2019 IL App (2d) 190307-U
No. 2-19-0307
Order filed August 13, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re K.B., a Minor,	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 17-JA-202
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Diondre S.,	)	Francis Martinez,
Respondent-Appellant).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: Trial court's findings that father was unfit due to his repeated incarceration and that it was in the best interests of the minor to terminate father's parental rights were not against the manifest weight of the evidence.

¶ 2 The minor, K.B., was born on March 28, 2017. Soon after her birth, she was removed from the care of her mother, Denise B. (who is not a party to this appeal), and a neglect petition was filed in the circuit court of Winnebago County. Her father, the appellant Diondre S., was incarcerated throughout the neglect proceedings. The trial court found that Diondre was unfit and that it was in the best interests of K.B. to terminate Diondre's parental rights. Diondre appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In October 2016, Diondre was charged in Winnebago County with one count of aggravated domestic battery and one count of domestic battery. The indictment alleged that, on August 8, 2016, Diondre choked and shoved Denise. (At the time, Denise was pregnant with K.B.) The indictment also alleged that, one year earlier, Diondre was convicted of domestic battery in Stephenson County. Diondre was arrested and incarcerated at the Winnebago County Jail. He was ultimately convicted of the aggravated domestic battery count. Separately, he was convicted of and sentenced for a previous drug charge. In March 2018 he was transferred to the Department of Corrections in Danville. He remained in prison until his parole on April 12, 2019.

¶ 5 K.B. has two older siblings who have different fathers. Those children were removed from Denise's care because of concerns regarding ongoing domestic violence and that on one occasion Denise used one of her children as a shield during an altercation. K.B.'s older siblings initially resided with an aunt. After K.B. was born in March 2017, she and her siblings went to live with her maternal grandmother.

¶ 6 The State filed a neglect petition with respect to K.B. on June 7, 2017. The State alleged that K.B. was in an environment injurious to her welfare in that her mother had failed to correct the conditions that led to her siblings' removal. On July 5, 2017, guardianship and custody of K.B. were granted to the Department of Children and Family Services (DCFS) and she and her siblings were formally placed in foster care with her grandmother. The trial court held an adjudicatory hearing on October 2, 2017, and found K.B. to be neglected.

¶ 7 The first permanency hearing was held on March 14, 2018. Diondre was incarcerated and had not yet received an integrated assessment, so no findings were made regarding him. The trial court ordered him to sign releases and complete any recommended assessments and

services. By August 2018, Diondre had been provided with a service plan that included a domestic violence program, a substance abuse program, parenting classes, anger management classes, and a mental health assessment. The agency assigned to K.B.'s case noted that in June Diondre began having monthly visits with K.B. at the correctional center. However, Diondre had not communicated with the agency about the services he needed to complete.

¶ 8 Diondre was present in court at the October 5, 2018, permanency hearing. He testified that the jail had not offered any services. He was transferred to the correctional center in March 2018 and since then he had begun working toward his GED. He was attending counseling once a month for 30 minutes. He testified that no anger management or domestic violence classes were being offered at the prison, and that he could not attend substance abuse or parenting classes because he was required to attend and complete remedial classes before being allowed to take any other classes. He anticipated being released from prison in April 2019 and planned to get a job, finish his schooling, and take care of K.B. On cross-examination, Diondre said that he had mailed the caseworker his mental health assessment and a card for K.B. He had not provided the caseworker with any documentation that he had signed up for classes. Following the hearing, the trial court found that he had made reasonable efforts, but not reasonable progress. Additionally, based on the length of time that had passed since K.B. was removed and the fact that Diondre would likely require additional time to complete services once he was released from prison, which would further deny permanency to K.B., the trial court changed the goal to substitute care pending adoption.

¶ 9 On October 9, 2018, the State moved to terminate the parental rights of Denise and Diondre with respect to K.B. As to Diondre, the State alleged that he (1) had failed to maintain a reasonable degree of interest, concern or responsibility as to K.B.'s welfare (750 ILCS

50/1(D)(b) (West 2016)), and (2) was currently incarcerated and had been repeatedly incarcerated due to criminal convictions, and the repeated incarceration had prevented him from discharging his parental responsibilities (750 ILCS 50/1(D)(s) (West 2016)).

¶ 10 The hearing on the State's motion to terminate parental rights commenced on November 29, 2018. The trial court began with the issue of parental fitness. The first witness was Nick Massetti, the current caseworker. He testified that he had arranged one visit between Diondre and K.B. since he had taken over the case. He also laid the foundation for the admission of the prior periodic agency reports. Other than that, he had little to add.

¶ 11 The hearing resumed on February 1, 2019. Tina Studer, who handled the case prior to the assignment of Massetti, testified. She had been assigned to the case from early 2018 through September 2018. She had sent Diondre two service plans. Although Diondre had told a case aide during a visit that he was pursuing some of the recommended services, Studer never received any documentation (or other communication) from Diondre. She did not recall that Diondre ever wrote to K.B.: K.B.'s grandmother did not want him to have their address, and Studer did not recall receiving a card or letter to pass along to Kenijah. She did receive a written listing of the classes available at the Danville correctional center from Diondre. After Studer testified, Massetti retook the stand. He did not recall the details of the service plan for Diondre. However, he had examined the file when he was assigned to the case, and he recalled seeing one letter from Diondre with a card for K.B., sent in September 2018. Diondre had not sent in any documentation of any services that he was engaged in or any waitlists (for classes) that he was on, and had not asked for a picture of K.B. or asked about her welfare.

¶ 12 Diondre then testified. He stated that Studer had contacted him about his service plan and had told him how K.B. was doing. He had written to Studer three times: once about visits,

once to get the necessary paperwork to start the visits, and once to report the status of his service plan and send a card for K.B. He had given cards directly to her during visits. In addition to the six or seven visits with K.B. at Danville, he had had video visits with her twice when he was in the county jail. When he had gotten to Danville, he had signed up for every class he was supposed to take "immediately," but there was a waitlist for the parenting class and he had to complete the mandatory remedial school classes before he was eligible to take other classes. He had also signed up for anger management classes, but they did not offer them at Danville. He had begun substance abuse group meetings but had the same conflict with his mandatory school classes. He was engaged in monthly individual counseling sessions and had been four or five times. During those sessions, he and his counselor talked about his past history and his anxiety. He was taking medication for anxiety and also learning non-medical coping techniques.

¶ 13 Diondre testified that he had also begun planning for after his release in April 2019, two and a half months away. He planned to complete the parenting classes and substance abuse program during the first 90 days while he was on electronic monitoring. K.B. would be two years old, and he had a place to stay with his aunt in Freeport where K.B. could have her own room. On cross-examination, Diondre testified that the anxiety medication and individual counseling were not conditions of his parole plan. After closing arguments from all parties, the trial court stated that it would take the matter under advisement.

¶ 14 On February 28, 2019, the parties again came before the court. The court announced its rulings on fitness. As to Diondre, the trial court noted that he had been incarcerated during all of Kenijah's life to that point. The trial court found that that incarceration had interfered with Diondre's ability to provide financial, physical and emotional support for K.B. Further, although he had made occasional efforts to communicate with the caseworker, "communication and

frequency were lacking" and he had not shown a reasonable degree of concern, responsibility and interest in K.B. Thus, the State had proved unfitness on both of the grounds alleged in the petition for termination of parental rights.

¶ 15 On April 3, 2019, the trial court held the best interests hearing. Massetti testified that K.B.'s placement with her grandmother was appropriate and safe. K.B. had a loving relationship with her grandmother and with her aunt, who also lived in the home. K.B.'s grandmother was also the foster mother for Kenijah's siblings and wished to adopt all three children. On cross-examination, Massetti stated that Diondre had visits with K.B. for a time and that the interaction during visits was appropriate. K.B. knew Diondre was her father and they were bonded.

¶ 16 Diondre testified that he was getting monthly visits with K.B. for about seven or eight months. The visits were great, but he stopped them because he was having to go to court a lot and he didn't want K.B. to come for a visit and not find him there, plus he would be released and back home soon. He loved his daughter and they were bonded. He described his plans upon his upcoming release from prison, which included a home with his aunt that had space for K.B., a job, continuing his education and individual counseling, and obtaining the services that he had been unable to get in prison.

¶ 17 After closing arguments, the trial court found that it would be in the best interests of K.B. to terminate Diondre's parental rights. The trial court noted that the law compelled it to give priority to achieving permanency for children. In this case, Diondre had already been found unfit and thus K.B. currently could not be placed with him. Even if Diondre were to follow through as promptly as possible with obtaining all the services he needed once he was released from prison, it would be six to twelve months before he could complete those services to be considered as a fit person to have the care and custody of K.B. The trial court could not deprive

K.B. of permanency for that long. Further, K.B.'s grandmother had facilitated visits between her and Diondre in the past, and going forward he would likely have the opportunity to maintain a loving relationship with his daughter if he wished. The trial court then terminated Diondre's parental rights. This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Termination of parental rights is a two-step process. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 1. First, the trial court must find, by clear and convincing evidence, that the parent is unfit. *Id*. ¶ 63. Second, the court must determine, by a preponderance of the evidence, whether termination of parental rights is in the minor's best interests. *Id*. Diondre challenges both the trial court's finding that he was unfit and that it was in K.B.'s best interests for his parental rights to be terminated.

¶ 20 Because the termination of parental rights constitutes a complete severance of the legal relationship between the parent and child, proof of parental unfitness must be clear and convincing. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 88. The trial court is in the best position to assess the credibility of witnesses, and a reviewing court may reverse a trial court's finding of unfitness only where it is against the manifest weight of the evidence. *Id*. ¶ 89. A decision regarding parental unfitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result. *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010).

¶ 21 In this case, the trial court found respondent unfit on two grounds. Although section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)) sets forth several grounds under which a parent may be deemed unfit, any one ground, properly proven, is sufficient to sustain a finding of unfitness. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89.

¶ 22 The trial court did not err in finding that the State had proven, by clear and convincing evidence, that Diondre was unfit due to his repeated incarceration. Section 50/1(D)(s) provides that unfitness can be shown where "[1] the parent is incarcerated at the time the petition or motion for termination of parental rights is filed, [2] the parent has been repeatedly incarcerated as a result of criminal convictions, and [3] 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 2016). All of these elements are met here. As the trial court noted, Diondre was incarcerated even before the termination petition was filed, from before K.B.'s birth through the date when his parental rights were terminated. He was also "repeatedly incarcerated," as he was first incarcerated for his aggravated domestic battery conviction and then later convicted and sentenced for a drug charge. Finally, there is no question that Diondre's incarceration prevented him from fulfilling his parental responsibilities for K.B., which include providing for her physical, emotional, and financial needs. See *In re D.D.*, 196 Ill. 2d 405, 420-21 (2001) (when analyzing this ground for unfitness, courts can consider not only "absences caused by incarcerations which have prevented the parent from providing his or her child with a stable home environment" but also "the overall impact that repeated incarceration may have on the parent's ability to discharge his or her parental responsibilities ***, such as the diminished capacity to provide financial, physical, and emotional support for the child").

¶ 23 Diondre argues that he demonstrated his fitness through his efforts to engage in at least some classes (the other services were not available to him in prison), along with his plans to complete those services, work, and provide a good home for K.B. upon his release. But while all of these things are commendable, none of them contradict the trial court's finding that, as of the date of the fitness hearing, Diondre was not able to provide the support and stability required of a

parent due to his repeated incarceration. As such, the trial court's finding of unfitness was not against the manifest weight of the evidence. We therefore turn to the issue of the trial court's best-interests determination.

¶ 24 Just as with the finding of unfitness, a reviewing court will not disturb the trial court's decision regarding the child's best interests and the termination of parental rights unless it is against the manifest weight of the evidence. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 65. Under the Juvenile Court Act of 1987, the best interests of the minors is the paramount consideration to which no other takes precedence. *In re I.H.*, 238 Ill. 2d 430, 445 (2010). In other words, a child's best interest is not to be balanced against any other interest; it must remain inviolate and impregnable from all other factors. *In re Austin W.*, 214 Ill. 2d 31, 49 (2005). Even the superior right of a natural parent must yield unless it is in accord with the best interests of the child involved. *Id*. at 50.

¶ 25 The Juvenile Court Act sets forth the factors to be considered whenever a best-interests determination is required, all of which are to be considered in the context of a child's age and developmental needs: the physical safety and welfare of the child; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including feelings of love, being valued, and security, and taking into account the least disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; 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; the uniqueness of every family and child; the "risks attendant to entering and being in substitute care"; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016). Other relevant factors in best-interests

determinations include the nature and length of the minors' relationships with their present caretaker and the effect that a change in placement would have upon their emotional and psychological well-being. *In re William H.,* 407 Ill. App. 3d at 871.

¶ 26 Here, K.B. was well-bonded to both her grandmother and her aunt, and she was in a home with her siblings. That home was the only home she had ever known. Despite Diondre's commendable plans to get a job and complete the recommended parenting, substance abuse, domestic violence and anger management services, the trial court did not err in finding that it was in K.B.'s best interests for her to remain in that home.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, the judgment of the circuit court of Winnebago County is affirmed.

¶ 29 Affirmed.