2017 IL App (3d) 170482-U

Order filed December 6, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re J.R.,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
A Minor	)	McDonough County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0482
	)	Circuit No. 16-JA-10
v.	)	
	)	
Tiffany S.,	)	
	)	The Honorable
Respondent-Appellant).	)	Heidi A. Benson,
	)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err when it found the respondent-mother to be an unfit parent and when it terminated her parental rights to the minor.

¶ 2 The circuit court entered orders finding the respondent, Tiffany S., to be an unfit parent and terminating her parental rights to the minor, J.R. On appeal, the respondent argues that the circuit court's decisions were erroneous. We affirm.

¶ 3 FACTS

¶ 4 On May 12, 2016, the State filed a juvenile petition alleging, *inter alia*, that the minor (born October 23, 2015) had been abused by the respondent. The petition was amended on September 15, 2016, to indicate that the respondent had pled guilty on September 1, 2016, to aggravated domestic battery (720 ILCS 5/12-3.2, 3.3(a) (West 2014)) and domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)). The respondent had caused great bodily harm to the minor by throwing him to the ground, which caused the minor to hit his head on a bassinet and suffer a skull fracture. The respondent also had punched the minor in the face. The circuit court granted the petition after a hearing and adjudicated the minor neglected.

¶ 5 The circuit court held a dispositional hearing on October 13, 2016. After the hearing, the court made the minor a ward of the court, found the respondent to be an unfit parent, and granted guardianship to the Department of Children and Family Services (DCFS) with the right to place the minor.

¶ 6 On December 23, 2016, the State filed a petition to terminate the respondent's parental rights. The petition alleged that the respondent was unfit based on depravity due to her conviction for aggravated domestic battery of the minor.

¶ 7 On May 8, 2017, the circuit court held a hearing on the termination petition. During the hearing, the State introduced a certified copy of the respondent's aggravated domestic battery conviction. In addition, the court took judicial notice of the file from that criminal case. At the close of the hearing, the court found the respondent to be an unfit parent due to depravity.

¶ 8 On June 28, 2017, the circuit court held a best interest hearing. A report compiled by Lutheran Social Services caseworker Ashlee Test was admitted into evidence. Test's report stated that the minor had been with the foster parents since May 10, 2016, at which time he was seven months old. Adoption of the minor was not currently an option and that the permanency goal was to return the minor to his father's care. However, if that did not occur, the foster parents were willing to adopt the minor. The report further stated that the minor's basic needs were being met by the foster parents and that the foster home was adequate. The foster parents also had a daughter who was in high school.

¶ 9 While the minor was not yet enrolled in an education program, the foster parents had been diligent about ensuring his participation in regular developmental screening. The minor was developmentally on target. He was also participating in home daycare and had been acting appropriately with the other children. While the minor was too young to have much community involvement, the foster parents were familiar with the community and expressed the desire to ensure the minor's involvement with the community as he got older should he remain in their care.

¶ 10 The report further stated that the minor had displayed "strong attachment" to the foster parents and that he was affectionate with them. Regarding the respondent, the report stated that she had been visiting with the minor once per month for two hours since March 2017, which was when she was released from prison.

¶ 11 The report recommended that the respondent's parental rights be terminated due to her acts of violence toward the minor.

¶ 12 Several witnesses also testified at the hearing. Macomb police department detective Denise Cremer testified that she investigated the minor's injuries after DCFS opened the case

based on suspected child abuse and failure to thrive. When she confronted the respondent about the minor's injuries, the respondent initially stated that she had left the minor in the care of her neighbors and that upon returning the minor to her, the neighbors said that something was wrong with him. Then, the respondent claimed that her live-in-boyfriend had hand spasms and may have dropped the minor and that her boyfriend also excessively spanked the minor. The respondent also had told a doctor and the DCFS caseworker that the minor had fallen out of a bassinet and that he had fallen over and hit his head when trying to sit up.

¶ 13 Eventually, the respondent admitted to Cremer that she had injured the respondent. The respondent told Cremer that the minor was a fussy baby and that she did not know how to control him. She was alone with the minor and after he would not stop crying, she stood up, picked him up to the level of her face, and threw him "hard" to the ground. She also said he hit his head on the bassinet.

¶ 14 Test testified that she had been the caseworker since January 27, 2017. The minor came into substitute care because he had lost two pounds between February and May 2016 and because he had a skull fracture and broken ribs that had been healing. Due to the weight loss, the minor had been diagnosed with failure to thrive. Test testified in accord with the best interest hearing report she had compiled, adding that the foster mother was the minor's maternal aunt who was married and who had a 13-year-old daughter. The daughter helped care for the minor. Test stated that the minor had a strong bond with the foster family and that he called his foster parents mom and dad. Test further stated that the respondent acted appropriately with the minor during visits but that he did not appear to have a strong bond with the respondent.

¶ 15 Test also stated that she believed the respondent was regressing regarding her mental health because she was denying at least one of the reasons why the minor came into substitute care.

¶ 16 Leanne Haney testified that she was the respondent's aunt and foster parent of the minor. She stated that the respondent had displayed appropriate parenting behavior with the minor during visits. She equivocated when asked whether the respondent was ready for full-time parenting duties, stating that "I think there's more education needed there and more guidance, more [*sic*] someone to help her along the way." She then stated that the respondent was not ready at present for full-time parenting duties, but could be ready someday.

¶ 17 The respondent's mother testified that she was unsure that the respondent caused the minor's injuries. She said she had trouble believing that her daughter would be capable of those actions. She also acknowledged that the respondent was now stating that she did not cause any harm to the minor.

¶ 18 The respondent testified that she lived with her mother in Blandinsville and that she was on probation. Since her release from custody, she had completed a parenting class and was participating in another parenting class. She was also participating in individual counseling and anger management classes. She had not been medicated for her depression before she went to jail, but she was now medicated for it and was addressing it in counseling. She started taking classes for her GED while in jail, and she obtained her GED after she was released.

¶ 19 At the close of the hearing, the court found that there were three issues with the respondent's treatment of the minor: (1) the minor's weight loss, which led to the diagnosis of failure to thrive; (2) the minor's broken ribs, which occurred at some point prior to the incident for which the respondent pled guilty; and (3) the minor's skull fracture and the varying

explanations from the respondent as to how that injury occurred. The court also found it significant that the respondent believed she did not injure the minor. The court further noted the respondent's "very significant depression issue" and "very poor insight and judgment." The court then ruled that it was in the minor's best interest to terminate the respondent's parental rights.

¶ 20 The respondent appealed.

¶ 21 ANALYSIS

¶ 22 The respondent's first argument on appeal is that the circuit court erred when it found her to be an unfit parent. Specifically, the respondent claims that because the State failed to present evidence that the minor was the victim in the respondent's aggravated domestic battery conviction, no presumption of her depravity arose.

¶ 23 The State has the burden of proving that a parent is unfit by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). On review, we will not disturb the circuit court's unfitness finding unless it was against the manifest weight of the evidence. *Id.* A ruling "is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent." *Id.*

¶ 24 Section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2016)) provides that a parent may be found unfit on grounds that he or she is depraved. *Id.* In relevant part, a rebuttable presumption of depravity exists if the parent was convicted of aggravated battery of *any* child. (Emphasis added.) *Id.*

¶ 25 In this case, the respondent's argument that no presumption of depravity arose fails for two reasons. First, the respondent fails to recognize that the statute does not require the victim of the aggravated domestic battery conviction to be the minor that was the subject of the

termination petition. *Id.* Second, even if the statute did so require, the circuit court took judicial notice of the case file from the respondent's aggravated domestic battery conviction, which clearly indicated that the minor was the victim. Accordingly, the State met its evidentiary burden and a presumption of depravity arose due to the respondent's conviction. The respondent does not argue that she rebutted that presumption; thus, we hold that the circuit court did not err when it found the respondent to be an unfit parent.

¶ 26 The respondent's second argument is that the circuit court erred when it found that it was in the minor's best interest to terminate her parental rights.

¶ 27 At the best interest hearing, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340 (2009). The State has the burden to prove by a preponderance of the evidence that the termination of parental rights is in the minor's best interest. *Id.*

¶ 28 Section 1-3(4.05) of the Act provides:

> "Whenever a 'best interest' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:
>
> (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) (West 2016).

The circuit court is not required to address every statutory factor in rendering its decision on the minor's best interest; in fact, the court need not articulate any rationale at all. *In re Jaron Z.*, 348 Ill. App. 3d 239, 262-63 (2004). On review, we will not disturb the circuit court's best interest

ruling unless it is against the manifest weight of the evidence. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071 (2009).

¶ 29 The respondent's argument essentially asks us to reweigh the evidence in relation to the statutory factors and reach a conclusion opposite to that reached by the circuit court. That is not our task. See *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006) (holding that "[a] reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn"). In fact, a review of the evidence presented reveals no error in the circuit court's judgment. The minor was thriving in the care of his foster parents, who were meeting all of his needs. He had formed a strong bond with the foster family and sought care and comfort from his foster parents, whom he called mom and dad. He had been with the foster parents since May 10, 2016, when he was just seven months old. He did not have a bond with the respondent, who had pled guilty to aggravated domestic battery and domestic battery after she punched the minor in the face and threw him to the ground, thereby causing a skull fracture. While she was participating in individual counseling, anger management classes, and parenting classes after her release from jail, the respondent was denying that she caused the minor's injuries. While adoption was not currently an option, the foster parents were willing to adopt should DCFS' efforts at reunifying the minor with his biological father fail. Under these circumstances, we hold that the circuit court's best interest determination was not against the manifest weight of the evidence.

¶ 30 CONCLUSION

¶ 31 The judgment of the circuit court of McDonough County is affirmed.

¶ 32 Affirmed.