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2014 IL App (3d) 140077-U

Order filed June 3, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

In re T.B., A.M.B., and P.M.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Minors	)	Rock Island County, Illinois.
	)	
(The People of the State of Illinois,	)	Appeal Nos. 3-14-0077
	)	3-14-0078
Petitioner-Appellee,	)	3-14-0079
	)	Circuit Nos. 10-JA-124
v.	)	10-JA-125
	)	11-JA-17
C.B.,	)	
	)	
Respondent-Appellant).	)	Honorable Peter W. Church,
	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court's determination that respondent was unfit pursuant to sections 50/1(D)(b) and 50/1(D)(m)(i), (ii) and (iii) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) was not against the manifest weight of the evidence. The evidence presented supported the trial court's finding that termination of respondent's parental rights was in the minor children's best interests.

¶ 2 Following an adjudicatory hearing in the Rock Island County circuit court on the State's petition, the trial court issued an order on May 17, 2011, finding the minors T.B., A.M.B., and P.M. neglected.

¶ 3 On November 13, 2013, the trial court found that the State proved by clear and convincing evidence that the respondent, C.B., was unfit pursuant to sections 1(D)(b) and 1(D)(m)(i), (ii) and (iii) of the Adoption Act (750 ILCS 50/1(D) (West 2012)).

¶ 4 The trial court conducted the best interests hearing on January 3, 2014, subsequently finding that the State proved by a preponderance of the evidence that it was in the minors' best interests to terminate respondent's parental rights.

¶ 5 Respondent appeals, claiming the trial court's determination that he was unfit for failing to maintain a reasonable degree of interest, concern or responsibility as to his children's welfare was against the manifest weight of the evidence, and the trial court's finding that it was in the minors' best interests to terminate his parental rights was against the manifest weight of the evidence. We affirm.

¶ 6 BACKGROUND

¶ 7 Respondent, C.B., is the biological father of T.B. (D.O.B. September 6, 1999) and A.M.B (D.O.B. August 29, 2001). He is the legally presumed father of P.M. (D.O.B. January 31, 2011), as he was married to P.M.'s mother at the time of P.M.'s birth.

¶ 8 On June 4, 2010, the State filed juvenile petitions alleging that T.B. and A.M.B. were neglected. At the time, the minors were 11 and 9 years old, respectively. P.M. had not yet been born. The petitions specifically alleged that respondent struck A.M.B., and the parents abused cocaine and alcohol. On June 21, 2010, respondent was ordered to submit to drug testing. Respondent tested positive for marijuana and admitted that he would similarly test positive for

alcohol. The trial court ordered that the children remain in the mother's care; the case was continued under supervision on August 17, 2010. The dispositional order entered on that date directed respondent to attend and complete parenting classes, substance abuse evaluation and treatment, psychological/psychiatric evaluation and treatment, and anger management classes.

¶ 9 On January 31, 2011, the mother gave birth to P.M. On February 10, 2011, the State filed a petition to revoke the order of continuance under supervision, as well as a juvenile petition, alleging that P.M. was neglected. All relevant pleadings and records are identical for all three children. The State filed a petition for temporary custody on February 16, 2011. On February 18, 2011, all three children were taken into temporary custody, with the Department of Children and Family Services (DCFS) assuming guardianship.

¶ 10 The trial court revoked the order for continuance under supervision on March 22, 2011, finding that the mother had used crack cocaine during her pregnancy and P.M. tested positive for cocaine at birth. Lutheran Social Services of Illinois (Lutheran) filed a dispositional report on May 3, 2011, recommending the permanency goal to be to return the children home within 12 months. On May 17, 2011, the trial court adjudicated all three children neglected, finding that efforts aimed at family reunification had not eliminated the need for the children's removal. The minors were placed in foster care. The court, again, directed respondent to attend and complete parenting classes, perform a substance abuse evaluation and treatment, obtain a psychological/psychiatric evaluation and treatment, and attend and complete domestic violence counseling.

¶ 11 On September 20, 2011, DCFS filed its family service plan, indicating that respondent had not made consistent contact with the caseworker during the review period. Respondent was evaluated as unsatisfactory in almost every category (mental health/psychiatric

assessment/treatment, anger management, securing financial support, parenting skills, and maintaining sobriety). Respondent did sign all necessary releases and accepted a referral to a psychiatric service provider. He maintained satisfactory housing at that point, but refused to allow monthly visits or access by DCFS. DCFS further stated that respondent had not visited with the children since they had been in its care.

¶ 12 Following the permanency hearing on November 15, 2011, the court entered a permanency order stating that the goal was to return home within 12 months. The court found that respondent had made neither reasonable and substantial progress, nor reasonable efforts toward returning the children home.

¶ 13 On April 20, 2012, Lutheran filed a report for the next permanency review hearing indicating respondent had not maintained contact with Lutheran's caseworker. Respondent had also failed to obtain a substance abuse assessment, a psychological evaluation or a domestic violence assessment. He had not participated in parenting classes and had not visited the children since they had been placed in foster care. Respondent did report completing anger management classes at that time.

¶ 14 Following the permanency hearing on May 8, 2012, the court ordered that the goal for all three children remained to return home within 12 months. The court, again, found that respondent had made neither reasonable and substantial progress, nor reasonable efforts toward returning the minors home.

¶ 15 On November 2, 2012, Lutheran submitted a report in preparation for the next permanency review hearing. The report indicated that respondent failed to maintain regular contact with the caseworker. Respondent did call Lutheran in September 2012 and subsequently met with the caseworker on October 5, 2012. At that time, respondent provided verification that

he completed anger management courses in January 2012. He had not, however, completed mental health services, but stated that he was seeing a psychiatrist for services. The report further indicated that respondent had not completed substance abuse treatment, a psychological/psychiatric evaluation, domestic violence evaluation or parenting classes. Respondent was unemployed at the time, but indicated to the caseworker that he would be starting employment again shortly. Lutheran set out a service plan for respondent to complete the enumerated tasks.

¶ 16 Following the permanency hearing on November 16, 2012, the permanency goal remained to return home within 12 months. The court found that respondent had not made reasonable and substantial progress or reasonable efforts toward returning the children home.

¶ 17 DCFS filed an updated family service plan on February 11, 2013, indicating that respondent completed a drug and alcohol evaluation in November of 2012 that diagnosed respondent with alcohol dependency; respondent declined treatment services. Respondent completed the psychological referral and began receiving psychiatric treatment. Respondent still had not completed either parenting classes or a domestic violence assessment. At the time of the report, respondent had attended 1 of the 14 offered parent/child visits. While DCFS reported respondent resided in a home that was appropriate to house the children, he was still rated unsatisfactory in his attempts to secure sufficient income to meet his children's needs, in his ability to demonstrate appropriate anger management, and his maintenance of sobriety/healthy lifestyle.

¶ 18 At the permanency hearing on February 26, 2013, the trial court entered a permanency order, finding that the appropriate permanency goal was substitute care pending determination of

termination of parental rights. Respondent had, again, failed to make substantial progress or reasonable efforts toward returning the children home.

¶ 19 Lutheran prepared another report on May 24, 2013, indicating that respondent had failed to complete those evaluations and programs set forth in the last permanency order. Respondent had not provided verification of employment for either his current or previous jobs. Respondent had attended 4 of the available 10 weekly supervised visits (though one visit had been cancelled by Lutheran due to A.M.B.'s illness).

¶ 20 The trial court entered a permanency order determining, once again, that respondent had not made reasonable and substantial progress toward returning the minors home. The court set a first appearance on the petition to terminate parental rights.

¶ 21 The State filed a supplemental petition to terminate parental rights, requesting that respondent be declared unfit and alleging that he failed to complete mental health services, substance abuse treatment, a psychological evaluation, a domestic violence evaluation, and parenting classes. Respondent did complete a late psychiatric evaluation, but failed to maintain appropriate housing, failed to provide verification of income, and failed to visit with the minor children throughout the pendency of the case.

¶ 22 On November 13, 2013, the trial court determined that respondent was an unfit parent in that he failed to show a reasonable degree of interest, concern or responsibility as to the children’s welfare; failed to make reasonable efforts to correct the conditions that were the bases for the removal of the children; and failed to make reasonable progress for the return of the children within nine months or any nine-month period after the initial nine-month period following the adjudication of neglect. Respondent failed to attend the fitness hearing.

¶ 23 The family's Lutheran caseworker, Ashley Habhab, filed a best interests report on December 27, 2013. In her report, Habhab stated that the children needed permanence and that the foster family was capable of providing that as they wished to adopt all three children. Habhab opined that it was in the children's best interests that respondent's parental rights be terminated. Following the best interests hearing, the trial court entered an order terminating respondent's parental rights on January 8, 2014.

¶ 24 This timely appeal followed.

¶ 25 ANALYSIS

¶ 26 The involuntary termination of parental rights involves a two-step process. The trial court must first find, by clear and convincing evidence, that the parent is unfit. *In re D.T.*, 212 Ill. 2d 347, 363 (2004). Once the State proves parental unfitness, the trial court must then consider whether it is in the best interests of the child to terminate the parental rights. *Id*. at 363-64. In the instant case, respondent challenges the trial court's findings on both issues, arguing that said findings were against the manifest weight of the evidence.

¶ 27 I. Unfitness

¶ 28 Respondent contends that the trial court erred in finding him to be an unfit parent. Specifically, he argues that the trial court's finding that he failed to maintain a reasonable degree of interest, concern or responsibility as to his children's welfare pursuant to section 50/1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2012)) was against the manifest weight of the evidence.

¶ 29 The termination of parental rights constitutes a permanent and complete severance of the parent-child relationship. *In re Adoption of Syck*, 138 Ill. 2d 255, 274 (1990). "Accordingly, proof of parental unfitness must be clear and convincing." *In re C.N.*, 196 Ill. 2d 181, 208

(2001). "A court's determination that clear and convincing evidence of a parent's unfitness has been shown will not be disturbed on review unless it is against the manifest weight of the evidence." *In re D.D.*, 196 Ill. 2d 405, 417 (2001). A decision regarding parental unfitness is not against the manifest weight of the evidence unless the opposite conclusion is clearly the proper result. *Id*.

¶ 30 A parent may be found unfit under any one or more of the various grounds listed in section 50/1(D) of the Adoption Act. Any ground standing alone may support a finding of unfitness, so a reviewing court that finds any one unfitness ground proven need not consider whether additional grounds were also proven. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004).

> "Our supreme court has instructed that when reviewing a finding of unfitness based upon a parent's failure to maintain interest, concern or responsibility for the children, a court must examine the parent's conduct in the context of the parent's circumstances. [Citation.] Relevant circumstances include, for example, difficulty in obtaining transportation, the parent's poverty, statements made by others to discourage visitation, and whether the parent's lack of contact with the children can be attributed to a need to cope with personal problems rather than indifference towards them. [Citation.] If visitation is impossible, letters, cards, gifts, and telephone calls may suffice to show a parent's concern and interest in the children. [Citation.] In a fitness determination, a parent's efforts, not the success of those efforts, are relevant. [Citations.] *In re T.D.*, 268 Ill. App. 3d 239, 246 (1994) (citing

In re Adoption of Syck, 138 Ill. 2d 255 (1990)).

¶ 31 In the instant case, respondent made little or no effort toward showing a reasonable degree of interest, concern or responsibility toward his children's welfare.

¶ 32 Respondent argues that "[t]he lower court's evaluation of his progress and that of the skewed presentation by the caseworkers was contrary to the manifest weight of the evidence ***" and that "[s]ince parental rights and responsibilities are of such deep human importance and should not be lightly terminated," his efforts and continued desire to be a part of the children's lives should not be thrown aside. As evidence of these efforts, respondent states only that "the obstacles he faced in the relationship with his wife and his own personal struggles managed [*sic*], over a period of time, to maintain a household about with neither DCFS or [Lutheran] ever made complaint, was often employed, obtained a psychiatric evaluation, attended anger management classes, and sometimes exercised visitation."

¶ 33 These "efforts" are belied by the evidence and, when viewed as a whole from the time of adjudication of neglect until the petition for termination of parental rights, cannot be considered reasonable. Respondent presented no evidence that he was unable to secure transportation to and from scheduled visitations or to the various services he was ordered to complete. Even if his employment (which was never verified) posed a challenge to attending visits, there was no evidence that respondent attempted to maintain contact with the children, either through phone calls, cards or otherwise. He did not argue that any personal problems attributed to his difficulty in completing those services directed by the court and caseworkers. While respondent was dealing with substance abuse issues, he declined the recommended treatment.

¶ 34 The State, on the other hand, presented the testimony of Miranda French, Yalanda Clements, and Jessica Sabel. Each of the three women served as a caseworker over the course of

the case from February 22, 2010, until October of 2013. Their testimony corroborated the information contained within the permanency review reports. The court ordered respondent to complete substance abuse treatment; submit to random drug/alcohol drops; to obtain a psychological/mental health evaluation; complete parenting, anger management and domestic violence classes; and maintain stable housing and employment. Respondent did not engage any services from May of 2011 until November of 2011; nor did respondent visit the minor children during that time frame.

¶ 35 From November 2011 until April 2012, the respondent only had contact with a caseworker once. The agency made referrals for services, but respondent did not follow up. Respondent did not visit with the minors during this time frame either.

¶ 36 From April 2012 until November 2012, respondent still did not exercise any visitation with the minors. A new caseworker was assigned in August 2012; she had no contact with respondent until October 5, 2012. While he provided proof of completion of anger management classes in October, respondent never completed any substance abuse treatment, any drug/alcohol drops, a psychological evaluation or parenting classes.

¶ 37 From November 2012 through January 22, 2013, respondent did not engage in any services. He did have one visit with the minors; his first since the children were taken into care approximately 20 months prior.

¶ 38 Respondent did complete a diagnostic assessment three months prior to the February 2013 permanency review. He was diagnosed with alcohol dependency, but declined the recommended substance abuse treatment. Respondent was participating in psychiatric services at this time. However, his housing was not a return home option for the minors, nor could he

provide verification of employment. Respondent attended 1 of 14 offered visits with the children.

¶ 39 From February 2013 to May 24, 2013, respondent continued to refuse to engage in services. His housing was not a return home option for the minors and he, again, failed to provide verification of employment. He attended 4 of 10 visits.

¶ 40 From May of 2013 to July of 2013, respondent engaged in no services and did not attend any visits. He did not provide information to the caseworker about where he was living.

¶ 41 At every permanency hearing (November 15, 2011; May 8, 2012; November 16, 2012; February 26, 2013; and June 7, 2013), the trial court found that respondent had not made reasonable and substantial progress toward returning the minors home and that respondent had not made reasonable efforts toward returning the minors home. At the fitness hearing, the court took judicial notice of the permanency orders, permanency reports, status alerts, and dispositional orders.

¶ 42 Following the presentation of this evidence, the trial court found that "[Respondent] is resoundingly, spectacularly unfit as the law defines fitness. He's made no efforts whatsoever. *** The States [*sic*] has clearly established by clear and convincing evidence all the specific factual allegations as set forth that he failed to complete mental health services, failed to complete substance abuse treatment, failed to complete a psychiatric evaluation until October 30th of 2012, failed to complete domestic violence evaluation, failed to complete a parenting class, failed to maintain appropriate housing, remained unemployed or failed to provide verification and failed to visit with the minors."

¶ 43 Based on our review of the record, we cannot say that the trial court's finding of unfitness was against the manifest weight of the evidence.

¶ 44 II. Best Interests

¶ 45 Respondent also argues that the trial court's determination that it was in the minor children's best interests to terminate his parental rights was against the manifest weight of the evidence.

¶ 46 Once a finding of parental unfitness is made, the court then considers the "best interests" of the child in determining whether parental rights should be terminated. 705 ILCS 405/2-29(2) (West 2012); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The focus shifts to the child and whether, in light of the child's needs, parental rights should be terminated. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Accordingly, at a best interests hearing, the parent's interest in maintaining the parent/child relationship must yield to the child's interest in a stable, loving home life. *Id*. The State bears the burden of proving by a preponderance of the evidence that termination is in the child's best interests. *Id*. at 366.

> "When determining whether termination is in the child's best interest, the court must consider, in the context of a child's age and developmental needs, the following factors: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness

> of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *In re Jay H.*, 395 Ill.App.3d 1063, 1071 (2009) (citing 705 ILCS 405/1–3(4.05) (West 2008)).

¶ 47 On review, "[w]e will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *In re Jay H*, 395 Ill. App. 3d at 1071. "A decision is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result." *Id*.

¶ 48 Respondent has failed to point to any evidence that would justify a reversal of the trial court's decision. Respondent argues that while he failed to complete some of the objectives, he did complete many of the objectives as directed by the trial court and DCFS. As outlined above, that statement is belied by the evidence.

¶ 49 At the best interests hearing, the trial court conducted an *in camera* interview with the minors, T.B. and A.M.B. The sisters were 14 years old and 12 years old, respectively, at the time of the hearing. While the girls demonstrated a strong bond with their mother, they made no mention whatsoever of respondent. The girls did not want to be separated from their youngest sister, P.M., who, at the time of the best interests hearing, was four weeks shy of being three years old.

¶ 50 Ashley Habhab, the family's caseworker, testified at the hearing and corroborated the information and opinions contained within the best interests report she prepared. Habhab stressed that it was important for the children to have permanency. All three children were placed in the same foster home. They were adjusting well to their current placement and were forming a bond with their foster parents. The foster parents have a large extended family and the

children have been accepted as part of the family. T.B. and A.M.B. were doing well in school since being placed with their foster parents. P.M. was developing on target and her medical needs were being met. The foster parents were committed to caring for the children indefinitely, and expressed a wish to adopt all three children. Habhab opined that it would be in the children's best interests that the mother and respondent's parental rights be terminated.

¶ 51 Following the presentation of testimony and evidence, mother's counsel argued that the children clearly had a strong bond with her and expressed a wish to live with her. Respondent was not present at the best interests hearing, and his counsel did not make any additional argument following that of mother's counsel.

¶ 52 The trial court stated that it had considered the best interests factors of section 405/1-3(4.05), and it was clear that it would not be in the children's best interests to separate them; that "'they are a package." Given the minors' need for permanency, the trial court terminated the parental rights of mother and respondent. As to respondent, the court stated, "[t]hat's not even [*sic*] close call."

¶ 53 The record demonstrates that respondent had not provided for the physical safety and welfare of the minors for years, that he had not completed any services that would enable him to do so, that the minors had no relationship with respondent as he had visited them only five times throughout the course of the four-year case, and that the children were becoming part of the foster family's community, and the foster family could provide permanency through adoption. Accordingly, we find that the trial court's decision to terminate respondent's parental right was not against the manifest weight of the evidence.

¶ 54 CONCLUSION

¶ 55 For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

¶ 56 Affirmed.