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2018 IL App (3d) 170643-U

Order filed March 6, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> L.H.-S.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minor)	Peoria County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-17-0643
)	Circuit No. 14-JA-97
v.)	
)	
Julia H.,)	
)	The Honorable
Respondent-Appellant).)	Mark E. Gilles,
)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Carter and Justice Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's termination of respondent's parental rights was not against the manifest weight of the evidence.
- ¶ 2 The State filed a juvenile petition, claiming that L.H.-S. was a neglected minor due to an injurious environment, and the trial court adjudicated her neglected. At the dispositional hearing,

the trial court found respondent mother and father unfit, ordered that L.H.-S. be made a ward of the court, and appointed the Department of Children and Family Services (DCFS) guardianship with the right to place. Subsequently, the court found that it was in the best interest of L.H.-S. to terminate both parents' parental rights. Respondent mother appealed the trial court's best interest ruling. We affirm.

¶ 3

FACTS

¶ 4

In April 2014, the State filed a juvenile petition, alleging that L.H.-S., born December 31, 2012, was a neglected minor due to an injurious environment. The petition stated that (1) respondent Julia H. was previously found unfit in September 2007 and remained unfit in March 2010; (2) respondent did not complete services that would result in a finding of fitness; (3) respondent had a criminal history; (4) James, L.H.-S.'s legal father, had a criminal history; (5) on March 28, 2014, James choked respondent and respondent left the residence, leaving L.H.-S. behind with James; (6) respondent had a substance abuse problem; and (7) James had mental health problems. In June, respondent obtained an emergency order of protection against James after he threatened to end her life.

¶ 5

At the adjudication hearing, the trial court adjudicated L.H.-S. neglected. At the dispositional hearing, the court determined that respondent remained unfit because she had alcohol problems, mental illness problems, and she had made the decision to continue to live with James although he had a history of domestic violence against her. The court also found James unfit because of his mental illness problems, his propensity to commit crimes, and his erratic behavior. The court ordered that L.H.-S. be made a ward of the court and appointed DCFS guardianship with the right to place.

¶ 6 The court also ordered respondent to perform certain tasks in order to correct the conditions that led to the removal of L.H.-S. These tasks included: (1) executing all authorizations for release of information requested by DCFS and its designee to monitor and evaluate compliance with the order, respondent's progress, her needs, and L.H.-S.'s needs; (2) cooperating fully and completely with DCFS or its designee; (3) following, cooperating with, and successfully completing any course of treatment recommended and providing proof to DCFS or its designee of successful completion of the treatment; (4) performing random drug drops including testing for alcohol three times per month; (5) submitting to a psychological examination arranged by DCFS or its designee and following all recommendations; (6) participating and successfully completing counseling and providing DCFS or its designee with proof of successful completion; (7) participating and successfully completing a parent course and providing DCFS or its designee with proof of successful completion; (8) participating and successfully completing a domestic violence course and providing DCFS or its designee with proof of successful completion; (9) obtaining and maintaining stable housing conducive to the safe and healthy rearing of L.H.-S.; (10) providing the assigned caseworker any change in address and/or phone number and any change in the members of her household within three days; (11) providing to the assigned caseworker the name, date of birth, and social security number and relationship of any individual requested by DCFS or its designee with whom DCFS or its designee had reason to believe that a relationship exists or had developed that would affect L.H.-S.; (12) visiting L.H.-S. at times and places set by DCFS or its designee and demonstrating appropriate parenting conduct during visits; (13) attending Alcoholics Anonymous (AA) meetings at least three times per week and providing proof; (14) refraining from conduct that

would cause James to violate the order of protection; and (15) continuing to take medication prescribed by the Human Services Center or other providers.

¶ 7 In July 2016, the State filed a petition for termination of parental rights. In count I, the State claimed that respondent failed to make reasonable progress toward the return of L.H.-S. during the nine-month period of October 2, 2015, to July 2, 2016. In count II, the State alleged that James failed to make reasonable progress toward the return of L.H.-S. during the nine-month period of October 2, 2015, to July 2, 2016. The court found that the State had proven the allegations in its petition by clear and convincing evidence.

¶ 8 In August 2017, a best interest hearing was held. Sarah Higgins, the foster care family worker from The Center for Youth & Family Solutions (CYFS), presented a best interest report. The report stated that L.H.-S. was placed in a foster home when she was 16 months old and had remained in the same home ever since. Her foster family had met her basic needs of food, shelter, health, and clothing. Higgins observed the caregivers' home to have an adequate amount of food, the home was in good condition, and there were no visible safety or fire hazards. The home had adequate space for the family size and L.H.-S. had an adequate sleeping area in her room. The home "had met all of DCFS's licensing standards for a traditional foster home."

¶ 9 L.H.-S. was diagnosed with Autism, Fetal Alcohol Syndrome, Attention Deficient Hyperactivity Disorder, and "lazy eye," which had been corrected with eyeglasses. She was prescribed Adderall two times a day and Clonidine at bedtime. Overall, L.H.-S. was in good health. "[L.H.-S.'s] caregivers make her medical needs and appointments a priority and are very diligent at ensuring that [her] well-child exams are current and that any acute medical issues are addressed immediately."

¶ 10 Higgins observed L.H.-S. to be dressed in appropriate clothing and had enough adequate clothing to meet her basic needs. She attended the Head Start Preschool Program. Her teachers stated that she was “very bright, but has some behavior issues at school.” She had met or surpassed all of her developmental milestones and continued to develop at or above her age level. Higgins had no concerns regarding L.H.-S.’s caregivers’ ability to continue to provide advocacy and assistance throughout L.H.-S.’s school year.

¶ 11 L.H.-S. had a strong relationship with her foster mother. The foster mother stated that L.H.-S. was a part of her family and L.H.-S. was very comfortable around her. She called her foster mother “mom” and loved to sit on her lap. The foster mother loved L.H.-S. and saw her as her biological child. Higgins observed L.H.-S. smiling, laughing, playing, hugging, and snuggling with her foster mother during home visits. The foster mother was able to meet L.H.-S.’s physical, emotional, and developmental needs. The foster mother stated that she had loved L.H.-S. and would like to adopt her.

¶ 12 L.H.-S. also had a strong relationship with her foster father and called him “dad.” Higgins observed L.H.-S. “engaged and comfortable with her foster father.” He was able to meet L.H.-S.’s physical, emotional, and developmental needs. He spoke highly of L.H.-S. and would like to adopt her. He stated that “ ‘from the minute she was placed in their home, he felt like she belonged there.’”

¶ 13 L.H.-S. had been placed with her foster family two and a half years ago. The foster parents are involved in their community and include L.H.-S. in their community activities. She has spent a lot of time with the foster parent’s family. She was involved in extracurricular activities and attended dance recitals and athletic games with her cousins. She “has grown fond of her community.” She loved to play outside at preschool and in the yard with her foster family.

In August 2016, respondent reported that she had moved to a substance abuse and mental health community house for adults. She maintained her sobriety for one month and, later, enrolled in the Human Service Center's Outpatient Drug Treatment Program. She completed the program in January 2017. In March 2017, respondent was unsuccessfully discharged from counseling and, to Higgins' knowledge, never re-enrolled. Around the same time, Respondent relapsed on alcohol and enrolled in the Human Service Center's Inpatient Drug Treatment Program. She successfully completed the program in May. Between September 2016 and January 2017, respondent performed drug drops three times a month and all of her results were negative. However, the caseworker had not received any drug drops from respondent after January 21, 2017. Respondent's visits with L.H.-S. were scheduled every third Thursday of the month. Respondent did not visit in March because she had relapsed. On June 1, the caseworker observed respondent and James in his van exiting the parking deck on a lunch break during the adjudication hearing. Higgins asked respondent about the car ride, and respondent stated that she had believed the order of protection expired and that "she 'owed [him] an opportunity to explain his side of things.'" Higgins told respondent that she made a "poor choice." After the adjudication hearing, Higgins asked respondent if she needed a ride home, and respondent declined. Higgins suspected that respondent was getting a ride from James. On June 14, respondent tried to reschedule a visit because she was sick. She later told Higgins that she wanted to reschedule the visit for June 22 because she was diagnosed with cancer and did not know the date of her surgery. Higgins and respondent never rescheduled the visit for June 22; however, respondent showed up to CYFS for a visit. Karen Jefferson, a support worker for CYFS, informed Higgins that she observed respondent sitting at a picnic table next to the CYFS building surrounded by six to seven beer bottles and appeared to be intoxicated. Respondent

informed Jefferson that she was waiting for James to pick her up and yelled “ ‘yes, Jim, there’s not a restraining order anymore.’ ” In July, respondent’s step-father informed Higgins that respondent was in the drug and alcohol crisis center because she attended her doctor’s appointment while intoxicated.

¶ 15 Higgins recommended that it was in the best interest of L.H.-S. to terminate the parental rights of respondent and James. She reasoned that (1) L.H.-S.’s basic needs of safety and welfare were met by her foster parents, (2) L.H.-S.’s “sense of security and familiarity lie within the foster family,” (3) her foster home is the least disruptive placement because she had lived with her foster family for the majority of her life, and (4) neither respondent nor James made reasonable efforts or substantial progress to participate in the recommended services in their case plan.

¶ 16 The State submitted evidence of an order of protection (case No. 14-OP-575) between respondent and James. The State noted that the order expired on April 9, 2017.

¶ 17 The State called Peoria County Deputy Sheriff Nick Butterfield to testify about his experience with James. He stated that, on June 5, 2017, he received a call regarding a vehicle burglary and, when he arrived at the scene, he spoke with Joshua Foster. Later, he was called to a residence where he saw Foster and respondent. He spoke to respondent and she told him that James S., who lived at the residence, found tools on a roadway. Butterfield asked respondent to speak with James and she attempted to open the door to the residence but it was locked. Butterfield called a telephone number he believed was James’ number and identified himself. The person did not identify himself to Butterfield but he heard a male voice. While Butterfield attempted to have a conversation, the man continuously told Butterfield that, “I have no contract

with you.” Butterfield asked the man to come outside the residence to speak with him and the man refused.

¶ 18 Respondent testified that she had been living at her current residence since May 31, 2017. Her current source of income was social security, and she received \$689 a month. Her recent periods of sobriety were “short lived” but she intended to maintain her sobriety by attending classes at the Human Service Center three times a week. Her relationship with L.H.-S. was “wonderful” and “loving.” She had not seen L.H.-S. in about two months because she had surgery. During visits, respondent and L.H.-S. played together and L.H.-S. appeared happy. L.H.-S. appeared to have a hard time when the visits ended. For example, “she does a lot of things like throw all of the toys back out and just anything she can to prolong the visit.” Respondent believes she has a strong bond with L.H.-S.

¶ 19 During cross-examination, respondent testified that she was currently 40 years old and had had a problem with alcohol since she was 19 years old. Her longest period of sobriety was 17 months. During this time, respondent was pregnant with L.H.-S. She had seven beers the day before the dispositional hearing.

¶ 20 During rebuttal, respondent testified that, when L.H.-S. was living with her and James, she observed him to be “[a]ttentive and loving and he was a good dad.” She stated that L.H.-S. never lived with respondent or James once she entered into foster care.

¶ 21 Guardian *ad litem* Louis Natonek recommended that it was in the best interest of L.H.-S. that the parental rights of both parents be terminated. Natonek stated that although respondent had tried to overcome her “demons,” she had not been able to “get herself in a position where she can take care of her daughter.” In regard to James, he had refused to participate in and complete the recommended services.

¶ 22 The trial court found that it was in the best interest to terminate the parental rights of respondent and James S., determining that, except for the preferences of the parents, the evidence, considered in light of the section 1-3(4.05) factors (705 ILCS 405/1-3(4.05) (West 2016)), weighed in favor of terminating the parental rights of the parties. The court appointed DCFS guardianship with the right to consent to adoption. Respondent appealed.

¶ 23 ANALYSIS

¶ 24 Respondent Julia H. brings a claim before this court challenging solely the trial court’s decision to terminate her parental rights. Respondent does not challenge the trial court’s finding of unfitness. Respondent argues that the trial court’s ruling was against the manifest weight of the evidence because it improperly found certain statutory factors supported a termination of her parental rights. For instance, respondent claims that L.H.-S.’s wishes and long-term goals are met by the continuation of her parental rights because the evidence shows she had a strong relationship L.H.-S. Respondent also contends that there is no evidence that L.H.-S.’s physical safety and welfare are at risk while in her care and that L.H.-S.’s need for permanence is best met if respondent retains her parental rights.

¶ 25 “The termination of parental rights is a two-step process under which the best interest of the child is considered only after a court finds the parent unfit.” *In re E.B.*, 231 Ill. 2d 459, 472 (2008). Once a court makes that finding, it may terminate parental rights if it is in the best interest of the child. *In Interest of W.U.*, 199 Ill. App. 3d 320, 322 (1990). At the best interest stage, the State must prove by a preponderance of the evidence that it is in the child’s best interest to terminate parental rights. In making its determination, a court must consider at least eight factors “in the context of the child’s age and developmental needs.” 705 ILCS 405/1-3(4.05) (West 2016). These factors include: (1) the child’s physical safety and welfare; (2) the

development of the child's identity; (3) the child's familial, cultural, and religious background; (4) the child's sense of attachment, including love, security, familiarity, and continuity of relationships with parent figures; (5) the child's wishes and goals; (6) community ties; (7) the child's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the person available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016).

¶ 26 “The 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 (2004). 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 686, 697 (2008). 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. *In re B.B.*, 386 Ill. App. 3d at 697-98.

¶ 27 We believe the evidence supports a termination of respondent’s parental rights when considered in light of the section 1-3(4.05) factors, including the factors respondent claims the trial court improperly considered. The evidence shows that L.H.-S. had been living with her foster parents since she was 16 months old. L.H.-S.’s foster parents have met her basic and medical needs and had a strong relationship with her. She calls her foster parents mom and dad, and she is very comfortable around both parents. Both parents have a desire to adopt L.H.-S. and view her as their biological child. L.H.-S. spends time with her extended foster family and is involved in various activities within her community. Under the circumstances, we find that the trial court’s termination of respondent’s parental rights was not against the manifest weight of the evidence.

¶ 28 Respondent argues that L.H.-S.'s wishes and long-term goals were met by the continuation of her parental rights because respondent and L.H.-S. had a good relationship and L.H.-S. appeared happy during their visits. There is no evidence in the record of L.H.-S.'s explicit wishes or long-term goals. However, the evidence does reveal that L.H.-S. has a strong bond with her foster parents, she has positive interactions with her foster parents, and her foster parents are able to meet her physical, emotional, and developmental needs. Although there is evidence presented to support both parties' arguments on this factor, we will not reweigh the best interest factors in respondent's favor. *In re S.M.*, 314 Ill. App. 3d 682, 687 (2000). Therefore, we determine that the trial court properly considered L.H.-S.'s wishes and long-term goals.

¶ 29 Respondent also avers that there is no evidence that L.H.-S.'s physical safety and welfare are at risk while in her care. We reject this claim as, to the contrary, the evidence reveals that respondent's substance abuse problems and interactions with James S. would place L.H.-S.'s physical safety and welfare at risk. Respondent testified that she had had problems with alcohol for years and that her periods of sobriety were "short lived." She also testified that she had had seven beers the day before the dispositional hearing. During the pendency of this case, respondent showed up to the CYFS office and to her doctor's appointment intoxicated. Moreover, respondent continued to interact with James S. although she had an order of protection against him and was informed by Higgins that the interaction was a bad decision. We find that the trial court properly considered L.H.-S.'s physical safety and welfare needs.

¶ 30 Lastly, respondent claims that L.H.-S.'s need for permanence is best met if respondent retains her parental rights. There is no evidence in the record to support respondent's contention. L.H.-S. had been living with her foster parents for two and a half years. She engaged with her extended foster family a lot, and her foster parents involved her in their community. She had

grown fond of her community and was involved in extracurricular activities. There was mutual love between her and the foster parents. We hold that the trial court properly considered L.H.-S.'s need for permanence.

¶ 31

CONCLUSION

¶ 32

The judgment of the circuit court of Peoria County terminating respondent's parental rights is affirmed.

¶ 33

Affirmed.