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2014 IL App (3d) 130773-U

Order filed March 11, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> L.J., and L.J.,)	Appeal from the Circuit Court
)	of the 10 th Judicial Circuit
Minors,)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-13-0773; 3-13-0774
)	Circuit No. 10-JA-290, 11-JA-164
v.)	
)	
Landrean J.,)	Honorable
)	Chris Fredrickson,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's finding respondent unfit was not against the manifest weight of the evidence and its determination that the best interest of the minors required the respondent's parental rights be terminated was likewise not against the manifest weight of the evidence.

¶ 2 Following a dispositional hearing, the circuit court found the respondent, Landrean J. to be an unfit parent and made his two children, L.J. (born November 24, 2008) and L.J. Jr. (born June 23, 2011) wards of the court. The court subsequently found it to be in the best interest of the minors that the respondent's parental rights be terminated. On appeal, the respondent maintains that: (1) the court's finding him to be unfit was against the manifest weight of the evidence; and (2) the court's decision to terminate his parental rights was against the manifest weight of the evidence. For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 3 **FACTS**

¶ 4 On October 4, 2010, the State filed a juvenile petition asserting that L.J. was neglected in that her environment was injurious to her welfare. The petition identified the respondent as the minor's father and alleged that the respondent was a registered sex offender with an extensive criminal history. At the time the petition was filed, L.J. was in foster care pursuant to a shelter care hearing. The petition asked that L.J. be made a ward of the court and the Department of Children and Family Services (DCFS) be appointed guardian.

¶ 5 On December 9, 2010, the court found L.J. to be a neglected minor based upon the death of a sibling from malnourishment and dehydration, the parent's inability to seek proper medical attention for their children, and the respondent's criminal history. The order adjudicated the respondent to be unfit and made L.J. a ward of the court with DCFS appointed as guardian.¹

¶ 6 The respondent was ordered to: (1) execute all authorizations for release of information required by DCFS; (2) cooperate fully with DCFS or its designee; (3) obtain drug and alcohol abuse assessment and successfully complete any recommended treatment; (4) submit to a

¹ The mother is not a subject of this appeal. Her parental rights have been terminated in a separate proceeding.

psychological examination and follow all recommendations; (5) successfully complete counseling and parenting classes; (6) successfully complete a domestic violence counseling program; (7) successfully complete a life skills program; (8) obtain and maintain stable housing; (9) obtain and maintain employment; (10) cooperate with a visitation schedule; and (11) provide the caseworker with any change of phone number, address, or change in household membership, as well as any information on any person with whom he had a relationship that might affect the minor.

¶ 7 On July 31, 2011, the State filed a juvenile petition alleging that L.J., Jr. (Junior) was neglected in that his environment was injurious to his welfare. The petition, filed approximately one month after the child was born, alleged that respondent had been found unfit in the case regarding L.J., on December 9, 2010, and there had not been a subsequent finding of fitness in that matter. Additionally, the petition noted that Junior was in foster care as a result of a prior shelter care order. The petition asked that Junior be made a ward of the court and the Department of Children and Family Services (DCFS) be appointed guardian. The respondent stipulated to all the allegations contained in the petition regarding Junior.

¶ 8 On September 1, 2011, Junior was adjudicated neglected based upon the stipulated allegations in the State's petition. The respondent was found unfit, and Junior was made a ward of the court with DCFS appointed as guardian. The respondent was ordered to complete the steps of the same plan previously ordered in the L.J. case.

¶ 9 On March 20, 2013, the State filed separate petitions seeking to terminate the respondent's parental rights as to both L.J., and Junior. Each petition alleged that the respondent was unfit pursuant to section 50/1(D)(m)(iii) of the Adoption Act. (750 ILCS 50/1(D)(m)(iii) (West 2010)). Specifically, the State alleged that the respondent failed to make reasonable

progress toward each of the minors' return during any nine-month period after the end of the initial nine-month period following an adjudication of neglect. The relevant nine-month period in both petitions was specified as being from June 1, 2012, to March 1, 2013.

¶10 On August 14, 2013, a hearing was held on both petitions. Catherine Shockley, testified that she was a caseworker at FamilyCore assigned to work with L.J., Junior, and the respondent. Her assignment ended on December 10, 2012. She testified that the respondent had been referred to the Center for Prevention of Abuse for domestic violence and life skills counseling, but had failed to complete the program. She referred the respondent to FamilyCore counseling, but he did not attend or complete that program. Respondent also failed to complete an assigned life skills counseling program.

¶11 Shockley also testified that the respondent failed to maintain regular contact with her, including a period of approximately three months during which the respondent was incarcerated. Shockley also testified that when she inquired of the respondent if he intended to participate in domestic violence counseling, he told her that he did not need domestic violence counseling.

¶12 On cross-examination, Shockley testified that the goal for each child was changed from returning to the respondent's custody to termination and after the status change, the respondent was no longer eligible for free counseling services. However, she informed the respondent that that these services were available to him on a sliding fee scale based upon his income. Shockley also testified, however, that the counseling services the respondent was required to complete were not available to him during the three months he was incarcerated. Shockley also testified that, after the respondent was released from incarceration, he contacted her in an effort to resume visitation with the children. These visits were limited to once per month after the permanency goal was changed. She also noted that at these once-per-month visits the children appeared

happy to see him and were appropriately affectionate toward him. Shockley also acknowledged that, prior to his incarceration, the respondent had successfully completed a parenting class and underwent a psychological examination.

¶ 13 Leona Ziegler testified that she was the FamilyCore caseworker assigned to the respondent's case after Shockley, from December 10, 2012, to March 1, 2013. Ziegler testified that the respondent did not seek any counseling services during this time period. Ziegler also testified that she had no contact with the respondent from December 6, 2012, when she was briefly introduced to him as his new caseworker, until March 1, 2013, when the respondent came to FamilyCore offices for a visitation with the children. Ziegler testified that she sent letter to the respondent in December, January, and February, but received no response from him. When she spoke with him on March 1, 2013, he acknowledged that he had received her letters. Zeigler further testified that she was aware of the respondent's scheduled visitation on March 1, 2013, so she attended that session in order to make contact with him.

¶ 14 On cross-examination, Zeigler acknowledged that the respondent had attended his monthly visitations in December, January, and February, and that she had received reports regarding those visitation sessions. The reports indicated that there were no concerns regarding the visits, and the children appeared to bond with the respondent.

¶ 15 Detective Robert Vasquez testified that he was a detective with the Peoria Police Department, Juvenile Division. He testified that he interviewed the respondent on June 26, 2012, regarding a sexual assault on a 13-year-old victim. Vasquez testified that he arrested the respondent after the respondent admitted to engaging in sexual intercourse with the victim.

¶ 16 The respondent, called as a witness by the State, testified that he was arrested on June 26, 2012, for having sex with a 13-year-old minor, and was released on September 14, 2012. He

testified that, at the time of his release, the charge was dropped, but he denied that it was in exchange for testifying against L.J. and Junior's mother at her trial for the murder of another of her children. The respondent also admitted to an extensive criminal history prior to, during, and after the nine-month period.

¶ 17 Documentary evidence admitted at the hearing included certified copies of FamilyCore counseling records, the respondent's records from the Center for Prevention of Abuse, and the petitions, adjudications, and dispositional orders in the case.

¶ 18 The respondent, testifying on his own behalf, stated that he had attended some counseling sessions prior to his arrest. After he was released, however, he was told that services were no longer available due to the change in his permanency status. He claimed he made several attempts to contact caseworkers and other service providers. He testified that he made several calls to FamilyCore, but none of the calls were returned. He denied being introduced to Zeigler on December 6, 2012. He further claimed that he was not informed that services were available on a sliding income scale. He also testified that he did not receive letters from caseworkers in December, January, and February.

¶ 19 Following the close of evidence, the trial court made several factual findings. The court found that the respondent's incarceration for three months during the relevant nine-month period prevented him from obtaining much of the court-ordered counseling and services. The court attributed this lack of access to services to the respondent's engaging in the behavior that led to his arrest and incarceration. The court found the testimony of Shockley and Ziegler regarding their attempts to contact the respondent and his failure to communicate with them was credible. The court found the respondent's testimony to the contrary was not credible. Based upon these credibility determinations, the court found that the respondent had failed to cooperate with the

DCFS and its designees. The court noted that, while free services had been terminated, a sliding scale fee structure was made available to the respondent. The court noted that the respondent had visited with the children and the visitations went well. However, these once per month visitations did not overcome the overwhelming evidence of the respondent's failure to make reasonable progress during the relevant nine-month period. The court found that the State had proven the allegations of the respondent's unfitness by clear and convincing evidence.

¶ 20 On September 18, 2013, the matter proceeded to a best-interest hearing for both minors. The court accepted into evidence a best-interest report for each child. It was reported that both children were in safe and secure environments in loving foster families. The reports showed that the two minors had been placed with their maternal great aunt and uncle who wished to adopt both children. The minors were reported to be developing identities within their foster family and had bonded strongly with each member of the foster family. The reports also indicated that each child's development and education was progressing satisfactorily. The reports recommended that DCFS be given guardianship with the right to consent to adoption, and that each child's goal be set as adoption. The court commented upon the record, noting that while the two children had "somewhat" of a bond with the respondent, and he had completed a parenting class prior to his arrest on the sexual assault charge, the remaining evidence overwhelmingly established that it was in the best interest of each of the minors that the respondent's parental rights be terminated. The respondent filed his timely appeal.

¶ 21

ANALYSIS

¶ 22

Fitness Determination

¶ 23 On appeal, the respondent first maintains that the court's finding that he was unfit under section 50/1(D) of the Adoption Act (750 ILCS 50/1(D)(m)(iii) (West 2010)) was against the

manifest weight of the evidence. We will not reverse a circuit court's determination regarding parental fitness unless the factual findings are against the manifest weight of the evidence. *In re Joshua S.*, 2012 IL App (2d) 120197, ¶ 44. In assessing whether the court's decision is against the manifest weight of the evidence, "a reviewing court must remain mindful that every matter concerning parental fitness is *sui generis*." *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). Each case must be decided on the particular facts and circumstances presented. *Id.*

¶ 24 The respondent maintains that his actions attending scheduled one-per-month visitation, maintaining a stable residence, and completing a parenting class prior to his incarceration were sufficient to establish a "minimum measurable or demonstrable movement toward reunification" and therefore it was against the manifest weight of the evidence for the trial court to find that he failed to make reasonable progress. See *In re Gwynne P.*, 346 Ill. App. 3d 584, 595-96 (2004). We disagree.

¶ 25 While the respondent made these minimal steps to comply with a portion of the court-ordered plan for reunification, the record established an overwhelming lack of overall progress. The record established that the respondent made no attempt to complete domestic violence counseling, going so far as to question his need for such counseling even though it was clearly part of his court-ordered reunification plan. In addition, by the respondent's own admission, the three-month period of incarceration during which services were unavailable was the result of his engaging in sexual intercourse with a 13-year old minor. Additionally, the court found the testimony of the two caseworkers regarding the respondent's lack of cooperation to be credible. Based upon the record evidence, the court's finding that the State had proven by clear and convincing evidence that the respondent was unfit in failing to make reasonable progress toward the return of the children to his custody was not against the manifest weight of the evidence.

¶ 26

Best Interest Determination

¶ 27 The respondent next maintains that the court's decision to terminate his parental rights to each of the minors was against the manifest weight of the evidence. When reviewing a finding that it is in the best interest of a minor to terminate parental rights, the appellate court will apply the manifest weight standard of review. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008).

¶ 28 Once a court has found a parent to be unfit, all considerations must yield to the best interest of the child. *In re I.B.*, 397 Ill. App. 3d 335, 340 (2009). Accordingly, at a best interest stage, the parent's interest in maintaining a parent-child relationship must yield to the child's interest in a stable, secure home life. *Id.* Generally, there are several factors which a court can take into account when considering whether the best interest of the child is served by terminating parental rights: (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; (4) the child's sense of attachment, including love, security, familiarity, continuity of relationships with parental figures; (5) the child's wishes and goals; (6) community ties; (7) the child's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the person available to care for the child. *In re B.B.*, 386 Ill. App. 3d at 698-699. Additionally, a court may consider the nature and length of the child's relationship with his or her present caretaker and the effect that a change in placement would have upon the child's well-being. *In re Jaron Z.*, 348 Ill. App. 3d 239, 262 (2004). In rendering a decision to terminate parental rights, the court is not required to expressly address each enumerated factor. *In re Janira T.*, 368 Ill. App. 3d 883, 894 (2006).

¶ 29 Here, the record clearly established that it was in the best interest of the minors that the respondent's parental rights be terminated. The evidence established that both minors were in a

stable, secure, loving environment provided by foster parents who were willing to adopt both into their family. Both minors had developed strong bonds within their foster family and were on target developmentally and educationally. Moreover, the respondent's failure to cooperate with the plan for reunification and his ongoing history of domestic violence and criminal activity, including his arrest during the nine-month period for engaging in sexual intercourse with a 13-year-old girl, supports a conclusion that the best interest of these minors called for the termination of his parental rights so the foster family could proceed with their adoption.

¶ 30

CONCLUSION

¶ 31 For the foregoing reasons, we affirm judgment of the circuit court of Peoria County.

¶ 32 Affirmed.