

NOTICE

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2014 IL App (4th) 140016-U

NO. 4-14-0016

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 29, 2014
Carla Bender
4th District Appellate
Court, IL

In re: M.J., K.N., and D.J., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	McLean County
v.)	No. 13JA32
JESSICA SCHWANDT,)	
Respondent-Appellant.)	Honorable
)	Kevin P.
)	Fitzgerald,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Pope and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Respondent has forfeited any claim of error in the procedures used to terminate her parental rights.

(2) The trial court's finding it was in the best interest of the minors to terminate respondent's parental rights was not contrary to the manifest weight of the evidence.

¶ 2 Respondent mother, Jessica Schwandt, appeals the orders terminating her parental rights to her children. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 24, 2013, the State filed a petition for adjudication of wardship and a petition to terminate parental rights with regard to three minors, K.N., born April 27, 2000, M.J., born October 15, 2004, and D.J., born January 8, 2007, and three parents, Thomas Nesby, Bobby

James, and respondent, Jessica Schwandt.

¶ 5 The State alleged one count of neglect as to respondent, contending the minors were neglected because they were in an environment injurious to their welfare because on May 6, 2008, McLean County case No. 05-JA-126 involving these same minors was closed "successfully" with the minors restored to the care and custody of respondent. Later, on February 10, 2010, in McLean County case No. 09-JA-148, respondent admitted the minors were neglected because she had been charged with felony drug charges following a raid at her residence in the presence of the minors. The minors were again restored to respondent's care and custody and that case closed on June 21, 2011. On April 23, 2013, respondent was again arrested following a drug raid at her residence in the presence of the minors. She is alleged to have sold illegal drugs on at least two occasions on April 9, 2013, in the presence of all three minors. Respondent is now incarcerated pending felony drug charges.

¶ 6 The petition also alleged respondent was an unfit person and her parental rights should be terminated because (1) she failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors welfare and (2) she failed to protect the children from conditions within their environment injurious to the children's welfare.

¶ 7 On April 25, 2013, respondent appeared for a shelter care hearing. She stipulated to probable cause and immediate and urgent necessity the children be placed in shelter care. As both of the named fathers and respondent were all incarcerated, a shelter care order was entered authorizing the Illinois Department of Children and Family Services (DCFS) to have guardianship over the minors.

¶ 8 On June 4, 2013, a pretrial hearing was held and Nesby, father of K.N.,

surrendered his parental rights, and the court entered an order terminating his parental rights.

¶ 9 On July 2, 2013, an adjudicatory hearing and the unfitness portion of the petition to terminate parental rights was held. James admitted the allegation of the petition for adjudication of wardship and the allegation of depravity pertaining to his fitness as parent to M.J. and D.J.

¶ 10 As to respondent, the State produced a certified copy of her conviction in No. 13-CF-534 where she was charged with delivery of cocaine, a Class 2 felony, and she was sentenced to three years in the Illinois Department of Corrections on May 28, 2013. The State also produced a certified copy of her conviction in No. 09-CF-1110, where she was charged with unlawful possession of heroin, a Class 4 felony, and she was sentenced to two years of first-offender probation on April 15, 2010.

¶ 11 Tamika Thompson testified she was a child protective investigator at DCFS. On April 23, 2013, DCFS received a hot-line call stating respondent had been arrested and her children were at the police station. This was the third time DCFS had taken protective custody of her children. The cases went back to 2005. Respondent had been provided domestic violence, substance abuse, and parenting classes during those earlier situations. She "successfully" completed the services each time. In the current DCFS investigation, respondent was indicated for neglect because she put her children in a dangerous situation.

¶ 12 Bloomington police officer Todd McClusky testified he observed drug transactions involving respondent in April 2013. On April 9, 2013, he was about 50 feet away and observed respondent and Nolan Love during a transaction for the sale of cocaine, and three children were in the back of the car where the transaction took place. K.N. was about 12 years

old at the time, and after respondent was arrested K.N. told the police she was aware of what was going on and told respondent it was only a matter of time before DCFS was going to take the children away from her again.

¶ 13 Brenda Steele, a caseworker at the Center for Youth and Family Solutions, formerly Catholic Charities, testified she first met respondent on May 3, 2005, when her family was referred as an intact family case from DCFS. An intact family case occurs when a report of abuse or neglect is made and DCFS decides to open a case for services for children but not remove the children. By September 2005, the children were taken into custody by DCFS due to lack of cooperation by the family. Repeated incidents of domestic violence occurred between respondent and James, and respondent's whereabouts were not always known.

¶ 14 Respondent was called as a witness by the State. She testified in 2005 she was aware she was not supposed to allow James to have contact with the children but she did so, and that was why her children were taken into protective custody. When she arrested in 2009, her boyfriend was Abdullah Tate. She continued to visit him in jail and she pled guilty to possession of heroin because it was in her home. However, it was Tate's heroin.

¶ 15 Respondent then detailed the men in her life and the life of her children. When she was with Tate, she knew he had been arrested and had a drug conviction. She had a two-year relationship with a Mr. Green, who had drug convictions. Then she had a relationship with Love, who also had pending drug charges. Each of these men had a relationship with her, with drugs, and with her children.

¶ 16 Respondent stated she had counseling or domestic-violence treatment during the two prior DCFS cases. She said domestic-violence classes taught her to look for red flags in

relationships but not for backgrounds including drug histories. In respondent's opinion, James was an excellent father. He took care of the kids and was bonded to them, even K.N. who was not his biological child. She then stated Nesby, Tate, and Green were not good to have around her children.

¶ 17 Natalie Roberts, caseworker at the Baby Fold, testified K.N. told her she knew about drug activity in the home. One day she was looking for a pencil in a desk and found drugs.

¶ 18 The State requested the trial court take judicial notice of several court files from the past juvenile proceeding in 2005 and 2009. No other evidence was presented. After argument, the court found the petition proved as to neglect and unfitness. It entered an adjudicatory order as well as an order finding both James and respondent unfit.

¶ 19 On August 21, 2013, the trial court held a combined best-interests hearing and dispositional hearing as to K.N. The service plan filed by the Baby Fold indicated no visitation was currently being offered to either parent as the State was pursuing expedited termination. Respondent had a long work history and cooperated with recommended services from DCFS in the past. She was incarcerated at the time of the hearing and not able to engage in any services.

¶ 20 The dispositional and best-interest reports indicated M.J. and D.J. were stabilized in their foster home and benefiting from structure and routine. They were thriving. K.N. was placed in a "specialized" foster home after running away from a previous foster home. Both foster homes were willing to provide permanency through adoption if parental rights were terminated. Respondent had not had any visitation with her children since the shelter care hearing. The best-interests report reviewed the statutory "best interests" factors and recommended all parental rights be terminated.

¶ 21 James testified it was his intention to do the services required of him to gain custody of his children, M.J. and D.J. He testified he also has a good relationship with K.N. and views her as his daughter. If he gets his own children back, he would be open to being her guardian or adopting her.

¶ 22 The trial court entered an order making M.J. and D.J. wards of the court with guardianship to DCFS. All parents were found unfit. The goal for M.J. and D.J. was made substitute care pending a hearing on the best-interest portion of the termination case. Ruling was reserved on K.N.'s permanency goal.

¶ 23 The parties then commenced a best-interests hearing as to K.N. Judicial notice was taken of the entire court file. Roberts, caseworker at Baby Fold, testified K.N. was first placed with her siblings in foster care. K.N. began to show aggression and disrespect and ran away to a former foster parent's home. K.N. remained in the second foster home for about a month until she again exhibited aggression and disrespect and got into a fight with another girl at her home and created a lot of chaos. She was moved to a specialized foster placement. K.N. told Roberts she will not go back to her mother because she knows she will be taken by DCFS again.

¶ 24 Respondent testified she was incarcerated in DOC and her out date was in October 2014. She is working on getting her general equivalency diploma (GED) and signed up for self-image classes. She took responsibility for the fact this was the third time her children had been in the care of DCFS. Respondent stated her willingness to engage in services after she gets out of prison, including engaging in a psychological evaluation.

¶ 25 The trial court set the goal for all three children at substitute care pending court

determination on the petition to terminate parental rights. He admonished both parents to cooperate with DCFS, comply with services plans, and correct the conditions which required the children to be brought into care or risk termination of parental rights.

¶ 26 A best-interests hearing was set for December 18, 2013. The trial court took judicial notice of the entire court file. Kathy Grismore, foster mother for M.J. and D.J., testified she is not related to the children even though respondent named her as godmother when the children were taken by DCFS. Grismore adopted two previous foster children who are now 10 and 12 years old. Originally, K.N. was placed with Grismore too, but she ran away. All three minors had anger issues when they were placed with Grismore. M.J. and D.J. are now bonding with Grismore and her children and are doing better in school. D.J. has issues with tantrums where he becomes completely out of control. Grismore used to be called at work to come get him at school. These issues have been addressed and Grismore decided to quit her job to devote more time to D.J., and he is learning to control his temper.

¶ 27 The minors have visitations between them now. If termination occurred, Grismore would be willing to help facilitate visits on holidays and special occasions but, since K.N. is placed in Peoria and Grismore lives in Bloomington, more visitations would not work out well.

¶ 28 K.N.'s foster mother, Karyn Mack, was unable to attend the hearing due to illness. However, Veronica Daughtery, caseworker from Camelot Care Center, testified Mack was willing to adopt K.N. and was also willing to help facilitate sibling visits if termination occurred. K.N. expressed her desire to be adopted by Mack if she cannot live with her aunt who has been ruled out as a placement.

¶ 29 Respondent testified she has learned to work on being a better person first so she can be a better mother. She believed it would take about six months after she is out of prison for her to be in a position to provide for her children. Respondent believed it was in the best interests of the minors to be back with her.

¶ 30 The best-interests report indicated all three of the minors enjoyed living with their foster parents and bonded with them. K.N. and D.J. had improved in controlling their anger issues. All three minors were doing better in school.

¶ 31 After arguments by counsel, the trial court reviewed the statutory best-interest factors. Some of the factors were found to be neutral or even leaning a bit toward not terminating parental rights. However, the court concluded because the older two minors were in their third placements with DCFS and the youngest minor was in this second placement with DCFS, permanency was needed for them. The court found goals of permanency, security, and least-disruptive placement strongly favored termination. An order was entered terminating all of the parental rights of respondent and James. This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 A. Expedited Termination

¶ 34 Respondent contends the order terminating her parental rights must be vacated because the guardian, DCFS, failed to follow its own internal procedures.

¶ 35 We need not address respondent's contention or error. Respondent never complained at any hearing that DCFS failed to follow any particular internal procedure. She neither referred in the trial court to any specific DCFS rule violated nor contended noncompliance with that rule precluded termination of her parental rights. She has raised these

contentions for the first time on appeal and has forfeited them. *In Interest of E.M., Jr.*, 295 Ill. App. 3d 220, 225, 692 N.E.2d 431, 434 (1998).

¶ 36 B. Best Interest

¶ 37 Respondent next contends the trial court's best-interest finding must be reversed because the court improperly placed more emphasis upon one of the statutory factors than the others, *i.e.*, permanency. We disagree.

¶ 38 Following a finding of unfitness, the focus shifts to the minor. The issue is no longer whether parental rights *can* be terminated but whether, in light of the minor's needs, parental rights *should* be terminated. The parent's interest in maintaining a parent-child relationship must yield to the child's interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). The State must prove by a preponderance of the evidence it is in the child's best interest that parental rights be terminated. *D.T.*, 212 Ill. 2d at 366-67, 818 N.E.2d at 1228.

¶ 39 In making a best-interest determination, the trial court is required to consider the following factors: the child's physical safety and welfare; the development of the child's identity; the child's familial, cultural, and religious background; the child's sense of attachment, including love, security, familiarity, and continuity of relationships with parental figures and other relatives; the uniqueness of every family and child; the risks related to substitute care; and the preferences of the child and the person available to care for the child. *In re R.L.*, 352 Ill. App. 3d 985, 1001, 817 N.E.2d 954, 967-68 (2004); 705 ILCS 405/1-3(4.05) (West 2012). The court need not articulate any specific rationale for its decision and, a reviewing court may affirm the court's decision without relying on any basis used by the court. *In re Tiffany M.*, 353 Ill. App. 3d

883, 893, 819 N.E.2d 813, 822 (2004).

¶ 40 A trial court's determination on termination of parental rights will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re S.M.*, 314 Ill. App. 3d 682, 687, 732 N.E.2d 140, 144 (2000). To be against the manifest weight of the evidence, the opposite result must clearly be apparent from a review of the evidence. *In re C.L.T.*, 302 Ill. App. 3d 770, 772, 706 N.E.2d 123, 125 (1999). Under this standard of review, we uphold the court's disposition.

¶ 41 The trial court considered all the relevant factors contained in the statute. The court found the need for permanency to be an "overwhelming" factor in this case because the minors had repeatedly been removed from their home with respondent and because of the uncertainty hovering over their heads since 2005. The court concluded by stating the goal of permanency, security, and the least disruptive placement strongly and overwhelmingly favored termination of parental rights. This court will not substitute its judgment for that of the court regarding the weight to be given any particular factor.

¶ 42 Given the evidence in this case, finding permanency to be an "overwhelming" factor does not represent error. DCFS has been involved with this family since 2005, and the minors have twice been returned to respondent only to be taken away again after a short period of time. They were removed this time based on respondent's continued drug dealing in the presence of her children. This behavior has been detrimental to the minors and caused them a great deal of stress, anxiety, and uncertainty. K.N. voiced her concerns about her mother's behavior as well as expressing great anger. D.J. also had anger issues. In light of respondent's repeated failures to do what was necessary for her children, the court could properly conclude the

