2018 IL App (4th) 180154-U

NO. 4-18-0154

FILED
July 3, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re ADOPTION OF S.R., a Minor	)	Appeal from the
	)	Circuit Court of
(Charlotte Pounders,	)	Macon County
Petitioner-Appellee,	)	No. 16AD14
v.	)	
Shavonne Pounders,	)	Honorable
Respondent-Appellant).	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in terminating respondent's parental rights.

¶ 2 In March 2016, petitioner, Charlotte Pounders, filed a petition to adopt S.R., the minor child of respondent, Shavonne Pounders. Following a hearing in November 2017, the trial court found Shavonne unfit. In February 2018, the court found it in S.R.'s best interest that Shavonne's parental rights be terminated.

¶ 3 On appeal, Shavonne argues the trial court erred in terminating her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2016, Charlotte filed a petition to adopt S.R., who was born in 2005. Charlotte is the adoptive mother of Shavonne, who is the biological mother of S.R. Demorris

Rhodes is S.R.'s biological father. The petition alleged Shavonne's parental rights should be terminated because she abandoned S.R. (750 ILCS 50/1(D)(a) (West 2016)) and failed to maintain a reasonable degree of interest, concern, or responsibility as to S.R.'s welfare for a period of over three years (750 ILCS 50/1(D)(b) (West 2016)). The petition also stated it was in S.R.'s best interest that she be adopted by Charlotte.

¶ 6 At the November 2017 fitness hearing, Charlotte testified she was 71 years old. She had S.R. in her custody since she was approximately four or five months old, after a juvenile case had been opened against Shavonne in Memphis, Tennessee. A Tennessee court entered an order awarding Charlotte guardianship of S.R. in December 2007. Charlotte moved to Decatur and filed a petition in 2009 to receive child support for S.R. from Shavonne. In August 2014, Shavonne agreed to terminate her visitation rights to S.R. Since that time, Shavonne last saw S.R. at a birthday party in December 2015, but she did not interact with S.R. Charlotte testified Shavonne had not sent cards or letters to S.R. since December 2015 and had not requested a visit with her. Shavonne had also not paid any child support or provided money to assist in S.R.'s care.

¶ 7 On cross-examination, Charlotte testified the juvenile case had been opened in Tennessee because S.R.'s parents were "addicts" and Shavonne "was living in a house that was full of gas."

¶ 8 S.R. testified she was 12 years old and attended school. She resided with her grandmother Charlotte and had not seen her mother Shavonne since a birthday party in December 2015. S.R. stated Shavonne did not talk to her at the party, which made her feel "invisible." Shavonne last contacted S.R. in March 2016, when she sent a text message on her phone. S.R. stated Shavonne had not come to see her and had not sent cards or gifts to her.

¶ 9 On cross-examination, S.R. stated she used to have visits with Shavonne, but they would do "nothing." S.R. stated she had contact with Shavonne through e-mail and Instagram accounts. S.R. and Shavonne conversed through Instagram twice a week during parts of 2016, but S.R. had no contact with Shavonne since March 2016.

¶ 10 On her own behalf, Shavonne testified she had been adopted by Charlotte, whom she called her "abuser." S.R. was born in Memphis, Tennessee, in 2005, and Shavonne had full custody of her at that time. Shavonne stated it was never her intention for S.R. to remain in Charlotte's care. When Shavonne moved to Decatur, Charlotte would allow her to see and interact with S.R. At some point, Charlotte claimed Shavonne stole a hundred dollars, "and the visits stopped." Shavonne then went to court to obtain visitation rights. Shavonne engaged in activities with S.R. during visits, which were always with someone "because of the false allegations and the numerous police reports and calls." Shavonne testified to one instance where she and Charlotte were both indicated after S.R. claimed they both hit her with a spoon. Shavonne stated she paid to move Charlotte and S.R. to Decatur in December 2010 because she wanted to be closer to S.R.

¶ 11 Shavonne testified her visitation with S.R. changed after Charlotte sought to modify visitation and "started filing DCFS [(Department of Children and Family Services)] reports on my other children." Although the allegations against her were untrue, Shavonne gave up visitations because she was unwilling to agree she had been abusive toward S.R., she felt she was "pushed in a corner," and she was worried about her other children being taken.

¶ 12 In addition to child support, Shavonne provided clothes, a cellular telephone, a Kindle, an iPad, dolls, cards, and money to Charlotte. Her last contact with S.R. took place in April 2016 through Instagram. Shavonne stated Charlotte filed a no-trespassing order against her

in March 2016.

¶ 13 Jeffie Allbritton, Charlotte's biological daughter and Shavonne's sister, testified Shavonne and S.R. had a "normal" parent/child relationship. Allbritton never saw Shavonne being physically, emotionally, or verbally abusive to S.R. Shavonne bought clothes, toys, iPads, a cell phone, and a laptop for S.R. Shavonne was not allowed to go to Charlotte's house because of the no-trespassing order, and whenever "Shavonne would ever try to see [S.R.], she was always blocked."

¶ 14 Teah Henderson, Shavonne's friend, testified Shavonne and S.R. "seemed to get along" and had a "regular" mother-daughter relationship. Henderson never observed Shavonne being verbally or physically abusive toward S.R.

¶ 15 David Fitzpatrick testified Shavonne is the mother of his three children. Early in their relationship, Fitzpatrick was present when Shavonne visited with S.R. He stated Shavonne interacted with S.R. "like any normal mother," and they played games and cooked.

¶ 16 Following arguments of counsel, the trial court made specific credibility determinations, finding Charlotte credible and Shavonne not credible. The court found Shavonne unfit under both allegations set forth in the adoption petition.

¶ 17 In January 2018, the trial court conducted the best-interest hearing. Charlotte testified S.R. has resided with her "practically all her life." S.R. is doing "wonderful" in school, thriving in her present environment, and wants to be adopted by Charlotte. Charlotte stated she is financially capable of providing for all of S.R.'s needs.

¶ 18 Shavonne testified she would visit with S.R. "pretty regularly" until March 2016, when she was served with the no-trespassing order. She also communicated with S.R. via Instagram until S.R. deleted her account. Shavonne believed S.R. wanted to have contact with

her because she did not want Charlotte to know they were communicating. Shavonne has one daughter, two sons, and a baby "on the way." S.R. met two of Shavonne's children, and Shavonne stated S.R. is "a great big sister."

¶ 19 Following arguments from counsel, the trial court noted Charlotte has "essentially cared" for S.R. since she was born. S.R. is doing "very well" in school, "thriving in the present environment," and has a "close, loving relationship" with Charlotte. Considering S.R.'s sense of security, sense of familiarity, continuity, and need for permanence, the court found Charlotte and S.R. have a "good relationship" that needed to continue. The court concluded it was in S.R.'s best interest that Shavonne's parental rights be terminated. This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 A. Lack of an Appellee's Brief

¶ 22 Initially, we note Charlotte has not filed a brief in this case. A reviewing court is not compelled to serve as an advocate for the appellee and is not required to search the record for the purpose of sustaining the trial court's judgment. However, if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court should decide the merits of the appeal. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976). Because we find Shavonne's brief sufficiently presents the issues for review and the record is sufficiently simple, we will decide the merits of this appeal from the facts and legal arguments before us without the aid of an appellee's brief.

¶ 23 B. Unfitness Findings

¶ 24 Shavonne argues the trial court's findings of unfitness were against the manifest weight of the evidence. We disagree.

¶ 25 The Adoption Act sets forth the method by which a party may petition to adopt a child who is either related or unrelated to the petitioner. *In re A.S.B.*, 381 Ill. App. 3d 220, 223, 887 N.E.2d 445, 448 (2008). "Section 8(a)(1) of the Adoption Act provides that a parent's consent to adoption is not required when, among other reasons, the parent is found by the court to be an unfit person." *A.S.B.*, 381 Ill. App. 3d at 223, 887 N.E.2d at 449; 750 ILCS 50/8(a)(1) (West 2016). If the trial court finds the parent unfit, the second issue is whether the adoption is in the minor's best interest. *In re Adoption of G.L.G.*, 307 Ill. App. 3d 953, 963, 718 N.E.2d 360, 368 (1999).

¶ 26 Because termination of parental rights is a serious matter, those petitioning for adoption must prove unfitness by clear and convincing evidence. *In re Adoption of L.T.M.*, 214 Ill. 2d 60, 67-68, 824 N.E.2d 221, 226 (2005). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re N.T.*, 2015 IL App (1st) 142391, ¶ 27, 31 N.E.3d 254. " 'A court's decision regarding a parent's fitness is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent.' " *In re M.I. v. J.B.*, 2016 IL 120232, ¶ 21, 77 N.E.3d 69 (quoting *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 517 (2005)).

¶ 27 In the case *sub judice*, the trial court found Shavonne unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to S.R.'s welfare. Before finding a parent unfit under section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2016)), the

court must "examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." *In re Adoption of Syck*, 138 Ill. 2d 255, 278, 562 N.E.2d 174, 185 (1990). Circumstances to consider may include the parent's difficulty in obtaining transportation to the child's residence, the parent's financial limitations, the actions or statements of others hindering or discouraging visitation, "and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child. [Citation.]" *Syck*, 138 Ill. 2d at 279, 562 N.E.2d at 185.

¶ 28 "The parent may be found unfit for failing to maintain either interest, or concern, or responsibility; proof of all three is not required." *Richard H.*, 376 Ill. App. 3d at 166, 875 N.E.2d at 1202. Moreover, "a parent is not fit merely because she has demonstrated some interest or affection toward her child; rather, her interest, concern[,] and responsibility must be reasonable." *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 125 (2004).

¶ 29 In this case, the facts indicated S.R., born in 2005, had been in Charlotte's care since she was four or five months old. S.R. was 12 years old at the time of the unfitness hearing. Charlotte was awarded custody of S.R. in December 2007, and S.R. had lived with her continuously since then. In 2009, Charlotte filed a petition to receive child support from Shavonne. In August 2014, Shavonne agreed to terminate her right to visit with S.R.

¶ 30 Charlotte testified Shavonne last saw S.R. in December 2015. Since then, Shavonne had not sent cards or correspondence for S.R. to Charlotte's address, and she had not paid any child support. S.R. testified she did not remember living with anyone other than Charlotte. She last saw Shavonne in December 2015, but Shavonne's lack of interaction made her feel "invisible." S.R. stated she had not received any gifts or cards from Shavonne.

¶ 31 Shavonne testified it was never her intention to let S.R. remain in Charlotte's care. After custody and guardianship had been granted to Charlotte, Shavonne had no job or place to stay. Following conversations with her father, Shavonne believed if she moved to Decatur, got a job, a stable apartment, and went back to school, she would have custody returned to her. While she had visits with S.R., Shavonne stated there were difficulties, which she blamed on Charlotte "brainwashing" S.R. Shavonne testified she attempted to get Charlotte's guardianship terminated, but Charlotte responded with a petition to modify visitation and "started filing DCFS reports on [Shavonne's] other children." When she went to court, Shavonne "gave up visitations" because she would not agree she was abusive toward S.R. Shavonne stated she provided S.R. with clothes, a cell phone, a Kindle, an iPad, dolls, cards, and money. Charlotte filed a no-trespassing order against her in March 2016, and Shavonne's last contact with S.R. was in April 2016. Shavonne testified she voluntarily agreed to terminate visitation in August 2014, but, since that time, she did not file anything requesting visitation.

¶ 32 Here, the trial court found Shavonne failed to maintain a reasonable degree of interest, concern, or responsibility as to S.R.'s welfare. The evidence indicated S.R. had resided in Charlotte's care for most of her life. Shavonne gave up her right to visit S.R. in August 2014 and last saw her in December 2015. Both Charlotte and S.R. testified Shavonne had not sent any cards or letters to S.R. Shavonne stated she sent S.R. gifts and wanted to visit with her, but she claims Charlotte thwarted any interaction between mother and daughter to Shavonne's detriment. However, the court found Charlotte credible in her testimony and Shavonne not credible. Having heard the testimony and observed the witnesses, the court was in the best position to make credibility assessments. Given the evidence, we find the court's finding of unfitness on this ground was not against the manifest weight of the evidence. Because the grounds of

unfitness are independent, we need not address the remaining ground of abandonment. See *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003) ("As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds.").

¶ 33 C. Best-Interest Finding

¶ 34 Shavonne argues the trial court's finding it was in S.R.'s best interest for her parental rights to be terminated was against the manifest weight of the evidence. We disagree.

¶ 35 "Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, "all considerations, including the parent's rights, yield to the best interests of the child." *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 80, 966 N.E.2d 1107. When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2016). These include the following:

> "(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 and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the

> uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2016).

¶ 36 A trial court's finding that termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 53, 74 N.E.3d 1185. The court's decision will be found to be "against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence." *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16, 73 N.E.3d 616.

¶ 37 At the best-interest hearing, Charlotte testified S.R. has lived with her for most of her 12 years of life. S.R. is doing well in school and thriving in her current environment. Charlotte stated S.R. has expressed an interest in being adopted by her. Charlotte also stated she was financially capable of providing for S.R.'s needs.

¶ 38 Shavonne testified she had communicated with S.R. in hopes of maintaining a relationship with her. She also stated S.R. intimated she was not supposed to talk with Shavonne or she would get into trouble with Charlotte. Shavonne believed Charlotte was trying to prevent her from having contact with S.R. If her parental rights were terminated, Shavonne feared S.R. would not have a relationship with her and S.R.'s siblings. Shavonne also expressed concern about Charlotte's advanced age and questioned what would happen to S.R. if Charlotte's dies in the near future.

¶ 39 The trial court found Charlotte and S.R. have a "close, loving relationship," S.R.

is thriving in her current environment, and Charlotte is capable of providing financially for S.R. The court found Charlotte's testimony credible. In noting the best-interest factors relating to a child's sense of security, sense of familiarity, continuity, and need for permanence, the court concluded granting Charlotte's petition would be in S.R.'s best interest. Thus, as S.R. needed permanence in her life and she and Charlotte have a "good relationship," the court found it in S.R.'s best interest that Shavonne's parental rights be terminated.

¶ 40 Here, the evidence indicates S.R. is in a good home and her needs are being met. She has spent the vast majority of her life in the custody of Charlotte, and her sense of security, familiarity, and need for permanence are best served by remaining with her grandmother. Considering the evidence and the best interest of S.R., we find the court's order terminating Shavonne's parental rights was not against the manifest weight of the evidence.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the trial court's judgment.

¶ 43 Affirmed.