. Although C.D. was still developing a sense of security in his new environment, the CASA reported he appeared comfortable with the foster parents and showed appropriate affection. When talking with his foster parents, C.D. called them "mom" and "dad." C.D. was displaying some behavioral issues, which the CASA felt the foster parents would address in a loving and consistent manner. It was difficult to determine if these behaviors were C.D.'s true nature or if he was testing the limits of his new home. The multiple placements had made it difficult for C.D. to develop a sense of trust and security. C.D. was treated with love and respect, and he was learning his foster parents would support and love him. Living with his sister had allowed C.D. to feel more of a sense of having a family. His foster family was providing him with consistent discipline in a loving environment. The CASA felt it was important for C.D. to stay in his current foster placement because they offered the stability and love he needed, particularly given the number of placements he had experienced.

¶ 14 The report reflected T.D. was thriving in her foster placement, where she had lived since March 6, 2015. She freely expressed her love and affection for her foster parents and

referred to them as "mom" and "dad." She had developed friendships at school and within the foster family's extended family. T.D. was doing well in school and after-school programs, and her foster parents had involved her in outside activities like cheerleading. She was also pleased to have her brother living with her, and there was a great deal of love between them. T.D. was modeling for C.D. the give-and-take of a loving family home. The CASA felt it was important for T.D. to remain in her current foster home, where she had a nurturing and loving environment. She appeared secure in her place within the family unit.

¶ 15 The foster parents expressed their desire to adopt C.D. and T.D. The CASA observed the children were being provided a loving and nurturing home, which would allow them to develop to their full potential. Even though T.Y. was living in a different foster home, the foster parents were making every effort for the minors to see each other on a regular basis. The CASA believed it was in the best interest of the minors to remain in their current foster placements. She also strongly believed the children needed a permanent placement. In her opinion, it was in the best interest of the minors to terminate respondent's and Mykia's parental rights.

¶ 16 The State called Kimberly Martin-Corcoran, a therapist with the Center, who started counseling five-year-old T.D. in March 2015. At that time, T.D. had been placed with the foster parents with whom she still resides. She was the only child in the home. Initially, T.D. experienced a lot of confusion. She was missing her mother and her siblings. Since that time, T.D. had adjusted to her new home and was doing well. In August 2015, C.D. was placed with the same foster family. Even though T.D. was excited to have her brother join her, she had to adjust to no longer being the only child in the household. Once T.D. adjusted to this situation, he felt they would not be separated again and this was a more permanent arrangement. Martin-

Corcoran testified T.D. appeared to be happy and bonded to the foster family, and she felt it was best for T.D. to stay with the foster family, where she would be safe, settled, and loved.

¶ 17 The State called Sarah Chlebanowski, a therapist with the Center, who worked with seven-year-old C.D. from March 2014 to April 2014, and started working with him again in April 2015. By April 2015, C.D. had been through complex trauma when he witnessed two traumatic experiences. In play therapy, C.D. recreated a scene where people were breaking into his home and fighting. This represented an event he experienced after he was returned to his mother's care in the middle of this case. C.D. demonstrated a lot of aggression and anger through his play.

¶ 18 Chlebanowski testified C.D. has been living with T.D. and his current foster family since August or September 2015. He was removed from his previous foster placement (his seventh since Chlebanowski had been working with him) because of a domestic-violence incident, which was the third traumatic incident C.D. experienced. According to Chlebanowski's testimony, since being placed with his current foster family, C.D. was able to talk about being with a family. Chlebanowski noted C.D.'s behaviors had worsened since his latest placement. However, Chlebanowski did not see this as unusual because C.D. had experienced trauma and had attachment issues. Chlebanowski believed this behavior showed C.D. was actually starting to attach with his caregivers. According to Chlebanowski, the current foster family has been able to effectively deal with C.D.'s issues thus far.

¶ 19 Chlebanowski understood C.D.'s and T.D.'s current foster parents wanted to adopt the children. In Chlebanowski's opinion, adoption would be in C.D.'s best interest. She explained her opinion as follows: "[C.D.] has a very skewed sense of attachment. He's in a very prime developmental stage. So I think at this point, being in a placement where there's stability,

there's structure, there's predictability, and there's safety, is really important for [C.D.]"

¶ 20 Chlebanowski testified C.D. meets the criteria for a diagnosis of reactive attachment disorder (RAD). She planned to train the foster parents how to deal with RAD. In Chlebanowski's opinion, C.D.'s issues, which stemmed from experiencing complex trauma, made it even more essential he be in a secure, safe, permanent, and stable environment because these issues would be ongoing. Given the history of care C.D. experienced with his mother, Chlebanowski felt returning C.D. to his mother's care would be more traumatic than him staying with his current foster family, who could provide him with stability, safety, structure, and predictability.

¶ 21 C.D.'s and T.D.'s current foster mother testified no other children lived in the household. She and her husband were both 24 years old. She gave up her job in December 2015 because she felt it was more beneficial to be home with C.D. and T.D. to work on bonding with them. Her husband worked full-time as an auto technician. They had experience with the foster-care system because her mother-in-law had adopted six foster children, all African-American (C.D. and T.D. are both African-American).

¶ 22 She testified T.D. had been with them since March 5, 2015. At that time, the foster parents did not have enough space to take C.D. The foster parents were open to having C.D. if he ever needed a new home. They moved at the beginning of August 2015. C.D. was placed with them on August 24, 2015.

¶ 23 The foster mother testified T.D. quickly bonded with her and her husband and their extended family. She had made tremendous strides and was doing remarkably well. T.D. was also very happy to have her brother there after she adjusted to the fact she was no longer the only child in the home.

¶ 24 The foster mother testified they knew the permanency goal was substitute care when C.D. was placed with them, and they had some idea it might become a permanent placement. She and her husband discussed the fact C.D. needed someone who was not going to give up on him and was going to give him the structure and safety he needed. When C.D. was first placed with them, Chlebanowski apprised them of behaviors they might see in C.D. and gave them suggestions on how to make his transition easier. C.D. displayed those behaviors, but the foster parents never thought about giving up on him. Although the behaviors can be extreme, the foster mother stated she is fully committed to making sure C.D. gets the help he needs to deal with those behaviors. She felt C.D.'s RAD made it even more important he be in a secure, stable, permanent, and safe environment. She was not scared away by C.D.'s RAD or his needs.

¶ 25 The foster mother testified she believed the children loved their mother and their foster parents. She agreed the children sometimes felt conflicted between going back home or staying with them. C.D. had said he had been hit by his mother and had concerns about going back home. Although it was never "forced" upon them, the children call the foster parents "mom" and "dad." They only call their foster mother "Lauren" when talking to their mother on the phone. The foster mother believed the children did this out of loyalty and concern for Mykia's feelings.

¶ 26 The foster mother testified C.D. had talked about respondent three times, at most. C.D. said his father was in jail, and he does not see him. C.D. had never expressed feelings about his father. The same was true for T.D. They said they missed him but never really asked to see him.

¶ 27 The foster parents were willing to allow contact between C.D., T.D., and T.Y. They have all met together for lunch on a couple of occasions.

¶ 28 The foster mother testified it was her and her husband's intention to adopt C.D. and T.D. if parental rights were terminated. She had no doubts about her ability to positively affect C.D.'s behaviors by providing him stability, structure, and a willingness to work on everything he needs.

¶ 29 Helen Jones testified in her capacity as a foster-care-family worker with the Center. She had been assigned to this case from its inception in August 2013. Jones was aware the CASA's recommendation was to terminate parental rights. In Jones's opinion, the parental rights of all the parents should be terminated because the case had been open for 28 months and the children needed permanency, structure, and consistency, which they could receive after termination.

¶ 30 Jones testified respondent had been incarcerated during the entire life of the case. Although he had been released to a halfway house, he was returned to DOC. Jones indicated respondent would be starting from square one when released from DOC, even though he did participate in some services while there. Respondent would need to demonstrate he could live a crime-free lifestyle for 6 to 18 months before she would be confident he could maintain that lifestyle. In Jones's opinion, it would be very traumatic for the children to learn they were going to be uprooted again.

¶ 31 Jones testified C.D. had talked about respondent, loved his father, and enjoyed visits with him. C.D. asked to see respondent when a visit was planned, but he did not mention anything about respondent at home visits. At visits with respondent, T.D. tells him she loves him. But during home visits, T.D. says nothing about her father. During visits in the courtroom, the children are affectionate toward respondent and vice versa.

¶ 32 Jones testified C.D. had expressed, if he cannot go back to live with his mother,

he would like to stay with his current foster family. He had not indicated any preference. T.D. had not expressed a preference for where she lives.

¶ 33 Respondent testified he was in DOC custody. While at Sheridan Correctional Center (Sheridan), he participated in parenting, anger-management, domestic-violence, drug-treatment, and workforce classes. He took an apprenticeship in plumbing to prepare for life after prison. He stated he successfully completed all classes. Except for the workforce class, no certificates of completion would be issued until his release from DOC.

¶ 34 Between late December 2014 or early January 2015 until May or June 2015, respondent had been in a work-release program in Chicago, Illinois. It was a work-release center with locked security doors and correctional officers, unlike a halfway house with more freedom of movement. Near the end of his time at the work-release program, respondent was able to have one face-to-face visit with the children. He was unable to attend a second visit due to transportation issues. While respondent was at Sheridan, he had phone contact with the children every Tuesday. He also wrote letters and sent birthday and Christmas cards. Mykia would read them to the children and have the children write back. More recently, respondent sent the communications to Jones; however, respondent indicated Jones said she had received only one card, which she forgot to share with the children.

¶ 35 Respondent testified he did not complete the work-release program. Even though respondent had access to alcohol and drugs while he was at work, he never used them and passed every random drug test. Respondent was violated because contraband (a cell phone) was found in the room where respondent resided with a roommate. Respondent claimed it was not his cell phone. Regardless, he was returned to DOC.

¶ 36 Respondent testified his parole date is scheduled for February 28, 2016.

Respondent stated he is prepared to cooperate with the Center. He expressed his desire for the case to remain open and his rights to remain intact. Respondent claimed things would be different when he is released because he has plans which he has put in motion. He claimed he also has a back-up plan. He stated he had learned a lot in DOC and been given a lot of tools. He had a plumbing apprenticeship, so he would not have to turn to selling drugs. Respondent also claimed he had job opportunities through Safer Foundation. Respondent would be on parole when released from DOC. He had been approved to live with his mother in Jonesburg, Missouri. He claimed DOC had been looking into him staying with his father in Normal, Illinois, until the DCFS case was completed.

¶ 37 Respondent acknowledged he has a criminal background. However, the current charge was his first after his children were born. He stated he fell on hard times and made a mistake but now has resources to keep him from making that mistake again.

¶ 38 Respondent acknowledged he had been incarcerated the entire life of this case. He had asked to see his children, but no one brought them to see him. Respondent felt no one had made an effort to help him at all or to include him in anything. Before his incarceration, respondent stated he had been very involved with the care of the children, including during C.D.'s lengthy hospitalization after his birth. He had been home every night and did things with them every day. However, court appearances are now the only time he finds out about the children.

¶ 39 On cross-examination, respondent acknowledged he had a lot of arrests in Florida and Missouri, many of which involved drugs. He had at least seven convictions. Respondent stated he had never been in a prison; he had only been in county jails, where no services were offered. Respondent acknowledged several arrests in Missouri after the children were born. He

was not paroled to live with Mykia because the status of their marriage was undecided.

¶ 40 Respondent stated he had been told the children were being cared for in their foster home. When he did visit the children, they seemed happy. However, he had no communication with them in the prior year. Respondent was concerned the children were living in a home where the foster parents were a different race.

¶ 41 Respondent agreed it was important for the children to be in a secure, loving, nurturing, stable environment. He felt he would be able to provide such an environment shortly after his release from DOC even though he would be on parole and his job and living situation would be in a state of flux. Through Safer Foundation, respondent had been told he would be able to get a temporary job at Dunkin' Donuts in Normal, Illinois, if his parental rights were not terminated.

¶ 42 After hearing arguments, the trial court stated this was a very difficult case because of the clear love for the children by the biological parents and foster parents, and the clear love the children had for both biological and foster parents. The court indicated there was "no perfect solution" and there would be detriment to the children regardless of the court's decision. The court noted its obligation to look out for the best interest of the children.

¶ 43 The trial court analyzed the best-interest standards set forth in section 1-3 of the Act (705 ILCS 405/1-3 (West 2014)). It found the physical safety and welfare of the children, including food, shelter, health, and clothing "weigh[ed] in favor of termination." The development of the children's identity was "largely neutral." The children's background and ties, including familial, cultural, and religious, "slightly favor[ed] non-termination." The children's sense of attachment, including where they actually feel love, attachment and a sense of being valued, was "a neutral factor." The children's sense of security "probably strongly favor[ed]

termination." The children's sense of familiarity was "a neutral factor." The continuity of affection was "neutral." The least-disruptive placement alternative "slightly favor[ed] termination." Overall, the sense of attachment "slightly favor[ed] termination." The children's wishes and long-term goals was "a neutral factor," "might slightly favor non-termination," but was a "relatively minor factor." The children's community ties, including church, school, and friends were "neutral." The uniqueness of every family and child "slightly favor[ed] termination," particularly for C.D. who has special needs. The risk attendant to entering and being in substitute care was "a non-factor." The preference of the persons available to care for the children was "a neutral factor." In the court's mind, this case "really crie[d] out for permanency," particularly in light of the multiple placements C.D. and T.D. had experienced.

¶ 44 The trial court entered a written order finding respondent unfit and the best interest of the minors required appointment of a guardian with the right to consent to the minors' adoption.

¶ 45 This appeal followed.

¶ 46 II. ANALYSIS

¶ 47 Because respondent does not challenge the trial court's unfitness finding, we confine our analysis on appeal to the court's best-interest determination. 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). Before a parent's rights may be terminated, a court must find the State proved, by a preponderance of the evidence, it is in the child's best interest those rights be terminated. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. The trial court's best-interest finding will not be reversed 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). A decision is against the manifest weight of the evidence "if the facts clearly demonstrate that 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).

¶ 48 When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2014). These factors include the following:

"(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) 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;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05)(a) to (j) (West 2014).

The trial court must consider all of the above-cited factors; however, no single factor is dispositive. *In re Austin W.*, 214 Ill. 2d 31, 50, 823 N.E.2d 572, 584 (2005).

¶ 49 Here, the trial court considered all the statutory factors. The court found 4 of the 10 factors favored termination, 4 were neutral, 1 was a nonfactor, and 1 favored nontermination. The one factor that "cried" out for termination was the children's need for permanence and stability.

¶ 50 In this case, the record showed the foster parents were meeting C.D.'s and T.D.'s individual needs and they were doing well in their foster placement. As stated, C.D. has special attachment and behavioral issues. The best-interest report and testimony of Chlebanowski indicated C.D. needs special developmental care and stability now, which the record does not indicate respondent is able to provide and would not have been able to provide for months after his release from DOC. By comparison, C.D.'s foster parents worked with Chlebanowski to learn how to address C.D.'s issues. The foster mother specifically testified she knew C.D.'s behaviors

can be extreme, but she is fully committed to making sure he is given the tools he needs to work through those behaviors. She is not scared away by C.D.'s attachment disorder. To her, that fact makes it even more important he be in a secure, stable, permanent, and safe environment. T.D. is thriving in the foster home. She has bonded to her foster parents and their extended family. She was doing well in school and had made friends there. The fact T.D. was living in the same home with her brother had made it seem as though they would not be separated again and were part of a family. The foster parents were willing to provide permanency for C.D. and T.D. through adoption.

¶ 51 In contrast, when respondent went to the work-release center, he reportedly would have been eligible for release in August 2015. However, because he was deemed to have violated the rules, respondent was sent back to DOC, where he remained at the time of the best-interest hearing. His release date was moved to February 2016. Respondent lost six months of critical time during which he could have been proving his commitment and ability to do what was required to get his children back.

¶ 52 When respondent is released in February 2016, he will not be in a position to immediately regain custody of the children because he will still have to do what is required by DCFS for reunification. He will be on mandatory supervised release (MSR) until February 2018 and will have to abide by MSR rules.

¶ 53 Respondent testified the parole board has approved him to live with his mother in Missouri, although he claimed he might be able to arrange to live with his father in Normal, Illinois, for a while.

¶ 54 Before the children could achieve permanency with respondent, he would have to accomplish many things. He would have to prove he could lead a law-abiding life. He would

need to be able to regularly visit with the children, prove he could provide a stable place for them to live, find a job, and complete all other services required by DCFS before reunification could be considered. This could take another 6 to 18 months to accomplish and, based on the record in this case, is not likely. Therefore, respondent would not be able to provide for the children's needs in the near future.

¶ 55 The children require stability. Therefore, the trial court's finding it is in the children's best interest to terminate respondent's parental rights is not against the manifest weight of the evidence where the facts do not clearly demonstrate the court should have reached the opposite result.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we affirm the trial court's judgment terminating respondent's parental rights.

¶ 58 Affirmed.