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2017 IL App (3d) 170327-U

Order filed September 26, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re J.B. and S.B.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Minors	)	Rock Island County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal Nos. 3-17-0327 and 3-17-0328
	)	Circuit Nos. 14-JA-33 and 16-JA-26
v.	)	
	)	
Jeremy B .,	)	
	)	The Honorable
Respondent-Appellant).	)	Theodore G. Kutsunis,
	)	Judge, presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence. Termination order modified to correct clerical error.

¶ 2 On June 10, 2014, The State filed a petition for adjudication of wardship alleging that J.B., a newborn, was a neglected minor. Following a dispositional hearing on August 19, 2014,

the minor was formally adjudicated neglected, the Department of Children and Family Services (DCFS) was appointed guardian, and the child was placed in relative foster care with a permanency goal of return home within 12 months. S.B. was born on November 2, 2015. On February 23, 2016, the State filed a petition alleging S.B. was a neglected minor, and a formal adjudication of neglect followed on April 22, 2016. S.B. was then placed in the same foster family as J.B., with the permanency goal of return home within 12 months. Permanency review hearings were held on June 3, 2016, and October 6, 2016. Following the second review hearing, the court found that the respondent father had not made reasonable progress or efforts toward family reunification. On February 1, 2017, the State filed petitions to terminate the respondent's parental rights regarding both minors. Following a hearing on April 7, 2017, the respondent was found unfit, and following a hearing on May 7, 2017, the court found it to be in the best interest of both minors that the respondent's parental rights be terminated.[1]

¶ 3 The respondent timely appealed the court's best interest findings, maintaining that each best interest determination was against the manifest weight of the evidence. He does not challenge the court's finding that he was unfit. This court consolidated the two appeals for a single decision. For the following reasons, we affirm the trial court's ruling in each appeal.

¶ 4 BACKGROUND

¶ 5 At the best interest hearing, the State presented the testimony of Kelly Sikardi, a child welfare specialist at Lutheran Social Services (LSS). Sikardi testified that she had been the assigned caseworker for J.B. and S.B., as well as two older siblings. She had been the caseworker for approximately one year prior to the hearing. Skiardi further testified that J.B. and

[1] Prior to the best interest hearing, the minors' mother executed a consent to adoption for each child.

S.B. had both been placed with their Godmother, Merryjo Diericks, who lived in a household with her husband and their three children, ages 18, 16, and 11. Sikardi noted that both J.B. and S.B. had been in placement for over a year and had been fully accepted into Diericks' home and were considered as part of the family. Sikardi also observed that all of the minors' physical, mental, and emotional and developmental needs were being fully provided in Dierick's home. Sikardi opined that it was in the best interest of both J.B. and S.B. that they remain in their current placement pending adoption.

¶ 6 Sikardi acknowledged that, approximately a month prior to the best interest hearing, Diericks had given notice that she wanted S.B. removed from her care. On the morning of the hearing, however, Diericks informed Sikardi that she wished to keep S.B. Sikardi testified that Diericks was concerned that if S.B. were removed, J.B. might likely be removed as well, and Diericks wished to keep custody of J.B with a goal toward adoption. Sikardi further testified that, in spite of Diericks' actions regarding S.B., it was still her opinion that it was in the best interest of both J.B. and S.B. that they remain with Diericks.

¶ 7 Julie Ramirez, Sikardi's foster care program supervisor at LSS, testified that it was "somewhat concerning" that Diericks had given notice seeking an alternative placement for S.B., but there were extenuating circumstances. Ramirez noted that S.B. "screams incessantly," motivating Diericks to seek alternative placement. However, by the time of the hearing, Diericks decided that keeping the two children together was the primary objective. It was agreed by Diericks and LSS staff that it would be too traumatic for both children to separate them. Ramirez further testified that no other viable alternative placement for S.B. existed. Ramirez concurred in Sikardi's recommendation that it was in the best interest of both children that they remain with Diericks pending adoption.

¶ 8 The court took judicial notice of the LSS best interest report prepared by Sikardi and submitted prior to the hearing. The report noted that J.B. had been in Diericks' care since shortly after he was born, and had developed a loving parent/child relationship. It was reported that Diericks had expressed interest in adopting J.B. The report further noted that S.B. had also been placed with Diericks shortly after her birth, and that Diericks was meeting all S.B.'s physical, mental, emotional, and developmental needs. The report also noted that J.B was in need of stability and permanency, something which neither birth parent had been able to provide. The report further noted that, while Diericks had not indicated a willingness to adopt S.B., she was willing to keep both children in order to provide for J.B.'s need for stability.

¶ 9 After the admission of the best interest report, the State rested and no other evidence was presented. Following arguments of counsel, the court found that it was in the best interest of both minors that the respondent's parental rights be terminated. Commenting upon the entire record, the court observed that both minors needed the permanence, stability, and continuity of parental and familial relationships that had been in place since the minors had been integrated into Diericks' family. The court further noted that the respondent had not established a better alternative to termination of his parental rights and placement with Diericks. The respondent appealed the court's best interest determinations.

¶ 10 ANALYSIS

¶ 11 The respondent does not challenge the court's finding that he was unfit. He argues on appeal that the trial court's finding that it was in the best interest of J.B. and S.B. that his parental rights be terminated was against the manifest weight of the evidence. We disagree.

¶ 12 Once the trial court has found the parent to be unfit, all considerations must yield to the best interest of the minor. *In re D.T.*, 212 Ill. 2d 347, 352 (2004). Accordingly, at the best interest

hearing, the focus shifts from the parent to the child's interest in a stable, safe, and loving home life. *Id*. At the best interest stage, the State must prove by a preponderance of the evidence that termination of parental rights is in the minor's best interest. *In re B.B.*, 386 Ill. App. 3d 686, 699 (2008). In considering a minor's best interest, the trial court must consider certain statutory factors in light of the minor's age and developmental needs, including: (1) the physical safety and welfare of the minor; (2) the development of the minor's identity; (3) the familial, cultural and religious background of the minor; (4) the minor's sense of attachment, including love, security, familiarity, and continuity of relationships with his parental figures; (5) the wishes of the minor; (6) the minor's community ties; (7) the minor's need for permanence, including stability and continuity of relationships; and (8) the preferences of persons available to care for the minor. 705 ILCS 405/1-3(4.05) (West 2012). There is no requirement that the trial court expressly address each or any of these statutory factors; nor must the court articulate any specific rationale for its best interest determination. *In re Jaron Z.*, 348 Ill. App. 3d 239, 263 (2004). It is sufficient that a reviewing court is able to determine from the record that the court considered the statutory factors in reaching a best interest determination. *Id*.

¶ 13 On appeal, a trial court's decision to terminate the rights of a parent to their child will not be disturbed unless it is contrary to the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31, 35 (2005). The trial court’s determination to terminate parental rights will be set aside if it is against the manifest weight of the evidence. *In re B.B.*, 386 Ill. App. 3d at 697. A determination is 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. *Id.* at 697-98.

¶ 14 In the instant matter, the evidence supports the trial court's best interest determination regarding both J.B. and S.B. As it relates to J.B., the respondent has provided no factual basis in his appeal as to how the trial court's best interest determination was erroneous. That said, we find that the record amply supports the trial court's decision. Based on the evidence presented, the court found that J.B. had bonded with Diericks and her family, and that his physical, emotional, and developmental needs were being met as well as his need for permanence, stability and continuity. Additionally, the record established that Diericks expressed a desire to adopt S.B. We hold that the trial court's decision to terminate respondent's parental rights to J.B. was not against the manifest weight of the evidence.

¶ 15 Regarding S.B., the record likewise established that the child's physical, emotional, and development needs were being met by the Diericks family. The only difference in the record between the J.B and S.B. was the fact that Diericks filed a request to place the child elsewhere, and did not expressed an intent to adopt S.B. The record established that the request for placement had been withdrawn prior to the hearing, and the trial court commented that both minors needed the stability and continuity of relationship that would result from both remaining in the care of the same family that they had been with since birth. The court found that ordering both children to remain in their current environment constituted the least disruptive placement alternative. Given the record, we cannot say that the court's findings regarding the best interests of both minors was against the manifest weight of the evidence.

¶ 16 During the pendency of this appeal, the State filed a motion seeking to remand the matter regarding J.B. (14-JA-33) to the circuit court to correct an alleged error in the termination order wherein a reference was made in the order to the minor as "S.B." rather than "J.B." The State maintains that the reference to "S.B." in the order was a clerical error resulting from the use of

the order in 16-JA-26 as a "template," which can be corrected by issuance of an order *nunc pro tunc* by the trial court. The respondent did not respond to the State's motion for remand. Our review of the record allows us to conclude that the termination order issued in case 14-JA-33 does contain a clerical error in the misidentification of the minor's initials. We are able to determine from the record that the termination order issued in case 14-JA-33 was clearly addressed to the matter of the minor identified as "J.B." The caption of the order refers to the minor as "J.B." and the transcript of the proceeding unambiguously established that the trial court issued two separate written orders terminating the respondent's parental rights as to each of the two minors. See *In re Madison H.*, 215 Ill. 2d 364, 375 (2005) (remand not necessary where trial court's oral pronouncements sufficiently state the court's findings). Therefore, pursuant to our powers under Supreme Court Rule 366(a) (eff. date February 1, 1994), we modify the termination order in case 14-JA-33 to correct any misidentification as "S.B." of the minor "J.B." See *Gretencord v. Cryder*, 336 Ill. App. 3d 960, 935 (2003).

¶ 17 CONCLUSION

¶ 18 The judgment of the circuit court of Rock Island County is affirmed as modified.

¶ 19 Affirmed as modified.