

NOTICE

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FILED

November 27, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 180472-U
NOS. 4-18-0472, 4-18-0473 cons.

**IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT**

<i>In re</i> K.D., a Minor,)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Adams County
Petitioner-Appellee,)	No. 16JA50
v. (No. 4-18-0472))	
Ashley P.,)	
Respondent-Appellant).)	
-----)	
<i>In re</i> G.P., a Minor,)	No. 16JA51
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-18-0473))	Honorable
Ashley P.,)	John C. Wooleyhan,
Respondent-Appellant).)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s best-interest finding terminating respondent’s parental rights was not against the manifest weight of the evidence.
- ¶ 2 On July 2, 2018, the trial court terminated the parental rights of respondent, Ashley P., as to her children K.D. (born September 28, 2016) and G.P. (born April 24, 2015). K.D.’s father and G.P.’s father are not parties to this appeal. On appeal, respondent argues the trial court’s best-interest finding terminating her parental rights was against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4

A. Initial Proceedings

¶ 5 In November 2016, the State filed a petition for adjudication of wardship, alleging K.D. and G.P. were neglected, pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(c) (West 2016)), because, at birth, K.D. tested positive for opiates and amphetamines. Respondent admitted to using drugs during and after her pregnancy. In December 2016, the State filed a motion for shelter care of K.D. when K.D.'s father informed the Department of Children and Family Services (DCFS) that he and respondent relapsed by using methamphetamine and marijuana while in a caretaker role for the minors. Subsequently, the trial court granted DCFS temporary custody of K.D. and G.P.

¶ 6

At an April 2017 adjudicatory hearing, respondent admitted the allegations of neglect in the petition for adjudication. The trial court adjudicated K.D. and G.P. neglected. At a June 2017 dispositional hearing, the trial court (1) found respondent unfit, (2) made K.D. and G.P. wards of the court, and (3) granted DCFS guardianship and custody.

¶ 7

B. Termination Proceedings

¶ 8

In March 2018, the State filed a motion seeking termination of parental rights, alleging respondent to be unfit where she failed to make (1) reasonable efforts to correct the conditions which were the basis for the removal of the children and (2) reasonable progress toward the return of the minor within any nine-month time period after the adjudication of neglect—specifically, April 3, 2017, to January 2, 2018. In June 2017, the State filed an amended motion adding an allegation that respondent failed to make reasonable progress during the nine-month period from October 3, 2017, to July 2, 2018.

¶ 9

1. *Fitness Hearing*

¶ 10 On July 2, 2018, the trial court conducted a bifurcated hearing on the motion for termination of parental rights, first considering respondent's fitness. The parties presented the following testimony.

¶ 11 a. Patricia Broughton

¶ 12 Patricia Broughton, a child welfare specialist for DCFS, testified that in October 2016, she was assigned to G.P.'s and K.D.'s case following a report that at birth, K.D. tested positive for methamphetamines amid concerns of substance misuse by respondent. Broughton created the first service plan on October 20, 2016. The service plan required respondent to complete substance-abuse related tasks, cooperate with DCFS, maintain stable housing, complete a mental-health assessment, and engage in counseling. After the December 2016 shelter-care hearing granting DCFS temporary custody of the minors, Alison Ketsenburg became the caseworker.

¶ 13 b. Alison Ketsenburg

¶ 14 Alison Ketsenburg, a child welfare specialist for DCFS, testified she handled K.D.'s and G.P.'s case from December 2016 through the beginning of October 2017. She rated respondent's May 30, 2017, service plan covering December 5, 2016, to May 30, 2017. The tasks in respondent's service plan included cooperation, visitation, mental health, and substance abuse. Ketsenburg rated the mental-health and substance-abuse tasks as unsatisfactory because respondent failed to attend consistently mental-health counseling and respondent provided some "dirty UAs [urine analyses]."

¶ 15 In May 2017, respondent, in declining a drug test, became extremely agitated. When asked about her children, respondent stated she was "ready to give up her rights to them." In June 2017, Ketsenburg went to respondent's home. She told respondent about others

reporting that respondent's home smelled like marijuana. Respondent provided Ketsenburg with a box containing what looked like a marijuana-smoking device with marijuana residue in it and an empty prescription bottle. In August 2017, respondent admitted to using marijuana. In September 2017, respondent reported being clean since her last drug drop. However, at her last drug drop, respondent tested positive for marijuana and showed an increase in her levels. Ketsenburg told respondent that respondent needed to be honest about her drug use. Ketsenburg testified she never considered unsupervised or extended visitation between respondent and her children.

¶ 16 c. Shari Robesky

¶ 17 Shari Robesky, a placement supervisor with DCFS, testified she provided casework services for K.D.'s and G.P.'s case beginning in October 2017. Robesky evaluated the December 7, 2017, service plan. Robesky rated respondent unsatisfactory on her mental-health and substance-abuse related tasks. Respondent started mental-health counseling in July 2017 but failed to consistently attend sessions or take her prescribed medications. Respondent tested positive for marijuana in June, August, October, and November 2017. Respondent tested positive for barbiturates in November 2017. While Robesky rated cooperation and visitation tasks as satisfactory, she testified she never considered allowing unsupervised or extended visitation between respondent and her children.

¶ 18 d. Broughton

¶ 19 In December 2017, DCFS reassigned Broughton to the case. Broughton evaluated the February 5, 2018, and June 12, 2018, service plans. The goal of the February 5, 2018, service plan changed to "[s]ubstitute care pending [c]ourt determination of termination of parental rights." In March 2018, Broughton provided respondent a copy of the service plan

indicating the goal change and discussed the case progression. Respondent and Broughton discussed the fact that respondent was receiving hydrocodone through prescriptions from four different physicians.

¶ 20 When evaluating respondent on the June 12, 2018, service plan, Broughton rated respondent unsatisfactory on her substance-abuse related tasks. Specifically, Broughton noted respondent's lack of compliance with her substance-abuse treatment. Concerns also existed about respondent's consistent inability to explain, at any given time, why the date of refill, number of pills prescribed, and pills left, rarely matched up. Respondent also admitted to using illegal substances, including marijuana. She tested positive for marijuana on two occasions and admitted using marijuana on another occasion. During December 2017, respondent amassed arrests for theft and possession of a controlled substance.

¶ 21 Broughton also rated respondent unsatisfactory on her mental-health and cooperation tasks because respondent lacked consistency in attending mental-health counseling. Respondent frequently neglected to pay her rent and needed stable employment. Broughton testified that at no point did she consider allowing unsupervised or extended visitation between respondent and her children.

¶ 22 e. Trial Court's Findings

¶ 23 Following the fitness hearing, the trial court found respondent unfit by clear and convincing evidence. The court explained its reasoning as follows.

“The [respondent] did at some point make some efforts to try to correct the conditions which were the cause for removal. Those were never successful, never rose to the level of reasonable efforts as contemplated by the statute; likewise, did not make reasonable

progress toward the return of the minors. Efforts do not always translate into progress, and that seems to be the situation here, that whatever progress the [respondent] did make, was not of a sufficient degree to allow the children to be returned to her during any of the nine-month periods which were alleged by the People here.”

¶ 24 *2. Best-Interest Hearing*

¶ 25 Immediately following the fitness hearing, the trial court held a separate best-interest hearing. The court heard the following evidence.

¶ 26 a. Broughton

¶ 27 Broughton testified that in October 2017, DCFS placed K.D. and G.P. in their second foster home, where they resided at the time of the hearing. DCFS removed the minors from their first foster home because the foster parents could not manage G.P.’s behavior and were expecting a child. Broughton testified the children were comfortable in their present placement and very affectionate toward their foster parents. The foster parents wished to adopt the minors.

¶ 28 Broughton testified that in December 2017, G.P. slipped in the bathtub, causing an injury to his head that required stitches. In June 2018, G.P. stepped on a piece of glass—requiring stitches—when he followed an older child into the cellar. In March 2018, K.D. was jumping on a mattress, fell off, and broke his collarbone. The foster parents reported all three incidents to DCFS and Broughton testified there was no indication the injuries resulted from abuse. DCFS recommended the foster parents adopt the minors. Respondent presented no evidence.

¶ 29

b. Trial Court's Findings

¶ 30 After considering the evidence presented at the best-interest hearing, the trial court found that the “minors appear to be bonded to the foster family[;] that their needs are being met in the foster home, educational needs, medical needs, and psychological needs; and that the minors have been cared for in this foster placement since October 2017.” Further, the court noted it “is required under the Juvenile Court Act to try to achieve a permanent solution or permanency for a minor as soon as that can be done so that they know what their permanent place is and are not in limbo for long periods of time.” The trial court found by a preponderance of the evidence that it was in the best interest of the minors to terminate respondent's parental rights.

¶ 31 This appeal followed.

¶ 32

II. ANALYSIS

¶ 33 On appeal, respondent argues the trial court's decision to terminate her parental rights was against the manifest weight of the evidence. We disagree and affirm.

¶ 34

A. Standard of Review

¶ 35 “At the best-interest stage of termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination [of parental rights] is in the child's best interest.” *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). The reviewing court will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence. *Id.* A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate the court should have reached the opposite result. *Id.* Ultimately, the trial court is in the best position to determine the

credibility of the witnesses. *In re K.B.*, 314 Ill. App. 3d 739, 748, 732 N.E.2d 1198, 1206 (2000).

¶ 36 At the best-interest stage of termination proceedings, “ ‘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 T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005) (quoting *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004)). The trial court takes into consideration the best-interest factors in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2016)).

¶ 37 **B. Best-Interest Finding**

¶ 38 Respondent argues the trial court’s termination of respondent’s parental rights was against the manifest weight of the evidence because the court based its best-interest decision “solely on the issue of permanency.” Respondent contends the permanent parent figure in the children’s lives has always been respondent and that she was successful in her cooperation with DCFS and her visits with K.D. and G.P. While respondent struggled with mental-health and substance-abuse issues, she argues she made efforts in both areas and there is no evidence the minors ever sustained injuries while in her care, as opposed to the three incidents that occurred in the foster home.

¶ 39 We disagree with respondent and find the trial court considered (1) the foster placement; (2) the minors’ bond with the foster family; (3) the minors’ educational, medical, and psychological needs; and (4) how the foster parents were meeting those needs, in addition to the children’s need for permanence. The court also considered respondent’s ongoing mental-health and substance-abuse problems. While the children sustained injuries in the foster home, the

court found the foster parents reported all the incidents to DCFS and the injuries showed no indication of abuse.

¶ 40 We find the trial court did not exclusively rely on the permanence factor in making its decision to terminate respondent's parental rights. Moreover, the evidence shows respondent is incapable of providing a safe and nurturing home for her children. We find the trial court's termination of respondent's parental rights was not against the manifest weight of the evidence. Accordingly, we affirm the court's judgment.

¶ 41 III. CONCLUSION

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

¶ 43 Affirmed.