NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 140051-U

NO. 4-14-0051

FILED
September 4, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in terminating respondent-father's parental rights.

¶ 2 On December 18, 2013, the trial court terminated respondent Bobby James's parental rights to D.J. (born January 8, 2007) and M.J. (born October 15, 2004). Respondent appeals, arguing (1) the court erred in finding termination of his parental rights was in the best interests of the children and (2) his procedural due-process rights were violated by the State's failure to properly notify him of his right to a rehearing on the issue of temporary custody. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 24, 2013, the State filed a petition for adjudication of wardship and termination of parental rights with regard to D.J., M.J., and K.N. (born April 27, 2000). Respondent is the father of D.J. and M.J.; Thomas Nesby is the father of K.N.; and Jessica

Schwandt is the mother of all three children. Neither Schwandt nor Nesby is a party to this appeal. The petition argued the children were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2012)) because they were residing in an environment injurious to their welfare.

¶ 5 This was not the parties' first involvement with the Department of Children and Family Services (DCFS). According to the petition, McLean County case No. 05-JA-126 was the minors' first involvement in the system. On May 6, 2008, the case closed "successfully," and the minors were restored to Schwandt's care and custody. However, on February 10, 2010, in McLean County case No. 09-JA-148, Schwandt admitted the minors were neglected after she had been charged with felony drug charges following a "drug raid" at her residence in the presence of the children. On June 21, 2011, the children were again returned to Schwandt's care and custody and case No. 09-JA-148 was closed. Less than two years later, on April 23, 2013, Schwandt was again arrested following a "drug raid" in her home in the presence of the children. She was incarcerated pending felony charges.

¶ 6 Respondent was also involved in the prior two cases. After the second case closed on June 21, 2011, respondent was incarcerated, had never attained fitness, and had not made reasonable progress or efforts toward the children's return.

¶ 7 The petition alleged it was in the minors' best interests they be adjudged wards of the court. Further, the State sought immediate termination of all the named parents' parental rights with regard to D.J., M.J., and K.N. pursuant to sections 2-13(4) and 2-29 of the Juvenile Act (705 ILCS 405/2-13(4), 2-29 (West 2012)) and section 50 of the Adoption Act (750 ILCS 50 (West 2012)). As for respondent, the State alleged depravity based on his repeated

incarcerations, which had prevented him from discharging his parental responsibilities for the children.

¶ 8 The trial court held a shelter-care hearing on April 25, 2013. At the hearing, the court noted both respondent and Nesby were incarcerated in the Illinois Department of Corrections (DOC) and were not available for the hearing. Schwandt and the State tendered a stipulated temporary custody order. Based on the criminal-intake report, the shelter-care report, and the stipulation, the court found probable cause and an immediate and urgent necessity to place temporary custody of the children with DCFS.

¶ 9 On June 4, 2013, the trial court held a pretrial hearing, and Nesby surrendered his parental rights to K.N.

¶ 10 On July 2, 2013, the trial court held a hearing on the petition to adjudicate the children as neglected and terminate respondent's and Schwandt's respective parental rights. Respondent admitted his children were neglected because they were under 18 and residing in an environment injurious to their welfare. Respondent also admitted he was unfit based on depravity because he had been criminally convicted of at least three felonies, with at least one conviction taking place within five years of the filing of the termination petition. The court entered an adjudicatory order finding the children neglected and also found a factual basis for respondent's admission of unfitness. (Respondent had four felony convictions, three of which resulted in sentences to DOC.)

¶ 11 On August 15, 2013, Natalie Roberts, a caseworker for The Baby Fold, filed a best-interests report with the court, which noted all three children appeared secure in their current placements. The report noted M.J. and D.J. were placed with Kathy Grismore, the

children's godmother. At that time, Grismore was willing to adopt M.J. but not D.J. The report noted M.J. and D.J. had a very close relationship, it was in their best interests to remain in foster care, and placement officials should search for a foster home willing to adopt both children.

¶ 12 M.J. and D.J. both expressed love for their parents. M.J. expressed a desire to live with either of her parents. D.J. had asked why he could not live with his father. According to the report, "[d]ue to [D.J.'s] lack of understanding about adoption, this worker is uncertain how accepting of it he may be." Both M.J. and D.J. had developed relationships with Grismore's grandchildren. According to the report:

> "[The] children are greatly benefiting from the structure and stability in their foster homes. [M.J.] and [D.J.] have formed a trusting relationship with foster mother, Kathy. Due to the number of times these children have been brought into the foster care system, there have been a number of parental figures who have come in and out of these children's lives. The children need a permanent parental figure in their lives to provide continuous care to them. The children need to be able to develop a long lasting and trusting relationship with a parental figure."

¶ 13 On December 10, 2013, Roberts filed another best-interests report regarding respondent's children. This report noted Grismore was now willing to adopt both M.J. and D.J. Grismore had recently resigned from her job to make herself available for D.J.'s care. Further, the report stated M.J. and D.J. enjoyed living at Grismore's house and appeared secure in their placement with Grismore.

¶ 14 The report noted M.J. consistently wet the bed since living with Grismore. However, Grismore reported M.J.'s bed-wetting was more prominent following visits with respondent or K.N. The report also stated M.J. had become very emotional in the preceding months and deeply affected after visits with K.N. and respondent.

¶ 15 Roberts offered the following recommendation in the report:

> "It is this worker's opinion that it is in the best interest for the children not to return home to either parent. Kathy Grismore is ready and willing to provide permanency for both [M.J.] and [D.J.] This worker is concerned about the toll it may take on [D.J.] and [M.J.] if permanency [is] delayed. The children currently have an uncertain future, which leads to anxiety for both children, especially [M.J.]
>
> It is this worker's opinion that the children deserve a loving, safe and stable home with a caregiver who is willing to commit to providing permanency. It is imperative that [D.J.] and [M.J.] be raised in safe and stable environment. Neither [respondent] nor [Schwandt] have demonstrated an ability to consistently provide the safe, stable and nurturing environment necessary to parent these children. [M.J.] and [D.J.] have entered the foster care system for the third time in their short lives. Therefore, this worker recommends that it is in the best interest of the minor

children that Jessica Schwandt['s] and Bobby James['s] parental rights be terminated."

¶ 16 On December 18, 2013, the trial court held a hearing on the children's best interests. The court took judicial notice of the court file, without objection. Grismore testified she was D.J. and M.J.'s foster mother. While not related to the children, Schwandt named Grismore as the children's godmother when the children were placed with her. Grismore testified D.J. was challenging. He sought attention and wanted to play and be cuddled. However, he sometimes did not know how to react and handle certain issues. When the children were placed with Grismore, she was working at Bloomington Junior High School. D.J. had issues at school, which disrupted Grismore's job. Grismore eventually resigned her position so she could devote herself to D.J. and since then had seen an improvement in D.J.'s behavior. She was seeking work from home-employment opportunities. Grismore testified both D.J. and M.J. were doing better in school since living with her.

¶ 17 According to Grismore, D.J. and M.J.'s visits with respondent or their sister had some ill effects. She testified they would come home happy, but D.J.'s behavior would then escalate. He would become defiant for up to two hours. D.J., M.J., and her other two adopted children each had their own room at her house.

¶ 18 Grismore testified D.J. and M.J. were bonded with both their mother and respondent. However, she did not believe termination would have a detrimental effect on the children. Grismore testified she intended to adopt M.J. and D.J. if respondent's and Schwandt's parental rights were terminated. She believed adoption would be in the children's best interests

because she could provide stability. The children could then continue their education and become productive members of society.

¶ 19 Grismore testified she is active in the community and planned to include the children in activities, including Catholic Charities day camp.

¶ 20 Natalie Roberts testified she had been the caseworker for M.J. and D.J. since the shelter-care hearing. She had monitored respondent's visits with M.J. and D.J. She had no concerns at the one-hour visits, which took place once per month. Further, while some visits had been rescheduled, respondent had not missed any visitation time.

¶ 21 Respondent's service plan called for him to get a substance-abuse assessment, domestic-violence assessment, individual counseling, stable housing, stable income, and a psychological evaluation. Respondent was living with his fiancée and reported having two jobs. He completed his domestic-violence assessment, substance-abuse assessment, and had scheduled a psychological evaluation for January. Roberts had told respondent he was doing well with his services. Respondent had also been cooperative since his release from custody. Further, respondent was in compliance with his parole. However, Roberts testified respondent had a history of initially complying with parole requirements, only to return to criminal behavior.

¶ 22 According to Roberts, it was in M.J.'s and D.J.'s best interests to terminate respondent's parental rights regardless of any progress respondent had made. The children were very aware their lives were unstable, having been in the foster-care system three times. Since living with Grismore, the children had shown incredible improvement.

¶ 23 Roberts testified the visits between M.J., D.J., and K.N. had been positive overall. Roberts believed it was important for these visits to be maintained. She saw no reason why

either foster parent would have any problem allowing sibling visits.

¶ 24 Respondent testified he had been in prison multiple times since 2003. In addition, respondent had been in the McLean County jail a multitude of times. He was working full-time at a factory and part-time at a restaurant. He was living with his fiancée, Stephanie Gibson, in a three-bedroom rental property. He helped Gibson with rent. He and Gibson had been together for approximately three years.

¶ 25 Respondent testified his substance-abuse assessment indicated no need for drug or alcohol classes but did indicate he needed to attend Alcoholics Anonymous, which he only started the Sunday before the hearing. According to respondent, the visits he had with M.J. and D.J. went well, and they had a strong bond. Respondent testified he could parent his two children because he was a good father and a hard worker. He acknowledged his past mistakes, which he attributed to his youth and selfishness. Respondent believed he could take very good care of his children now because he was wiser and more mature.

¶ 26 Respondent testified he understood the need for his children to have stability, permanency, and security. He also testified he understood his children had bonded with Grismore and the other children living at Grismore's home. Further, respondent had no concerns about the children's care at Grismore's and believed she loved his children. If not returned to him, he testified he thought the children's current placement was the best place for them to be.

¶ 27 In making its ruling, the trial court noted the unusual circumstances of this case. This was the third time the children had been removed, and the State sought an expedited termination of respondent's and Schwandt's parental rights. The court also commented on respondent's significant criminal history. With regard to the statutory best-interests factors found

in section 1-3(4.05) of the Juvenile Act (705 ILCS 405/1-3(4.05) (West 2012)), the court found the children were being well cared for in their current placement. The court stated it did not know enough about respondent's current living arrangements to know if he could offer a stable environment for the children. The court found the children's current placement favored termination.

¶ 28 As for development of the children's identities, sense of familiarity, continuity of affection, community ties, wishes, and long-term goals, the trial court found these were neutral factors. The court also found the preferences of the parties available to care for the children were also a neutral factor. Based on the relationship between the three siblings and concern over whether M.J. and D.J. would maintain in contact with K.N., the court found the children's background and ties slightly favored not terminating respondent's parental rights. The court noted the children's sense of attachment and the uniqueness of every family and child favored termination because Grismore was better equipped to meet D.J.'s special needs. The risks attendant to entering and being in care was an insignificant factor to the court.

¶ 29 Permanency was the most important factor for the trial court. According to the court:

> "To have been removed three times, and Miss Schwandt, I think, recognizes that the kids are angry at her for having had that disruption three times, but being at these young ages and the amount of time they have been out of their home in foster care and just being totally uncertain of what the future brings, this case cries out for these children to achieve permanency as soon as possible,

> and to silence the devil of uncertainty that has hovered over their heads since 2005.
>
> The court feels that the goal of permanency, security, and the least[-]disruptive placement strongly and overwhelmingly favor termination of the parental rights in this case."

The court found the State proved by more than a preponderance of the evidence that terminating respondent's parental rights was in D.J.'s and M.J.'s best interests.

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 A. Best-Interests Determination

¶ 33 At issue in this case is the termination of respondent's parental rights. "The termination of parental rights is a two-step process under which the best interests of the child is considered only after a court finds the parent unfit." *In re E.B.*, 231 Ill. 2d 459, 472, 899 N.E.2d 218, 226 (2008). In this case, respondent admitted he was unfit for termination purposes. However, he appeals the trial court's finding termination of his parental rights was in his children's best interests. He also argues his procedural due-process rights were violated by the State's failure to properly notify him of his right to a rehearing on the issue of temporary custody.

¶ 34 After a parent is found unfit, the trial court shifts its focus in termination proceedings to the child's interests. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). At the best-interests stage, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.* Before a parent's

rights may be terminated, a court must find the State proved, by a preponderance of the evidence, termination is in the child's best interests. *Id.* at 367, 818 N.E.2d at 1228.

¶ 35 When considering whether termination is in a child's best interests, a trial court must consider a number of factors within "the context of the child's age and developmental needs," including the following:

> "(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 and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-] disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1071-72, 859 N.E.2d 123, 141 (2006); 705 ILCS 405/1-3(4.05) (West 2012).

¶ 36 This court grants trial court decisions great deference in termination proceedings because the trial court is in a better position to see the witnesses and judge their credibility. *In re K.B.*, 314 Ill. App. 3d 739, 748, 732 N.E.2d 1198, 1206 (2000). A trial court's best-interests finding will not be reversed unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be

against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 37 Respondent argues the trial court's best-interests finding was against the manifest weight of the evidence. According to respondent, the court placed too much emphasis on "permanency" and lacked sufficient facts regarding respondent's ability to provide a stable environment.

¶ 38 With regard to the trial court's emphasis on permanency, respondent argues the statute does not specify that any one factor is more important than any other factor in making a best-interests determination. However, respondent ignores the statutory directive to consider the enumerated best-interests factors in the "context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2012). Depending on the facts of a particular case, certain enumerated factors are more important than others in determining what is in a child's best interests. The trial court did not err by placing a greater emphasis on the children's permanency needs in the case *sub judice*.

¶ 39 Respondent had been in and out of jail and prison during a large portion of his adult life. Based on the evidence the trial court heard, the court obviously was concerned respondent could not provide permanency for the children based on his history of criminal behavior and potential likelihood—based on his criminal history—of reoffending. Prior to this case, M.J. and D.J. had already been in the DCFS system two times. If respondent's and Schwandt's parental rights were terminated, M.J. and D.J. had a better chance of permanency, especially considering Grismore's expressed desire to adopt both children.

¶ 40 With regard to the trial court's statement it did not "know enough about [respondent's] home at this point to know if it would be able to provide as stable an environment, but he seems fairly stable," the court's statement was made in the context of comparing the children's current situation. The court stated:

> "They're certainly being well-cared for where they're at. We don't know enough about Mr. James'[s] home at this point to know if it would be able to provide as stable an environment, but he seems fairly stable, so I would say that that factor slightly favors termination."

The court's statement does not indicate an absence of sufficient evidence.

¶ 41 The trial court's determination it was in M.J.'s and D.J.'s best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 42 B. Failure To Notify Respondent of His Right to a Rehearing

¶ 43 Respondent also argues his procedural due-process rights were violated because the State failed to properly notify him of his right to a rehearing on the issue of the temporary custody of D.J. and M.J. On April 25, 2013, the trial court conducted a shelter-care hearing in this case. At the hearing, the court noted both respondent and Thomas Nesby were incarcerated in the DOC and not available to attend the hearing. Schwandt stipulated to probable cause and immediate and urgent necessity to place the children in shelter care. The court found probable cause and immediate and urgent necessity to place temporary custody of the children with DCFS. The "stipulated" temporary custody order stated respondent had not received notice of the hearing.

¶ 44 The record reflects notice of the June 4, 2013, pretrial hearing on the State's petition for adjudication of wardship and termination of parental rights was mailed to respondent on April 30, 2013. However, the notice mailed to defendant did not comply with section 2-10(3) of the Juvenile Act (705 ILCS 405/2-10(3) (West 2012)), which states:

> "If prior to the shelter[-]care hearing for a minor described in Sections 2-3, 2-4, 3-3 and 4-3 the moving party is unable to serve notice on the party respondent, the shelter[-]care hearing may proceed ex-parte. A shelter[-]care order from an ex-parte hearing shall be endorsed with the date and hour of issuance and shall be filed with the clerk's office and entered of record. The order shall expire after 10 days from the time it is issued unless before its expiration it is renewed, at a hearing upon appearance of the party respondent, or upon an affidavit of the moving party as to all diligent efforts to notify the party respondent by notice as herein prescribed. The notice prescribed shall be in writing and shall be personally delivered to the minor or the minor's attorney and to the last known address of the other person or persons entitled to notice. The notice shall also state the nature of the allegations, the nature of the order sought by the State, including whether temporary custody is sought, and the consequences of failure to appear and shall contain a notice that the parties will not be entitled to further written notices or publication notices of proceedings in this case,

> including the filing of an amended petition or a motion to terminate parental rights, except as required by Supreme Court Rule 11; and shall explain the right of the parties and the procedures to vacate or modify a shelter[-]care order as provided in this Section."

The statute provides a form titled "NOTICE OF PARENT'S AND CHILDREN'S RIGHTS TO REHEARING ON TEMPORARY CUSTODY." See 705 ILCS 405/2-10(3) (West 2012).

¶ 45 However, this issue is moot. An issue is moot when subsequent events render it impossible for the reviewing court to grant effective relief. *In re A.D.W.*, 278 Ill. App. 3d 476, 480, 663 N.E.2d 58, 61 (1996). While respondent did not receive the form of notice specified by section 2-10(3) of the Juvenile Act (705 ILCS 405/2-10(3) (West 2012)), he did receive notice of the proceedings and took part in the proceedings. After receiving notice, respondent admitted he was unfit. The trial court then found it was in M.J.'s and D.J.'s best interests to terminate respondent's parental rights. We have affirmed the trial court's termination decision. As a result, no relief is available to respondent with respect to his failure to receive the specific notice form required by section 2-10(3).

¶ 46 Further, any error was harmless in this case. Respondent received notice of the proceedings, participated in those proceedings, and admitted he was unfit based on depravity. Further, respondent was in prison at the time of the shelter-care hearing. Any attempt respondent might have made with regard to altering the temporary custody order would have been futile considering he was not due to be released from prison until May 31, 2013, and even then would be subject to house arrest.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, we affirm the trial court's order terminating respondent's parental rights to D.J. and M.J.

¶ 49 Affirmed.