2016 IL App (4th) 160398-U

NO. 4-16-0398

FILED
October 20, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: L.L., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 15JA2
KENNETH LOSS,	)	
Respondent-Appellant.	)	Honorable
	)	Brett N. Olmstead,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in finding respondent father unfit.

(2) The trial court did not err in terminating respondent father's parental rights.

¶ 2 Respondent father, Kenneth Loss, appeals the orders finding him an unfit parent and terminating his parental rights to L.L. (born July 3, 2013). Respondent argues the orders are against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 10, 2015, the Department of Children and Family Services (DCFS) received a hotline report stating Chelsea Oakley, L.L.'s mother, was involved in a domestic dispute. When police arrived at Oakley's home, her paramour, Michael Veale, answered the door and collapsed. Both Veale and Oakley appeared "highly intoxicated." L.L. was sleeping,

and Veale and Oakley were arguing. A handprint was observed on Oakley's back, and Veale had a bloody nose as a result of Oakleys striking him. Oakley could not remember where she put her baby but found her sleeping upstairs. The home was dirty, with garbage, clothes, and animal feces on the floor. At this time, respondent, a registered sex offender, was imprisoned in the Illinois Department of Corrections (DOC), serving a sentence for failure to report a change of address.

¶ 5 Three days later, the State filed a petition for adjudication of neglect and shelter care on behalf of L.L. The State alleged L.L. was neglected when she resided with her mother, Oakley, because when residing with Oakley, L.L. lived in an injurious environment as she was exposed to domestic violence and substance abuse (705 ILCS 405/2-3(1)(b) (West 2014)). Oakley is not a party to this appeal. The State further alleged L.L. to be neglected when residing with Oakley and respondent as her environment exposed her to contact with a registered sex offender, respondent. Temporary custody and guardianship of L.L. was placed with DCFS.

¶ 6 At the February 2015 adjudicatory hearing, Oakley stipulated to the allegations of neglect regarding domestic violence and respondent stipulated to the allegation regarding exposure to a registered sex offender. The trial court found L.L. neglected.

¶ 7 In January 2016, the State moved to find respondent unfit and to terminate his parental rights. The State alleged respondent was unfit in that he failed to (1) make reasonable progress toward the return of L.L. in the nine months following the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (2) maintain a reasonable degree of interest, concern, or responsibility as to L.L.'s welfare (750 ILCS 50/1(D)(b) (West 2014)).

¶ 8 In April 2016, the trial court held a hearing on the State's allegations of parental

unfitness. The State's first witness was James Zielinski, a foster-care family worker with the Center for Youth and Family Solutions. Zielinski, the family's caseworker from January through October 2015, testified respondent was incarcerated in the DOC when the case began and during Zielinski's entire tenure as the family's caseworker. Zielinski contacted respondent at the DOC. Recommended services for respondent included domestic-violence treatment, a substance-abuse assessment, and sex-offender treatment. Because of his incarceration, respondent was unable to participate in those services. Respondent did participate in individual counseling. Respondent also attended Alcoholics Anonymous (AA) group meetings. According to Zielinski, respondent participated in a vocational program and a religious group. Respondent was unable to visit with L.L. while incarcerated. Respondent maintained contact with Zielinski.

¶ 9 Beth Volk, a foster-care case manager with Caritas Family Solutions (Caritas), was assigned to the family's case in October 2015. When Volk took over the case, she contacted respondent at the DOC. Respondent was released from the DOC in December 2015. Respondent contacted Volk upon his release. He moved to Xenia, Illinois, and maintained contact with Volk. Volk referred respondent for mental-health counseling and substance-abuse treatment. Respondent participated in some services. He completed the substance-abuse evaluation, which recommended no further services. Respondent attended the domestic-violence assessment, but Volk had not received validation of that completion. Volk learned the service provider was not recommending group treatment. When respondent moved to Louisville, Illinois, Volk referred respondent to Julie's Counseling Services. Respondent attended three or four of those sessions and missed two.

¶ 10 Volk reported respondent attended supervised visits with L.L. since December

2015. Volk supervised three or four visits. The visits were appropriate. Respondent was "engaging and building a relationship" with L.L. The other weekly visits were supervised by different individuals from Volk's office.

¶ 11 According to Volk, respondent, at the time of Volk's testimony, was residing in the Clay County jail. Volk was unsure about when respondent became incarcerated, as she had only learned of the change that week. Respondent was held on the charge of failure to report a change of address.

¶ 12 The State also submitted into evidence a psychological evaluation of Oakley. Oakley reported to the psychologist she and respondent had a bad relationship. Respondent was "very unfaithful" and cruel to her children. On one occasion, he "whipped" Oakley's other two children, causing bruising. Oakley further reported respondent had an addiction to pornography and had sexual relations "with many women." Oakley "kicked him out" after L.L.'s birth.

¶ 13 Respondent testified on his own behalf. When DCFS took L.L. into care, respondent was serving a sentence in the DOC for failure to register a change of address and employment. Respondent maintained contact with Zielinski and Volk through the mail and by "a couple [of] phone calls." Respondent met with Volk in person after his release at the monthly meetings and at the visits. He began visiting L.L. in January 2016. Respondent was diligent in attending visits, only missing "a couple" due to lack of transportation. He had since obtained a driver's license and had access to a vehicle.

¶ 14 Regarding the visits, respondent testified they went well. He and L.L. were developing a bond. The last visit "was one of the more emotionally attached visits" he had. Respondent missed the most recent scheduled visit because he was arrested nine days earlier.

Respondent had hired an attorney to help him with the charges of failing to report his address change. The attorney was optimistic about a probation agreement.

¶ 15 According to respondent, he participated in the services offered to him. He missed two days of counseling because they were on the same days as the visits with L.L. and he had transportation issues. Respondent had a sex-offender assessment done in 2013 and that report was recently provided to Volk. No treatment was recommended. While imprisoned, respondent attended AA meetings at Zielinski's suggestion. Respondent also participated in a Christian-based spiritual program to help him deal with readjusting upon his release. Respondent successfully completed two vocational courses: custodial maintenance and construction. Also during his imprisonment, respondent participated in mental-health counseling.

¶ 16 Respondent testified at the time of his arrest he was employed full-time at Xenia Manufacturing, Inc. Respondent intended to continue with services upon either his acquittal or sentence to probation.

¶ 17 The trial court found the State proved by clear and convincing evidence respondent was unfit for failing to make reasonable progress toward L.L.'s return. The court found the State failed to prove respondent failed to maintain a reasonable degree of interest and concern as to L.L., but that the State sufficiently proved respondent unfit in that he failed to maintain a reasonable degree of responsibility as to L.L.

¶ 18 In May 2016, the best-interests hearing was held. Respondent, at that time, remained incarcerated. The trial court noted it received and considered the best-interests report prepared by Caritas. According to the Caritas report, L.L. resided with the same foster mother, a

maternal aunt, since January 2015. L.L.'s aunt was also the co-guardian of L.L.'s half-sisters. The aunt married her fiancé in January 2016, and he became L.L.'s foster father. Both foster parents met L.L.'s needs. They provided appropriate direction and had a strong bond with L.L. Both were willing to keep L.L. involved with her maternal and paternal family members and to build a relationship between L.L. and respondent's son, L.L.'s half-brother, who resided with respondent's mother in Florida. The foster parents were willing to adopt L.L.

¶ 19 The trial court concluded it was in L.L.'s best interests to terminate respondent's parental rights. The court observed respondent was incarcerated, which significantly interfered with his ability to develop a close bond with L.L. The court addressed the statutory factors and noted L.L.'s close bond with her foster parents and her half-siblings.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 A. Parental Fitness

¶ 23 Respondent first contends the trial court erred in finding him unfit to parent L.L. Respondent argues his cooperation and efforts showed the evidence was not clear and convincing L.L. would not be able to be returned to his custody.

¶ 24 In termination-of-parental-rights proceedings, the trial court engages in a two-step process. In the first step, the court must determine whether respondent parents are fit to parent their minors. A parent will be found "unfit" if the State proves by clear and convincing evidence any ground specified in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 25 On appeal of a finding of parental unfitness, this court defers to the decision of the

trial court because that court, during the hearing on parental fitness, viewed witnesses and heard their testimony. *Id.* We will not overturn a determination of parental unfitness unless the finding is against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005). Only when we find "the correctness of the opposite conclusion is clearly evident from a review of the evidence" will we hold a finding to be against the manifest weight of the evidence. *Id.*

¶ 26 In this case, the trial court found respondent an unfit parent based on two grounds listed in section 1(D). One ground is respondent failed to maintain a reasonable degree of responsibility as to L.L.'s welfare (see 750 ILCS 50/1(D)(b) (West 2014)). We begin by reviewing that finding.

¶ 27 When a finding of parental unfitness is based on the parent's alleged failure to maintain a reasonable degree of responsibility as to his or her child's welfare, the trial court must focus on the parent's efforts, not the parent's success, in light of the surrounding circumstances. See *T.A.*, 359 Ill. App. 3d at 961, 835 N.E.2d at 914. However, a parent will not be found fit simply because that parent showed some affection, interest, or responsibility toward the child, but only if the interest, concern, or responsibility shown is reasonable. *Id.*

¶ 28 The record supports the trial court's decision. L.L. was taken into custody in January 2015. From that time until December 2015, respondent, a registered sex offender, was serving a sentence for failing to notify the authorities of his change of address. While respondent made efforts to improve his life and prepare for the return of his child, he missed multiple appointments and visits. In addition, respondent found himself returned to jail in early April 2016 for the same offense for which he was released from prison just a few months earlier.

Given these facts, we cannot find the trial court erred in finding the State clearly and convincingly proved respondent unfit for failing to maintain a reasonable degree of responsibility as to L.L.'s welfare.

¶ 29 Having concluded the trial court did not err in finding respondent unfit on one ground specified in section 1(D) of the Adoption Act, we need not consider the propriety of the other unfitness finding. The State need only prove one ground of unfitness. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006).

¶ 30 B. The Best Interests of the Child

¶ 31 Respondent next argues the trial court erred in concluding the best interests of L.L. necessitated the termination of his parental rights. Respondent emphasizes L.L.'s young age and his prompt steps toward visitation and reunification when he was released from prison in December 2015 show he will be successful at establishing a relationship with his daughter. Respondent maintains the relationship would grow if given time to do so.

¶ 32 The determination of the best interests of a child is the second stage of termination-of-parental-rights proceedings. At the hearing to decide those interests, the trial court shifts its focus from the interests of the parents to those of the child in securing "a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). Statutory factors must be considered, including the child's safety and welfare, the development of the child's identity, the child's background, the uniqueness of each child and family, and the preferences of those available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). A parent's desire to maintain a relationship with his child must yield to the child's interests. *D.T.*, 212 Ill. 2d at 364, 818 N.E.2d at 1227. Only if the trial court concludes the State proved by a

preponderance of the evidence the termination is in the child's best interests may that court order parental rights terminated. *Id.* at 366, 818 N.E.2d at 1228. This court will not disturb an order terminating parental rights unless the decision to terminate is against the manifest weight of the evidence. *T.A.*, 359 Ill. App. 3d at 961, 835 N.E.2d at 914.

¶ 33 We find no error in the trial court's decision to terminate respondent's parental rights to L.L. The trial court considered the requisite statutory factors in reaching its decision. The record supports that decision. At the May 2016 best-interests hearing, respondent remained incarcerated. No evidence was presented to show when respondent would be released. Respondent offered no permanency or stability to L.L. In contrast, L.L. resided with foster parents, to whom she attached a close bond. Her needs were met. L.L. also maintained relationships with family members in her foster placement. Moreover, her foster parents offered permanency and stability.

¶ 34 III. CONCLUSION

¶ 35 We affirm the trial court's judgment.

¶ 36 Affirmed.