2017 IL App (5th) 170248-U

NO. 5-17-0248

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re B.J., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Marion County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 15-JA-59
	)	
K.J.,	)	Honorable
	)	Ericka A. Sanders,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's unfitness and best interest findings were not against the manifest weight of the evidence.

¶ 2 Following a hearing, the trial court found respondent, K.J., to be an unfit parent to his minor child, B.J. (minor). At a subsequent hearing, the court held it was in the best interest of the minor to terminate respondent's parental rights. On appeal, respondent alleges both findings are against the manifest weight of the evidence. We affirm.

¶ 3 BACKGROUND

¶ 4 Respondent is the biological father of the minor. On October 1, 2015, approximately 10 days after the minor was born, the Marion County State's Attorney (State) filed a petition for adjudication of wardship alleging the minor was neglected in that: (1) at birth, the minor's blood contained methamphetamine in violation of section 2-3(1)(c) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(c) (West 2014)); and (2) the minor is in an environment injurious to his welfare because his mother's and father's drug use make them periodically unable to care for, train, and protect said minor in violation of section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2014)). The petition indicated the minor was currently in protective custody, and asserted it is in minor's best interest that he be adjudged a ward of the court.

¶ 5 Following a shelter care hearing, the court entered an order on October 2, 2015, granting temporary custody of the minor to the Illinois Department of Children and Family Services (DCFS). DCFS's original family service plan, dated November 12, 2015, stated its permanency goal was for the minor to return home within 12 months. The family service plan indicated its desired outcome was "[f]or [respondent] to be provided the appropriate services." Specifically, the plan provided that respondent had to agree to the following: participate in an integrated assessment; participate in a substance abuse assessment; cooperate with any recommendations made as a result of the substance abuse assessment; develop a relapse prevention plan; participate in a psychological assessment; cooperate with any recommendations made by the psychological assessment; participate

in a mental health assessment; follow any recommendations given from the mental health assessment; and participate/complete parenting education.

¶ 6 On December 16, 2015, the minor was adjudicated neglected in that the minor was exposed to illicit drugs as a newborn. 705 ILCS 405/2-3(1)(c) (West 2014). The minor was placed with his maternal grandparents. In its permanency order entered on July 20, 2016, the trial court stated the permanency goal was for the minor to return home within 12 months. The permanency order further stated respondent had not made substantial progress towards the return home of the minor.

¶ 7 The State filed a motion for termination of parental rights and for appointment of guardian with power to consent to adoption on November 16, 2016. The petition noted the minor had previously been adjudged neglected and made a ward of the court, and alleged respondent is an unfit person to have the minor for one or more of the following reasons: (1) he has failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare as defined by section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2014)); (2) he has deserted the minor for more than three months next preceding the commencement of the adoption proceeding as defined by section 1(D)(c) of the Adoption Act (750 ILCS 50/1(D)(c) (West 2014)); (3) he has failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor from the parent during any nine-month period following the adjudication of the neglected minor under section 2-3 of the Juvenile Court Act of 1987 as defined by section 1(D)(m)(i) of the Adoption Act (750 ILCS 50/1(D)(m)(i) (West 2014)); and (4) he has failed to make reasonable progress toward the return of the child to the parent

during any nine-month period following the adjudication of the neglected minor under section 2-3 of the Juvenile Court Act of 1987 as defined by section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)). Based on this petition, the court entered a permanency order changing the permanency goal to substitute care pending court determination on termination of parental rights.

¶ 8 Following a hearing on May 31, 2017, the court concluded the State failed to meet its burden regarding its allegation that respondent deserted the child for more than three months next preceding the commencement of the adoption proceeding. 750 ILCS 50/1(D)(c) (West 2014). However, the court found the State met its burden in proving: respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare (750 ILCS 50/1(D)(b) (West 2014)); failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any nine-month period following adjudication of the neglected minor (750 ILCS 50/1(D)(m)(i) (West 2014)); and failed to make reasonable progress toward the return of the child to the parent during any nine-month period following the adjudication of the neglected minor (750 ILCS 50/1(D)(m)(ii) (West 2014)). Following a best interest hearing on June 28, 2017, the court concluded it was in the minor's best interest that respondent's parental rights be terminated. The permanency goal was subsequently changed to adoption.

¶ 9 This appeal followed.

¶ 10 ANALYSIS

¶ 11 Prior to discussing the arguments raised by respondent in this appeal, we address the timeliness of our decision. This is an accelerated appeal under Illinois Supreme Court Rule 311(a) (eff. Feb. 26, 2010). Under Rule 311(a)(5), we are required to issue our decision within 150 days after the filing of the notice of appeal, except for good cause shown. Ill. S. Ct. R. 311(a)(5) (eff. Feb. 26, 2010). Here, respondent's notice of appeal was filed on June 29, 2017, making the deadline to issue our decision November 27, 2017. However, this case was not placed on the oral argument schedule until December 5, 2017. Therefore, we find good cause to issue our decision after the 150-day deadline.

¶ 12 Turning to the merits, respondent alleges the trial court acted against the manifest weight of the evidence when it found: (1) he was an unfit parent; and (2) it was in the best interest of the minor that his parental rights be terminated.

¶ 13 The authority to terminate parental rights involuntarily is found in the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2014)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2014)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). A petition to terminate parental rights is filed under section 2-29 of the Juvenile Court Act, which delineates a two-step process in seeking termination of parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2014); *J.L.*, 236 Ill. 2d at 337. First, the State must prove, by clear and convincing evidence, that the parent is unfit under one or more of the grounds of unfitness enumerated in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2014); *J.L.*, 236 Ill. 2d at 337. Second, once the court makes a finding of parental unfitness, the matter proceeds to a second hearing where the State must prove it is in the

best interest of the child that the parent's parental rights be terminated. 705 ILCS 405/2-29(2) (West 2014); *J.L.*, 236 Ill. 2d at 337-38. As we indicate above, respondent challenges both findings.

¶ 14 I. Standard of Review

¶ 15 As a reviewing court, we will not disturb the trial court's unfitness or best interest rulings unless they are against the manifest weight of the evidence. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 65. The question before us is not what we would have done in the first instance if we had been acting as the trial court and this evidence was presented before us; rather, the question for us is whether the trial court's decisions were against the manifest weight of the evidence. *Julian K.*, 2012 IL App (1st) 112841, ¶ 65. The trial court's decisions are afforded great deference because the trial court sits in a superior position to assess the credibility of the witnesses and weigh the evidence. *Julian K.*, 2012 IL App (1st) 112841, ¶ 65. Accordingly, a trial court's decision is against the manifest weight of the evidence only where a review of the record clearly demonstrates the court should have reached an opposite result. *Julian K.*, 2012 IL App (1st) 112841, ¶ 65.

¶ 16 II. First Step: Unfitness

¶ 17 Respondent claims the trial court's finding that he was an unfit parent was against the manifest weight of the evidence. Section 1(D) of the Adoption Act defines an "unfit person" as "any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption." 750 ILCS 50/1(D) (West 2014). Section 1(D) sets forth numerous grounds under which a parent may be

deemed "unfit," any one of which standing alone will support a finding of unfitness. 750 ILCS 50/1(D) (West 2014); *In re C.W.*, 199 Ill. 2d 198, 210 (2002).

¶ 18 In this case, the trial court concluded respondent was an unfit parent based on sections 1(D)(b), 1(D)(m)(i), and 1(D)(m)(ii) of the Adoption Act. In relevant part, these sections provide the following grounds of unfitness:

> "(b) Failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare.
>
> * * *
>
> (m) Failure by a parent (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any 9-month period following the adjudication of neglected or abused minor *** or (ii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor[.]" 750 ILCS 50/1(D)(b), (m)(i), (m)(ii) (West 2014).

¶ 19 We first address the court's finding that respondent was an unfit person based on the failure to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare. 750 ILCS 50/1(D)(b) (West 2014). In evaluating an allegation under section 1(D)(b), a trial court must focus on the reasonableness of the parent's efforts to show interest, concern, or responsibility, and not the success of those efforts. *In re M.J.*, 314 Ill. App. 3d 649, 656 (2000). The court must also consider any circumstances that may have made it difficult for respondent to show interest, concern, or responsibility for the child's well-being. *M.J.*, 314 Ill. App. 3d at 656.

¶ 20 After careful review, we find the trial court's finding of unfitness based upon respondent's failure to maintain a reasonable degree of interest, concern, or responsibility concerning the minor's welfare was not against the manifest weight of the evidence. The record shows the original service plan was entered in November 2015, and respondent was subsequently incarcerated in June 2016 in relation to a retail theft incident. In that seven-month window, the only initiative taken by respondent was to submit to the initial assessments. The DCFS family service plan dated March 1, 2016, indicates respondent failed to complete services. The DCFS family service plan dated August 23, 2016, indicates respondent did not participate in any services, failed to maintain contact with agency workers, and did not follow the recommendations given to him from his assessment. The record further shows that at the fitness hearing, the caseworker assigned to the minor's case testified respondent did not contact her about visitation and did not contact her for assistance in obtaining services while respondent was in custody or out of custody. Most telling is a report prepared by Caritas Family Solutions prior to respondent's incarceration that was filed in the circuit court of Marion County on January 5, 2016, which indicates respondent "sat in a truck with another person and did not talk to worker or try to come see [the minor]" during a scheduled visit with the minor on December 21, 2015.

¶ 21 In light of the foregoing, we find the record supports the trial court's finding that there was clear and convincing evidence regarding respondent's unfitness based on the failure to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare. Our courts have determined that noncompliance with an imposed service

plan and infrequent or irregular visitation is sufficient evidence warranting a finding of unfitness under section 1(D)(b) of the Adoption Act. *In re Janira T.*, 368 Ill. App. 3d 883, 893 (2006). Accordingly, the trial court's finding was not against the manifest weight of the evidence. Having determined there was adequate evidence to satisfy one statutory ground of unfitness, we need not address the other findings of unfitness made by the trial court. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1168 (2003).

¶ 22 III. Second Step: Best Interest

¶ 23 Respondent next challenges the trial court's finding that terminating his parental rights was in the best interest of the minor. The State maintains the trial court properly determined it was in the minor's best interest to terminate respondent's parental rights.

¶ 24 The best interest stage of a termination proceeding does not require standards as strict as the unfitness stage. *Julian K.*, 2012 IL App (1st) 112841, ¶ 80. While the State has to prove unfitness by clear and convincing evidence, it has to prove the child's best interest by only a preponderance of the evidence. *Julian K.*, 2012 IL App (1st) 112841, ¶ 80. Our supreme court has defined a preponderance of the evidence as that evidence which renders a fact more likely than not. *People v. Brown*, 229 Ill. 2d 374, 385 (2008).

¶ 25 Although the parent still maintains an interest in the child at the best interest stage of the proceeding, the focus is on the child. *Julian K.*, 2012 IL App (1st) 112841, ¶ 80. Specifically, the court focuses on the child's welfare and whether termination would improve the child's future financial, social, and emotional atmosphere. *In re D.M.*, 336 Ill. App. 3d 766, 771 (2002). Once the trial court determines the parent is unfit, the parent's rights are no longer of concern and must yield to the best interest of the child. *In*

re Veronica J., 371 Ill. App. 3d 822, 831 (2007). Importantly, the question of what is in the best interest of the child should not be treated lightly. *D.M.*, 336 Ill. App. 3d at 773. As previously stated, the trial court's preponderance ruling will not be disturbed on review unless it was against the manifest weight of the evidence. *In re Jaron Z.*, 348 Ill. App. 3d 239, 262 (2004).

¶ 26 In determining the best interest of the child, the court must consider the following factors in the context of the child's age and developmental needs: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures, siblings, and other relatives; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). Other considerations include the nature and length of the child's relationship with his or her caretakers and the effect that a change of placement would have on the emotional and psychological well-being of the child. *In re Brandon A.*, 395 Ill. App. 3d 224, 240 (2009).

¶ 27 In this case, the minor is currently residing with his maternal grandparents, with whom he has lived his entire life except for one week in which he was placed with his maternal great-grandmother. The court was made aware of the grandparents' desire to adopt the minor at the best interest hearing. The record shows that after adequately considering the testimony of the caseworkers, the minor's maternal grandparents,

respondent, the recommendation of the guardian *ad litem*, and the arguments of counsel, the court concluded the minor "no doubt is bonded to the foster parents, to his grandparents," who fostered the minor's development and cared for the minor "in the beginning when things were rough." The court noted the minor has been loved by his maternal grandparents since birth, and acknowledged the grandparents' desire to continue to love and support the minor. The court was convinced this would continue to be the case, as his grandparents' home is the only home the minor has ever known.

¶ 28 Kayla Weihe (Weihe), a caseworker for Caritas Family Solutions assigned to the minor's case, testified the minor is doing very well in his placement with his grandparents, who are both in their early forties. Despite being drug-exposed at birth, Weihe testified the minor's doctors do not have any concerns about his health, well-being, or development, and the minor is "on track developmentally." The court was further informed that the grandparents maintain stable employment and provide a safe environment for the minor.

¶ 29 In consideration of the foregoing, we cannot say the trial court's decision to terminate respondent's parental rights was against the manifest weight of the evidence. This decision allows the grandparents of the minor, who have played a vital role in the development and care of the minor for the duration of his life, to seek adoption.

¶ 30 Respondent argues the trial court erred by not expressly considering each of the statutory factors outlined in section 1-3 of the Juvenile Court Act in making its best interest determination. 705 ILCS 405/1-3(4.05) (West 2014). Respondent asserts the trial

court improperly failed to discuss any of the statutory factors in rendering its decision, and gave no attention to the minor's ties to his biological paternal family. We disagree.

¶ 31 Contrary to respondent's position, a trial court need not articulate any specific rationale for its decision that termination of parental rights is in the child's best interest, and a reviewing court may affirm the trial court's decision without relying on any basis used by the trial court. *Jaron Z.*, 348 Ill. App. 3d at 263. As we discuss above, the undisputed evidence shows the minor lives in a stable environment with his maternal grandparents where he has progressed developmentally since being drug-exposed at birth. The minor is attached to his maternal grandparents, and the minor's grandparents want to continue to care and provide for the minor. In contrast, respondent is currently incarcerated. While respondent expressed his love for the minor and his desire to do anything for him at the best interest hearing, his actions speak louder than words. Respondent has not participated in the services recommended to him by the family service plan, and has neglected visitation opportunities with the minor even when he was not in custody. Accordingly, we reject respondent's argument.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of Marion County finding respondent unfit and terminating his parental rights is affirmed.

¶ 34 Affirmed.