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2018 IL App (3d) 180338-U

Order filed September 24, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> A.B.L.P.,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
a Minor)	Rock Island County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-18-0338
)	Circuit No. 15-JA-12
v.)	
)	
B.P.,)	
)	Honorable Theodore G. Kutsunis,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Carter and Justice O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court did not err in finding respondent unfit or terminating his parental rights where respondent failed to show reasonable interest, concern or responsibility for the welfare of his child. Terminating his parental rights was in the best interests of the child.
- ¶ 2 Respondent, B.P., appeals the circuit court's finding of unfitness and termination of his parental rights. 750 ILCS 50/1(D)(b) (West 2016); 705 ILCS 405/1-3(4.05) (West 2016). He asserts both determinations were against the manifest weight of the evidence. We affirm.

FACTS

¶ 3

¶ 4 Respondent is the father of the minor child, A.P. (born August 5, 2014). A.E. is the minor's mother and not a party to this appeal. On February 13, 2015, the State filed a petition for adjudication of wardship and for temporary custody of A.P., alleging his environment was injurious to his welfare and resulted in a physical injury sustained by nonaccidental means.

¶ 5 The petition alleged on February 5, 2015, respondent and A.E. brought A.P. to a follow-up appoint from an ear infection. Dr. Channing Petrak, A.P.'s doctor, filed a report with the Illinois Department of Children and Family Services (DCFS) alleging A.P. suffered from serious head injuries. Petrak observed A.P. had a bulging anterior fontanel with distended scalp veins. Following a head scan, Petrak observed A.P. to have brain swelling and bleeding. A.P. was vomiting and had scratch marks near the injury site. Petrak determined the injuries were non-accidental; she could not determine when the injuries occurred because some portions of the injured area were in various stages of healing. Petrak stated that these injuries were the result of abusive shaking or impact on A.P.'s head. Respondent and A.E. were evasive during questioning and could provide no explanation or knowledge of how A.P. sustained these injuries. Both parents denied giving A.P. these injuries. Because A.P. was often in the care of various family members and no one could provide information on the perpetrator, the State determined it was best to place A.P. in foster care.

¶ 6 On February 17, 2015, the court entered an order for temporary custody, finding probable cause existed that A.P. was neglected and abused due to the allegations contained in the petition. At this point, respondent had weekly visitation rights that increased to biweekly visits.

¶ 7 On August 14, 2015, the circuit court held a hearing on whether A.P. was neglected or abused. The circuit court found the State proved the allegations in the petition, substantially due to Petrak's testimony.

¶ 8 On September 15, 2015, DCFS filed a dispositional hearing report listing obligations on the part of respondent. The court informed respondent it was important to complete the steps DCFS listed in order to have the best chance of regaining custody of A.P. The report noted respondent "struggles with poverty, probable delinquency and managing day to day tasks and responsibilities. He is cooperating with services and recommendations, but is struggling to maintain consistency and demonstrate an understanding of positive factors." Respondent attended 54 supervised visits with A.P. Respondent had a strong relationship with A.P. and completed a parenting course. Respondent was not forthcoming about drug use and tested positive once. DCFS found marijuana in respondent's home during an investigation. Respondent also failed to inform DCFS of three criminal charges and two convictions. Respondent refused to take accountability for the situation or address the issues that led to A.P.'s removal. Respondent did not appear to understand the implications of A.P.'s injuries. Respondent also appeared evasive when discussing what caused A.P.'s injuries but maintained he would never hurt A.P. Neither parent constructed a plan to minimize risk of injury necessary for reunification. DCFS stressed a major factor preventing reunification was the significant and serious nature of A.P.'s injuries and both parents' unwillingness to discuss the perpetrator or identify the cause.

¶ 9 DCFS stated a permanency goal for A.P.'s return home in 12 months. DCFS recommended respondent: complete a parenting capacity assessment, attend counseling to address safety concerns, complete a psychological evaluation, complete a substance abuse evaluation, complete substance abuse treatment as recommended, remain employed, and comply

with any other recommendations that arise in the course of completing the steps outlined by DCFS.

¶ 10 On October 16, 2015, the court issued a supplemental order, adopting the position of DCFS. The order stated the goal for reunification was still 12 months; A.P. would remain in DCFS custody.

¶ 11 On February 5, 2016, DCFS filed a review of the case. The recommendations and observations were substantially unchanged.

¶ 12 On April 26, 2016, DCFS filed another review. The report stated that respondent lost his job in March 2016 but was not forthcoming about the issue with DCFS. DCFS noted no change in the lack of safety precautions in the parents' home but did observe a new, large television and rented vehicle. Respondent admitted to claiming A.P. on his taxes, although A.P. did not reside with him. A.E.'s older child from a different relationship indicated several times respondent was the one who hurt A.P. She then told a different story. Respondent failed to complete his substance abuse evaluation but did complete his psychological evaluation. The report included information on respondent's April 8, 2016, arrest for armed violence, manufacturing/dealing cocaine, and felon in possession of a weapon. Respondent claimed he did not know there was a gun in his car. The report indicated that respondent's recent arrest showed he was not committed to maintaining a healthy and safe lifestyle for A.P. Also, respondent made no attempt to contact DCFS about his arrest. DCFS continued to emphasize the failure of A.E. and respondent to identify who hurt A.P. or understand the significance of failing to report A.P.'s injuries/observe the signs of his injuries. When describing A.P.'s condition, the report noted A.P. suffered from seizures as a result of his shaken head trauma. DCFS still recommended reunification in 12 months if the parents followed through on DCFS's recommendations.

¶ 13 On April 28, 2016, the circuit court entered a permanency order indicating neither parent made reasonable efforts toward correcting the conditions resulting in A.P.’s removal.

¶ 14 On August 17, 2016, DCFS filed a new service plan. The plan indicated respondent and A.E.’s apartment had no furniture. Neither parent cooperated with doctors or recognized the signs of their son’s medical distress. Both parents refused to believe anyone would hurt A.P., despite obvious medical evidence that A.P. was shaken. A.E. stated A.P. would not be around “those people” again but refused to identify about whom she was speaking. Respondent failed to make his visits because he was incarcerated. Respondent failed to meet his goal of maintaining appropriate parent-child boundaries and demonstrate concern and sensitivity toward A.P. Respondent also failed to comply with providing DCFS updates of his current situation, undergo a substance abuse evaluation, attend therapy, maintain appropriate housing, or meet with his caseworker. The circuit court, in its October 27, 2016, permanency order, adopted these findings.

¶ 15 On April 18, 2017, DCFS filed an updated permanency hearing report. It changed its recommendation for permanency to termination of parental rights. DCFS found respondent made neither reasonable progress nor reasonable efforts in regaining custody of A.P for the reasons listed in the August 17 report. It noted A.P.’s foster parents monitor A.P. for possible developmental delays, support all services, and monitor A.P.’s medical status. Respondent attended supervised visits with A.P. when he was out of jail. However, during those visits, DCFS described interactions as “chaotic” as respondent did not exhibit any of the appropriate parenting behaviors. DCFS continued to emphasize neither parent made the appropriate steps to correct the conditions leading to A.P.’s removal or attempt to explain how A.P. sustained such severe injuries. On June 23, 2017, the circuit court adopted DCFS’s findings in a permanency order.

¶ 16 On August 10, 2017, the State filed a supplemental petition to terminate parental rights. On December 4, 2017, the circuit court held a hearing on the petition. The State called Joyce Loy, A.P.'s caseworker, to the stand. She testified to the extent of A.P.'s shaken baby syndrome, including a fractured skull, an eye that dislodged from its socket, and a required shunt to mitigate swelling. As A.P. grew, he exhibited delayed verbal and movement skills. He does not use one side of his body during movement as a result of injuries sustained from being shaken. Respondent did not exhibit good parenting behaviors during supervised visits, despite attending them regularly and often sat to the side of the room, neglecting to engage with A.P. Respondent did not complete any of the recommendations while in jail. Loy testified as to the DCFS reports she completed and maintained her accuracy in those reports.

¶ 17 On cross-examination, Loy testified that she did not know whether respondent obtained substance abuse or psychological counseling while in jail. Loy did not attempt to schedule visits between A.P. and respondent while respondent was in jail but respondent also did not reach out to Loy. She tried to help respondent by speaking with A.E.'s apartment management so respondent could live at A.E.'s apartment, despite felony restrictions on A.E.'s lease. Respondent never signed the lease as required by the management company.

¶ 18 Respondent testified during the hearing. At the time, he was incarcerated for felony convictions for possessing a firearm as a felon and unlawful possession of a controlled substance with intent to deliver. Respondent took a parenting class and safety awareness class while in jail. Respondent was first convicted in 2012. He was also convicted for disorderly conduct and criminal trespass. Respondent testified he had 15 to 90 days left on his sentence.

¶ 19 On March 15, 2018, the circuit court found respondent unfit. The court found the State presented clear and convincing evidence that respondent failed to maintain a reasonable degree

of interest or responsibility for A.P. Respondent did not make reasonable efforts to correct the conditions which led to A.P.'s removal. Respondent failed to make reasonable progress toward A.P.'s return. The court made a finding of depravity as to respondent. The court noted his failure to meet most of his goals due to his incarceration but not did not allow that as an excuse. It stated, "[t]he fact that he is incarcerated and has been for much of the time of this case is because of his own actions and it does not mitigate this Court's measurements of his efforts and progress." The court cited his failure to undergo a substance abuse evaluation or therapy.

¶ 20 On May 17, 2018, the circuit court held a best interests hearing. At the hearing, Kelly Veronda testified as a DCFS permanency worker familiar with A.P.'s case. Veronda testified A.P. was in a good foster care home and had been for over three years. He was placed with his sister; he had his own bedroom and a big yard. A.P.'s foster parents were able to take care of A.P.'s financial needs. They included him in family activities and treated him as a biological member of their family. A.P. viewed his foster parents as his parents because that was all he had known. Veronda classified the family dynamic as "appropriate and positive." A.P.'s foster parents took care of all of his medical needs; DCFS never had to intervene or take a controlling role over A.P.'s medical care. A.P. received special school services and his foster parents supported his growth and development. A.P.'s foster parents wanted to adopt him. Veronda testified this would be the best, least disruptive option for A.P. as he was comfortable there.

¶ 21 A.E. testified to respondent's bond with A.P. She said they shared a strong attachment and respondent took care of A.P. when he lived with them.

¶ 22 The circuit court terminated respondent's parental rights. It noted A.P. had been a ward of the court for three years and only had memories with his foster parents. The circuit court strove to act in the best interests of the child. It found A.P.'s foster situation was the best way to

give A.P. a chance at success. Respondent made no showing that he would do a better job at providing for A.P.'s physical safety and welfare, or food, shelter, and clothing needs. The circuit court assessed all 10 factors as required in a best interests hearing and, although it acknowledged that maintaining family ties was one factor, it was 1 out of 10, the other 9 favored A.P. remaining with his foster family.

¶ 23 This appeal followed.

¶ 24 ANALYSIS

¶ 25 Respondent argues that the trial court erred in finding him unfit and terminating his parental rights. As to the finding of unfitness, respondent submits he showed much interest in the welfare of A.P. and made both reasonable efforts and progress toward the return of the child. Additionally, respondent argues the trial court did not have sufficient evidence before it to declare respondent depraved. The State disagrees, arguing respondent's jail time during the duration of this case does not excuse him from completing his obligations. As to the termination of respondent's parental rights, respondent argues he has a strong bond with this child and "is eager to reunite" with A.P. The State submits that family ties is 1 out of 10 relevant factors at a best interests hearing and the other 9 weighed heavily for termination.

¶ 26 I. Whether the Trial Court Erred in Finding Respondent Unfit

¶ 27 Under the Juvenile Court Act of 1987 (Juvenile Court Act), the involuntary termination of parental rights is a two-step process. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). The first step requires the State to prove the respondent is "unfit" per the Adoption Act. See *id.*; 750 ILCS 50/1(D) (West 2016). The trial court based the unfitness ruling on finding respondent (1) failed "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare" (*id.* § 1(D)(b)), (2) failed "to make reasonable efforts to correct the conditions that were the basis

for the removal of the child” (*id.* § 1(D)(m)(i)), (3) failed “to make reasonable progress toward the return of the child to the parent” (*id.* § 1(D)(m)(ii)), and (4) was deprived (*id.* § 1(D)(i)). Proof of parental unfitness must be proved by clear and convincing evidence. *In re D.D.*, 196 Ill. 2d 405, 417 (2001). Clear and convincing evidence is a higher burden than the preponderance of the evidence but less than proof beyond a reasonable doubt. A reviewing court will only reverse a finding of unfitness if it is against the manifest weight of the evidence. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). To be against the manifest weight of the evidence, the opposite result must be apparent from the evidence presented. *D.D.*, 196 Ill. 2d at 417.

¶ 28 “A parent’s rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence.” *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005). “This means that, on review, if there is sufficient evidence to satisfy any one statutory ground we need not consider other findings of parental unfitness.” *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000).

¶ 29 The Adoption Act provides for a finding of unfitness if the parent fails to show a reasonable degree of interest in the welfare of the child. 750 ILCS 50/1(D)(b) (West 2016). Issues of statutory construction are reviewed *de novo*. *C.W.*, 199 Ill. 2d at 211. The goal of the courts is to give effect to the language chosen by the legislature by interpreting a word using its plain meaning. *Id.* at 211-12.

¶ 30 The legislature used the disjunctive “or” in subsection (b) to indicate a finding of unfitness can be based on lack of interest, concern, or responsibility of the child’s welfare. 750 ILCS 50/1(D)(b) (West 2016). “A parent’s interest, concern, or responsibility toward the minor must be objectively reasonable.” *In re J.B.*, 2014 IL App (1st) 140773, ¶ 51. A court must consider circumstances that would impair a parent’s ability to meet this standard. *M.J.*, 314 Ill.

App. 3d at 656. A parent's failure to comply with DCFS recommendations is analogous to the parent failing to show a reasonable degree of interest or concern in the welfare of the child. *Id.*

¶ 31 The State and DCFS supplied the circuit court with clear and convincing evidence that respondent failed to show a reasonable degree of interest, concern, or responsibility in A.P.'s welfare. Respondent bases much of his argument on the fact that he was incarcerated during a portion of this case. Most troubling to this court, however, is respondent's failure to understand the severity of A.P.'s injuries. Respondent was evasive, dismissive, and unresponsive to the level of trauma A.P. experienced. By all accounts, A.P.'s injuries were visible to the naked eye. The protrusions on his head, coupled with his bulging eye and vomiting were apparent indicators that something was wrong with A.P. Assigning blame as to the cause of A.P.'s injuries aside, A.P. was clearly injured; respondent did not notice or seem worried by obvious head trauma.

¶ 32 After doctors confirmed A.P.'s injuries, respondent refused to discuss the cause of said injuries with DCFS or take the proper steps to insure a safe environment in his home for A.P. During supervised visits, DCFS said respondent sat to the side of the room and did not intervene when the situation became "chaotic." Attending visits alone is an insufficient showing of interest. DCFS noted respondent attended many visits but often failed to engage with A.P.

¶ 33 Although respondent completed some of the necessary evaluations and courses, he also failed to complete several of DCFS's recommendations. As far as this court can tell, respondent neither completed a substance abuse assessment, nor continued to attend the recommended therapy. Respondent failed to provide housing for A.P. or maintain employment. He argues this court should excuse this failure due to his incarceration but takes no accountability for his actions.

¶ 34 Respondent cites no case law to support his argument that we should excuse his behavior because of his incarceration. Our supreme court held “[t]here is no exception for time spent in prison” when assessing parental fitness. *In re J.L.*, 236 Ill. 2d 329, 340 (2010). He also claims DCFS’s recommendations and the circuit court’s ruling were too harsh because he was a new parent who was only able to see his child four hours a week. He was only able to see his child four hours a week because, while under respondent’s care, someone shook his child so severely as to fracture his skull, distend his eye, and cause repeated seizures and vomiting. We have little sympathy for respondent’s pleas of leniency.

¶ 35 The circuit court’s finding was not against the manifest weight of the evidence. Because a circuit court’s finding of unfitness need only be supported by finding one of the many factors, we decline to address the other bases for the circuit court’s finding respondent unfit.

¶ 36 II. Termination of Respondent’s Parental Rights

¶ 37 Respondent argues that the circuit court erred when it terminated his parental rights. Following a finding of parental unfitness, the circuit court must determine whether it is in the child’s best interests to terminate respondent’s parental rights. *In re D.T.*, 212 Ill. 2d 347, 353 (2004). The primary goal of the Juvenile Court Act is to preserve the bond between the minor and his family. See 705 ILCS 405/1-2 (West 2016). However, the traditional family relationship must yield to the child’s best interests. *D.T.*, 212 Ill. 2d at 354. The circuit court, at a best interests hearing, must consider several factors: (1) the child’s physical safety and welfare; (2) the development of the child’s identity; (3) the child’s background and ties, including familial, cultural, and religious; (4) the child’s attachments; (5) the child’s wishes and long-term goals; (6) the child’s community ties; (7) the child’s need for permanence; (8) the uniqueness of each family and child; (9) the risks of entering and being in substitute care; and (10) the preferences of

the person available to provide substitute care to the child. See 705 ILCS 405/1-3(4.05) (West 2016). The State must present evidence that termination is in the child's best interests by a preponderance of the evidence. *D.T.*, 212 Ill. 2d at 365. A circuit court's decision to terminate the parental rights will not be disturbed unless it was against the manifest weight of evidence; that is, the opposite conclusion is clearly evident. *In re S.D.*, 2011 IL App (3d) 110184, ¶ 44.

¶ 38 Here, the State presented evidence from DCFS to establish that A.P. (1) lived with his foster family from the age of six months till the date of the hearing; (2) received all of his basic needs and medical treatment; (3) received extra medical and educational attention to compensate for his special needs as a result of being shaken; (4) was integrated into his foster family and all of their family events; (5) viewed his foster family as his family; (6) enjoyed his own room in safe house with a large yard; (7) was placed with his biological sister; and (8) had foster parents who were interested in adopting him.

¶ 39 Despite respondent's claims he shared a strong bond with A.P., Loy did not observe the proper parenting behaviors or engagement during respondent's supervised visits with A.P. It is apparent A.P. will always need an extra level of care and medical attention. Specifically, A.P.'s foster parents need to be aware of simple things like A.P. favoring one side when he moves. Respondent showed a repeated lack of concern about A.P.'s injuries and their severity. In order for A.P. to have the best chance of success in life, given the extent of his shaken baby syndrome, he will need an attentive family who is willing and able to provide that extra level of care. Respondent has not demonstrated that he is able to match the level of care A.P.'s foster parents have given A.P. and are willing to continue to give him. After a review of all of the evidence presented, we cannot say that the circuit court's termination of respondent's parental rights was against the manifest weight of the evidence.

¶ 40

CONCLUSION

¶ 41 For the foregoing reasons, we affirm the judgment of the circuit court of Rock Island County.

¶ 42 Affirmed.