2019 IL App (2d) 190110-U
No. 2-19-0110
Order filed July 19, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MATTHEW W., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 16-JA-292
	)	
(People of the State of Illinois, Petitioner-Appellee v. Matthew R., Respondent-Appellant.)	)	Honorable
	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment terminating the respondent's parental rights was affirmed where the trial court's findings were not against the manifest weight of the evidence.

¶ 2 The trial court found respondent, Matthew R., to be an unfit parent and determined that it was in the best interests of respondent's minor son, Matthew W., to terminate respondent's parental rights. Respondent appeals, arguing that the court's findings were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Rather than provide a detailed recitation of the facts here, we will briefly outline the background and address the relevant facts more fully in the analysis section below.

¶ 5 Matthew was born in May 2016. For the first few months of his life, he resided with his half-sister, Abigail V., and their mother, Jessica W. (The court ultimately terminated Jessica's parental rights to both Matthew and Abigail. Jessica is not a party to the present appeal, and Abigail's custody and guardianship is not at issue here, as respondent is not her father.) On August 3, 2016, respondent was convicted of possession of a stolen firearm (720 ILCS 5/24-3.8(a) (West 2016)), a class 2 felony. He was incarcerated during the entirety of the proceedings giving rise to this appeal.

¶ 6 Meanwhile, on August 12, 2016, Abigail, who was five years old at the time, contacted authorities and reported that she was unable to wake Jessica. A first responder notified the Department of Children and Family Services (DCFS) after observing that Jessica appeared to be under the influence of some sort of substance. On August 16, 2016, the State filed a petition alleging that Matthew was a neglected minor in that (1) he was born substance-exposed, (2) Jessica had a substance-abuse problem that prevented her from properly parenting, and (3) Jessica took suboxone while pregnant without a prescription and Matthew went through withdrawals. That same day, Jessica waived her right to a shelter care hearing and agreed that temporary custody and guardianship of Matthew would be placed with DCFS. On December 14, 2016, pursuant to the parties' agreement, the court adjudicated Matthew neglected on one count of the State's petition and appointed DCFS as Matthew's guardian.

¶ 7 At the first permanency review on June 13, 2017, the court found that respondent made reasonable efforts toward Matthew's return. The court made no findings at that time with respect to respondent's progress. On March 2, 2018, the court conducted a second permanency review and found that respondent made reasonable efforts but not reasonable progress. At that point, the

court changed the goal to substitute care pending court determination of termination of parental rights.

¶ 8 On March 5, 2018, the State filed a petition to terminate respondent's parental rights. The State filed an amended petition on June 14, 2018. Count I of the amended petition alleged that respondent failed to make reasonable progress during two specified nine-month periods following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2018)). Count II alleged that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to Matthew's welfare (750 ILCS 50/1(D)(b) (West 2018)). Count III alleged that respondent was depraved (750 ILCS 50/1(D)(i) (West 2018)). Count IV alleged that respondent was prevented from discharging his parental responsibilities due to his repeated incarceration (750 ILCS 50/1(D)(s) (West 2018)).

¶ 9 Following a hearing, the court found respondent unfit pursuant to all four counts of the State's amended petition. On January 16, 2019, the court found that it was in Matthew's best interests to terminate respondent's parental rights. Respondent timely appealed.

¶ 10 II. ANALYSIS

¶ 11 Our disposition was due on July 11, 2019. Several circumstances delayed our decision. On March 22, we granted respondent's original court-appointed appellate counsel's unopposed request for a 21-day extension to file the appellant's brief. On April 23, respondent's counsel moved to withdraw from the case upon discovering that he had a conflict of interest. We granted that motion, and the trial court appointed new counsel for respondent on April 26. On May 9, we allowed respondent's new counsel a 14-day extension to file the appellant's brief. Pursuant to that new briefing schedule, respondent's reply brief was not due until July 3—eight days before our disposition was due to be filed. Under these circumstances, there is good cause for our

failure to issue our decision within 150 days of the filing of the notice of appeal. See Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018).

¶ 12 Respondent argues that the court's findings as to both parental unfitness and Matthew's best interests were against the manifest weight of the evidence.

¶ 13 Involuntary termination of parental rights under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq*. (West 2018)) is a two-step process. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). The State must first prove by clear and convincing evidence that the parent is unfit under any single ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)). *C.W.*, 199 Ill. 2d at 210. If the parent is unfit, the matter proceeds to a second hearing, at which the State must prove by a preponderance of the evidence that it is in the best interests of the minor to terminate parental rights. *In re D.T.*, 212 Ill. 2d 347, 352, 366 (2004). We will not disturb a finding of unfitness unless it is against the manifest weight of the evidence. *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 19. "A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 14 The trial court found respondent unfit pursuant to all four counts of the State's amended petition. We focus on count IV. See *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 30 ("As the grounds for finding unfitness are independent, we may affirm the trial court's judgment if the evidence supports it on any one of the grounds alleged."). Section 1(D)(s) of the Adoption Act provides that a parent is unfit in the following circumstances:

> "The child is in the temporary custody or guardianship of the Department of Children and Family Services, the parent is incarcerated at the time the petition or motion for termination of parental rights is filed, the parent has been repeatedly incarcerated as a

> result of criminal convictions, and the parent's repeated incarceration has prevented the parent from discharging his or her parental responsibilities for the child." 750 ILCS 50/1(D)(s) (West 2018).

To sustain its burden of proof under this statute, the State had to show that (1) Matthew was in the temporary custody of DCFS, (2) respondent was incarcerated at the time the petition for termination of his parental rights was filed, (3) respondent had been repeatedly incarcerated as a result of criminal convictions, and (4) respondent's repeated incarceration has prevented him from discharging his parental responsibilities for Matthew. See *In re Gwynne P.*, 215 Ill. 2d 340, 355 (2005). Respondent does not dispute that Matthew was in the temporary custody or guardianship of DCFS. Respondent also concedes that he was incarcerated when the petition was filed and that the State introduced certified records documenting his convictions. Nevertheless, he argues that there was no evidence that he was "repeatedly incarcerated," because "[t]he certified copies of the convictions are silent as to any incarceration and nothing further was offered to support a termination of rights under this statute."

¶ 15 Respondent's argument is belied by the record. The State introduced into evidence records showing that respondent was convicted of eight felonies between August 2008 and August 2016, including: two separate convictions of theft (720 ILCS 5/16-1(a)(3)(A) (West 2008); (720 ILCS 5/16-1(a)(1)(A) (West 2010)), deceptive practices for writing a bad check (720 ILCS 5/17-1(B)(d) (West 2008)), forgery (720 ILCS 5/17-3(a)(2) (West 2008)), escape (720 ILCS 5/31-6(a) (West 2010)), retail theft (720 ILCS 5/16A-3(a) (West 2010)), burglary (720 ILCS 5/19-1(a) (West 2012)), and possession of a stolen firearm (720 ILCS 5/24-3.8(a) (West 2016)).[1] Contrary to what respondent claims, the evidence supported the trial court's finding

[1] In their briefs, the parties mention respondent's five felony convictions from

that respondent was "repeatedly incarcerated" in connection with those convictions. Respondent's mother, Tina W., testified that, in addition to his stints in jail, respondent had been to prison four times since 2009. Moreover, although the Winnebago County records do not indicate the sentences that respondent received on each conviction, the Ogle County records reflect that respondent was sentenced to two years in prison in 2011. The evidence also showed that respondent was incarcerated through the duration of these neglect/termination proceedings on his latest charge from Winnebago County for possessing a stolen firearm. In his motion in the trial court to proceed with this appeal *in forma pauperis*, respondent represented that he received a 6-year sentence on that particular charge. The evidence showed that this latest period of incarceration prevented respondent from discharging his parental duties for the first 2 ½ years of Matthew's life. For these reasons, the court's finding that respondent was unable to discharge his parental duties due to his repeated incarceration was not against the manifest weight of the evidence.

¶ 16 After the court makes a finding of parental unfitness, "the focus shifts to the child." *D.T.*, 212 Ill. 2d at 364. Specifically, the court must consider whether it is in the best interests of the child to terminate parental rights. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 41. At the best interests hearing, the trial court considers:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;

Winnebago County. The record reflects that respondent also had three felony convictions from Ogle County.

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2018).

We will not overturn the trial court's finding that termination of parental rights is in the child's best interests unless it is against the manifest weight of the evidence. *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24.

¶ 17 The evidence showed that respondent had never met Matthew. Since August 2016, Matthew and his half-sister, Abigail, had resided with their maternal uncle and aunt. According to Elizabeth Tevis, who was the family's caseworker, Matthew and Abigail loved each other and cared for each other, although they had a "love-hate relationship" that was very typical of

siblings. Tevis testified that returning Matthew to respondent would disrupt the bond between Matthew and Abigail and would be very hard on the children. Tevis explained that Matthew was very attached to his current home and that he looked to his aunt and uncle as caregivers. Tevis believed that Matthew was particularly attached to his aunt. The aunt and uncle expressed to Tevis a willingness to adopt Matthew and Abigail.

¶ 18 In his statement to the court, Matthew's uncle, Chris W., explained that his own two children were more like older siblings than cousins to Matthew and Abigail. Chris insisted that he was not trying to keep Matthew away from respondent. Chris said that he would allow Matthew and Abigail to see their respective parents, so long as the parents took care of themselves and it was safe to do so.

¶ 19 In finding that it was in Matthew's best interests to terminate respondent's parental rights, the court noted that it found Chris to be "very credible" when he assured the court that he was open to facilitating relationships between Matthew and Abigail and their parents. The court found it significant that the children were with their biological relatives and were in a "safe and secure spot," where they were treated as "part of a sibling group, including their cousins." According to the court, that situation was "the best of both worlds." The court expressed its hope that the foster parents would consider allowing "some type of a relationship with the biological parents going forward."

¶ 20 The State argues that respondent forfeited his argument with respect to Matthew's best interests by failing to discuss all of the statutory factors and by failing to cite pertinent authority. Even if the State were correct and we could deem the argument forfeited, given the importance of the rights involved in this appeal, we would choose to address respondent's argument.

¶ 21 The court's findings were amply supported by the evidence. By virtue of respondent's incarceration, he was not in a position to function as a parent or to develop a relationship with Matthew for the first 2 ½ years of Matthew's life. In respondent's absence, Matthew's aunt and uncle welcomed Matthew and Abigail into their home and provided a safe and stable environment. The aunt and uncle were committed to adopting both children and were open to facilitating a relationship between respondent and Matthew in the future. The record supports the court's determination that this was the best outcome for Matthew.

¶ 22 Respondent emphasizes that he was never a danger to Matthew, given that he was incarcerated throughout Matthew's entire life. The statutory factor that respondent cites in support of his point indicates that a court should consider "the physical safety and welfare of the child, including food, shelter, health, and clothing." 705 ILCS 405/1-3(4.05)(a) (West 2018). This factor clearly weighed in favor of terminating respondent's parental rights, because the foster parents, not respondent, provided a safe home for Matthew and attended to his basic needs. Additionally, before DCFS became involved, respondent's incarceration prevented him from protecting Matthew from the neglect that was attributable to Jessica's substance abuse.

¶ 23 Respondent further asserts that the State prevented him from having contact with Matthew, thereby denying respondent the ability to establish an attachment to his son. The record, however, shows that DCFS and its contracting agency acted reasonably and in Matthew's best interests. During the majority of this case, respondent was incarcerated at Centralia Correctional Center. According to exhibits admitted into evidence, Centralia, Illinois, is almost 5 hours from Rockford, Illinois, and the contracting agency had concerns about taking Matthew on a 9 or 10 hour round-trip car ride. The agency attempted to facilitate a visit between Matthew and respondent when respondent was temporarily housed in an institution that was closer to

Rockford. Unfortunately, Matthew reacted very poorly when the agency's workers attempted to put him in a car. He would not stop screaming and crying for more than half an hour, and the workers could not get him buckled in his car seat. In light of Matthew's reaction to being transported, the agency decided not to attempt further visits with respondent while respondent was incarcerated. Given the circumstances, the agency acted reasonably and in Matthew's best interests.

¶ 24 Accordingly, the determination that it was in Matthew's best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 25 III. CONCLUSION

¶ 26 For the forgoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 27 Affirmed.