

NOTICE

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2016 IL App (4th) 160071-U

NO. 4-16-0071

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 26, 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
MYKIA 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 Mykia Davis's parental rights to her children, C.D. (born in July 2008) and T.D. (born in January 2010). Following fitness and best-interest hearings, the trial court terminated her parental rights to both children. Respondent is also the mother of a third child who was living in the home, T.Y. Carnell Davis is the father of C.D. and T.D.. Carnell, 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 interests to terminate her 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 Carnell were the subject of an ongoing undercover investigation; (2) Carnell admitted obtaining heroin and respondent admitted selling it; (3) respondent and Carnell were arrested in the presence of the minors following a drug raid; and (4) respondent and Carnell 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 The October 24, 2013, dispositional report filed by the Center for Youth and Family Services (Center) indicated respondent was released from jail on October 17, 2013, and was sentenced to 30 months' probation.

¶ 8 At the October 30, 2013, dispositional hearing, the trial court was advised Carnell 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 Carnell 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.

¶ 9 On August 14, 2015, the State filed a petition to terminate the parental rights of respondent, Carnell, and T.Y.'s father. As to respondent, the petition alleged she was unfit because she 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 May 17, 2014, through February 17, 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 May 17, 2014, through February 17, 2015 (750 ILCS 50/1(m)(ii) (West 2014)).

¶ 10 At a September 30, 2015, pretrial hearing, respondent admitted she failed to make reasonable progress toward return of the minors during the nine-month period from May 17, 2014, through February 17, 2015. The State's factual basis reflected, during the relevant time period, respondent had (1) lost two jobs and was unemployed; (2) received an eviction notice and moved into a residence with a male roommate; (3) needed agency assistance to buy food, gas, and bus passes; (4) been arrested twice; and (5) a pending petition to revoke her probation. The factual basis further reflected, in December 2014, respondent had demonstrated an inability to protect the children and created a dangerous environment for them when there was a bloody, violent incident in the home in the presence of the minors. If called, the police would testify respondent claimed the alleged assailant smashed in her door and attempted to rape her, initially denying she had actually invited the man into her home. Respondent attempted to clean up a very bloody scene. One photograph taken at the scene showed T.Y. with a mop and a bucket of bloody water. Another photograph showed T.Y. and C.D. sitting on a couch next to bloody clothing from the two men in respondent's apartment who had attacked the alleged assailant. The alleged assailant suffered serious injuries. Thereafter, the trial court found a factual basis.

The court found respondent freely, voluntarily, and knowingly admitted the allegations and the State could prove the allegations by clear and convincing evidence. The court found respondent unfit and continued the matter for a best-interest hearing. The court further ordered services continue for respondent.

¶ 11 The court appointed special advocate (CASA) filed a December 16, 2015, best-interest report reflecting 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 in 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 behavior 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 sense of 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.

¶ 12 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 afterschool 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.

¶ 13 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 Carnell's parental rights.

¶ 14 At the December 29, 2015, best-interest hearing, 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, where 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, T.D. felt they would not be separated again and this was a more permanent arrangement. Although T.D. experienced conflict over loving both

her mother and her foster parents, Martin-Corcoran testified she appeared to be happy and bonded to the foster family. Even though T.D. loved her mother, Martin-Corcoran felt it was best for T.D. to stay where she was because she was settled and bonded with the foster family. Martin-Corcoran expressed concern about T.D.'s safety if she was returned to her mother, whereas with the foster family she would be safe, settled, and loved.

¶ 15 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.

¶ 16 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 had been able to effectively deal with C.D.'s issues thus far.

¶ 17 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]."

¶ 18 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.

¶ 19 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).

¶ 20 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.

¶ 21 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.

¶ 22 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.

¶ 23 The foster mother testified she believed the children loved their mother and their foster parents. She agreed the children sometimes feel 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 respondent's feelings.

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

¶ 25 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.

¶ 26 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 respondents 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.

¶ 27 Jones testified, if respondent's parental rights were not terminated, she would need to see consistency for at least another six months before a return-home goal would be considered. Even if the goal changed, it would be a few more months before Jones would be comfortable recommending unsupervised contact. In Jones's opinion, it would be very traumatic for the children to learn they were going to be uprooted again. While the children were back home, they never said anything negative about their situation. After they were removed again, they were very slow to answer questions. C.D. stated he did not want to say anything because his mom would be mad and he would get in bad trouble. Something horrible happened in respondent's home a year ago. Before that incident, Jones thought everything was going fine and respondent had successfully gone through her services.

¶ 28 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.

¶ 29 On cross-examination, Jones testified in the September 18, 2015, client-service

plan, respondent was rated satisfactory for individual counseling, substance abuse, housing, family-individual counseling, income, and probation. If parental rights were not terminated, respondent would be required to maintain her current service-plan goals even though she had accomplished those goals. Respondent would need to have adequate housing. According to Jones, respondent had had an illegal means of income for several months but did not elaborate. Jones explained, even though respondent had completed certain services, she did not feel the environment was safe to return the children to respondent's care. Jones stated it might be a significant amount of time before she would feel like respondent was in a safe environment for return home of the minors.

¶ 30 Respondent testified in November 2015 she moved out of a three-bedroom apartment because she was being evicted for failure to pay rent. She had since moved into an apartment where the landlord was agreeable to leasing her a three-bedroom apartment if her parental rights remained intact. Respondent testified she was a manager at Taco John's where she had worked for six months. During tax season she would again be working for Jackson Hewitt as a "CPA." Respondent stated she had also obtained a license to operate a forklift. She had 10 more months on probation.

¶ 31 Respondent testified she and her current counselor talk about how what happened affected her children. She admitted her actions and judgment were "totally not good." The counselor had written a report indicating respondent did not need any more counseling regarding her decision-making, but she wanted respondent to continue counseling. The counselor reported respondent needed to choose better associates and broaden her community support. Respondent testified she was in a support program for women with felony backgrounds. She stated her life consists of working, coming home, and trying to do positive things. In the past, respondent

wanted to have adult friends and adult company, but now she has very few friends and her focus is on making the right decisions for her children and herself.

¶ 32 Respondent testified visits with the children were positive. The children expressed their desire to return home, and she told them she wanted the same. Respondent expressed remorse for her actions and stated her desire to raise her children. She acknowledged she had made wrong decisions in the past but claimed she had not been given an opportunity to redeem herself. Respondent stated she had learned many things in counseling and accomplished many things to become a better mother and provider. She asked the trial court for a chance to prove she can be a better mother.

¶ 33 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 interests of the children.

¶ 34 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 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 attachments "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.

¶ 35 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.

¶ 36 This appeal followed.

¶ 37 II. ANALYSIS

¶ 38 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).

¶ 39 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).

¶ 40 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.

¶ 41 During the relevant time period between May 17, 2014, and February 17, 2015, respondent lost two jobs, remained unemployed, received an eviction notice, needed agency assistance to buy food, gas, and bus passes, and was arrested twice. She had a pending petition to revoke her probation. More important, respondent failed to protect the minors after they were returned to her home. Even though respondent reported there were no problems with the children at home or at school, it was later revealed she meted out corporal punishment on the children and they were having problems at school. She left them alone for long periods of time and even overnight. Sometimes she took T.D. with her. In December 2014, she created a dangerous environment when she provoked a bloody, violent incident to occur in front of the

children, resulting in their removal once again.

¶ 42 The record showed the foster parents were meeting C.D. and T.D.'s individual needs and they were doing well in their foster placement. C.D. has special attachment and behavioral issues largely caused by respondent's actions. The best-interest report and testimony of Chlebanowski indicated C.D. needs special developmental care and stability now, which the record suggests respondent is unable to provide and would not be able to provide in the near future. 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.

¶ 43 Before the Center would consider changing the goal to return home, respondent would have to prove consistency for at least another six months. Even after the goal changed, it would be another few months before unsupervised contact would be considered. Consequently, respondent would not be able to provide for the children's needs in the near future.

¶ 44 The children require stability. Therefore, the trial court's finding it is in the children's best interests 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.

¶ 45

III. CONCLUSION

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

¶ 47 Affirmed.