2018 IL App (1st) 181368-U

No. 1-18-1368

Fourth Division
December 27, 2018

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re A.D. and E.D., Minors	Appeal from the Circuit Court of Cook County.
(The People of the State of Illinois, Petitioner-Appellee,	Nos. 14 JA 1123, 14 JA 1124
v.	
C.A., Respondent-Appellant).	The Honorable Peter Vilkelis, Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice McBride and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that it was in the best interest of the minors to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 The instant appeal arises from an order finding that it was in the best interest of 4-year-old twin minors to terminate the parental rights of respondent, their father.[1] Respondent does

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[1] The mother's parental rights were also terminated, but she is not a party to the instant appeal. The mother filed a separate appeal, No. 1-18-1145, which had previously been consolidated with the instant appeal. However, on September 24, 2018, the appeals were severed and it is only respondent's appeal currently before us.

not challenge the trial court's unfitness finding but solely challenges its best-interest finding, claiming that the finding was against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 Respondent's twin sons, A.D. and E.D., were born on August 10, 2014. On September 29, 2014, the State filed petitions for adjudication of wardship, asking for both minors to be adjudicated wards of the court; the State also filed motions for temporary custody the same day. The adjudication petitions claimed that the minors were neglected due to an injurious environment under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)) and were abused due to a substantial risk of physical injury under section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2012)). The facts underlying both claims were the same. According to the petition, the minors' mother had a prior indicated report for substantial risk of harm and had one other minor in the custody of the Department of Children and Family Services (DCFS), with findings of neglect and dependency having been entered in that case; the mother had only supervised visitation in that case and had been noncompliant with services. The petition alleged that the mother had also been diagnosed with bipolar disorder and had been prescribed medication. The petitioner further alleged that on September 28, 2014, the mother and respondent were involved in an altercation "at which time putative father attempted to run mother over with a vehicle." The petition noted that paternity had not been established and that respondent was incarcerated.[2]

[2] Paternity was later established via genetic testing and the juvenile court entered a finding regarding respondent's paternity on January 29, 2015.

¶ 5 On the same day, based on the allegations contained in the petitions for adjudication of wardship, the juvenile court found probable cause that the minors were neglected and that immediate and urgent necessity existed to support their removal from the home. The court granted temporary custody of both minors to the DCFS guardianship administrator.

¶ 6 On April 21, 2015, after an adjudication hearing, the juvenile court entered an adjudication order finding the minors neglected due to an injurious environment. On May 21, 2015, the juvenile court entered a disposition order making the minors wards of the court and finding both parents unable for some reason other than financial circumstances alone to care for, protect, train, or discipline the minors. The court further found that reasonable efforts had been made to prevent or eliminate the need for removal of the minors from their home, but that it was in the best interests of the minors to remove them from the custody of their parents. The court placed the minors in the custody of the DCFS guardianship administrator with the right to place them.

¶ 7 Initially, the juvenile court entered a permanency order with a goal of return home pending status hearing; the initial permanency order stated that the children were nine months old and were currently residing in a nonrelative foster home together. On June 17, 2016, the juvenile court entered a permanency order with a goal of return home within 12 months; the order deferred any findings as to the parents' progress, but stated that respondent was not engaged in any services at the time and had last visited the minors on April 12, 2016.

¶ 8 On December 7, 2016, the juvenile court entered a permanency order modifying the permanency goal to substitute care pending court determination on termination of parental rights. The reasons for selecting the goal were listed as: (1) the minors were two years old and currently residing in a nonrelative, preadoptive foster home together; (2) respondent was

not engaged in any services and only visited sporadically; and (3) the mother was visiting but was not engaged in all recommended services.

¶ 9 On May 24, 2017, the State filed supplemental petitions for the appointment of a guardian with the right to consent to adoption (termination petitions) with respect to both minors. In its petitions, the State alleged that both parents were unfit under sections 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) and 2-29 of the Juvenile Court Act (705 ILCS 405/2-29 (West 2016)). Specifically, the petitions alleged that the parents were unfit under (1) section 1(D)(b) of the Adoption Act for failure to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare; (2) section 1(D)(c) of the Adoption Act for deserting the children for more than three months; and (3) section 1(D)(m) of the Adoption Act for failing to make reasonable efforts to correct the conditions that were the basis for the removal of the children and/or failing to make reasonable progress toward the return of the children to them. Additionally, the petitions alleged that it would be in the minors' best interest to appoint a guardian with the right to consent to their adoption because they had resided with their foster parents since September 30, 2014, the foster parents desired to adopt them, and adoption by the foster parents would be in the minors' best interest.

¶ 10 The parties came before the juvenile court for a hearing on the termination petitions on March 29, 2018, and May 23, 2018. The juvenile court's findings as to the fitness portion of the proceedings are not challenged on appeal, so we discuss the testimony and findings from that portion only briefly. Madelline Holmes testified that she was a supervisor with Children's Home and Aid who had been assigned to the case since January 26, 2016, and that the case came into the system based on a risk of harm due to the minors' older sibling being in foster care. When she was assigned the case, respondent had not been assessed for services

and was first assessed for services in February or March 2016; he was found to be in need of services for individual therapy, domestic violence, and substance abuse, and received referrals for all three services. From January 2016 until December 2017, the only service he participated in was individual therapy, from which he was unsuccessfully discharged; he received a new referral when the permanency goal was changed to termination of parental rights in December 2016. Holmes testified that respondent had not completed any of the services, but that he was currently participating in both substance abuse and domestic violence services, with the domestic violence services beginning in December 2017 and the substance abuse services beginning in February 2018. Respondent was not engaged in individual therapy. Respondent visited the minors and became more consistent with his visitation after February 2016, but did not have unsupervised contact with the minors due to his noncompliance with services.

¶ 11 Bernard Wells testified that he was the former case manager on the case with Children's Home and Aid and was the case manager from February to December 2017. Wells testified that respondent had outstanding services for domestic violence, individual therapy, and substance abuse, and that these services remained outstanding for the entire time he was the case manager. Respondent visited the minors monthly during that time, missing only one visit, and the visits were safe and appropriate, with respondent bringing toys and food to the visits. Wells testified that respondent contacted him in December 2017 about participating in services, and Wells referred respondent to Holmes because he was no longer the case manager on the case.

¶ 12 The minors' mother testified that they were premature when born and spent three months in the hospital. She also testified that respondent had twice attempted to strike her with his

vehicle when the minors were infants, as well as using pepper spray on her at a bus stop and kicking in the door to her home in 2015. She testified that she attempted to obtain an order of protection against respondent but that the court did not enter one.

¶ 13 Curtis Richardson testified on behalf of respondent that he was a counselor at South Suburban Council on Alcoholism and Substance Abuse, which was an intensive outpatient counseling program in which respondent was a "very eager" participant. Richardson testified that respondent began the program in February or March 2018, successfully completing the program in April 2018.

¶ 14 Robert Dunlap testified on behalf of respondent that he was the coordinator for the partner abuse intervention program at the Crisis Center for South Suburbia and that respondent was a participant in the domestic violence "perpetrator program" at the center. Dunlap testified that respondent completed an assessment for the program in December 2017, "paused" because he was incarcerated, and then began the program in February 2018. Dunlap testified that respondent had recently been unsuccessfully discharged from the program because he had missed more classes than allowed; respondent informed Dunlap that some of the absences were due to a medical issue with his son. Respondent expressed a willingness to reengage in the program, and Dunlap testified that the center would be willing to accept him back into the program. Dunlap characterized respondent as "engaged" and "participatory" in the program and testified that he was showing progress. Dunlap further testified that respondent was paying for the program out-of-pocket.

¶ 15 Finally, respondent testified that he initially refused to participate in an assessment after the minors' case came into the DCFS system in September 2014 but that he eventually completed an assessment in June 2016, which recommended that he complete an intensive

outpatient substance abuse program. Respondent testified that he declined participation in the program because he felt that it was not needed. Respondent further testified that his prior work schedule presented obstacles to scheduling services. Respondent testified that his participation in domestic violence services at the Crisis Center for South Suburbia was temporarily "paused" when he was incarcerated for driving on a suspended license. Respondent testified that he did not have any issues with domestic violence with respect to his current girlfriend and that they had two children together, neither of which had any DCFS involvement. Respondent testified that the mother's account of the incidents with his vehicle were "[n]ot necessarily" accurate and that he had simply been attempting to leave but was "provoked" and "cornered in."

¶ 16 The trial court reviewed the testimony of the witnesses and the service plans and other documentation admitted into evidence and found that both parents were unfit under the grounds listed in section 1(D)(b) ("reasonable degree of interest") and section 1(D)(m) ("reasonable efforts") of the Adoption Act. With respect to respondent, the trial court found that, while respondent had recently begun engaging in services, "the problem is the case has been in the system for almost four years at the time he got into services."

¶ 17 The parties then proceeded to the best interest hearing, at which Eduardo Ibarra testified that he was the case manager at Children's Home and Aid who was currently assigned to the minors' case. Ibarra testified that the minors' current placement was safe and appropriate, with no signs of abuse or neglect, and that the minors had been in the same home for approximately three years. Ibarra characterized the minors' interactions with their foster parents as "good" and "healthy" and testified that the minors referred to them as "[m]om and dad." Ibarra testified that the foster parents were "open" to maintaining contact with the

minors' biological parents and had established a "Google Voice" phone line that was available for communication with them. Ibarra testified that he had observed two two-hour visits between respondent and the minors since he had been assigned to the case and that the visits were safe and appropriate, with a bond between the minors and respondent. The minors responded to respondent with familiarity, and respondent brought gifts and played with them. Ibarra testified that the children were African-American, while the foster parents were Caucasian, and that the foster parents were attempting to help the minors understand their cultural identity. Ibarra testified that the minors were "thriving" in the foster home and that the agency had no concerns about the foster parents' ability to meet the minors' needs.

¶ 18 The foster father testified that he and his wife had been the minors' foster parents since they were released from the hospital seven weeks after they were born. He and his wife lived alone, but had family and friends nearby. The foster father testified that he and his wife wished to adopt the minors because "[w]e love the boys. And have since we got them." He further testified that they had "extensively" discussed contact with the minors' biological parents and "believe that it would be a good thing to try to work it out with both parents." The foster father testified that he and his wife had worked to understand the cultural differences between them and the minors, with the foster father seeking out experiences where the minors would encounter "positive, strong black men engaging in the community in an appropriate way" as well as seeking input from African-American friends and colleagues.

¶ 19 Respondent testified that he did not believe it was in the minors' best interest to terminate his parental rights because "it's best for them to be at home with their family." He testified that he had been consistent with monthly visitation since the permanency goal changed to termination of parental rights, and that he and the minors had a bond. Respondent testified

that his mother and girlfriend attended the visits, as well, and that the minors were bonded to the girlfriend and began referring to her as "mom." Respondent had two other children who also attended the visits, and the minors recognized them as siblings.

¶ 20 Finally, respondent's mother testified that she attended a portion of respondent's visitation sessions with the minors and had done so for two years. She testified that respondent had a "really good bond" with the minors. She further testified that she did not believe that it was in the minors' best interest to terminate respondent's parental rights in part because of the cultural difference between the minors and the foster parents.

¶ 21 After hearing the testimony of the witnesses and considering the evidence, the juvenile court found that it was in the minors' best interest for both parents' parental rights to be terminated. The court noted that, on June 17, 2016, it set a permanency goal of return home within 12 months despite the recommendation of the service agency but admonished the parties that "the ball was in their court" and that "if there really wasn't substantial progress by the next time we had the hearing, I was going to change the goal. And that's what happened. And there wasn't substantial progress." The court set forth the statutory factors that were required to be considered when making a best interest determination, and found that the factors "leave[ ] this Court to the, in my view, inescapable conclusion, that it is in fact in the best interest of the children for me to enter an order terminating the biological parents' parental rights." The court incorporated the findings it had made during the unfitness portion of the proceedings and found that, "[b]ased on the additional testimony received today, it is in the best interest of the minors to terminate father's parental rights."

¶ 22 On the same day, the juvenile court entered an order finding by clear and convincing evidence that both parents were unfit under the grounds listed in sections 1(D)(b) and

1(D)(m) of the Adoption Act and that it was in the minors' best interest to terminate parental rights. This appeal follows.

¶ 23 ANALYSIS

¶ 24 On appeal, respondent challenges only the juvenile court's finding that it was in the best interest of the minors to terminate his parental rights. Under the Juvenile Court Act, termination of parental rights requires a two step process. First, there must be a showing, by clear and convincing evidence, that the parent is unfit, as defined in section 1 of the Adoption Act. *In re C.W.*, 199 Ill. 2d 198, 210 (2002); *In re Brown*, 86 Ill. 2d 147, 152 (1981). Since the juvenile court was in the best position to view and evaluate the parties, its decision is entitled to great deference, and a finding of unfitness will not be reversed unless it is against the manifest weight of the evidence. *In re Brown*, 86 Ill. 2d at 152. A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). Additionally, due to the "delicacy and difficulty of child custody cases *** wide discretion is vested in the [juvenile court] to an even greater degree than any ordinary appeal to which the familiar manifest weight principle is applied." (Internal quotation marks omitted.) *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998). If the court makes a finding of unfitness, it then must decide whether it is in the best interest of the child to terminate parental rights. See 705 ILCS 405/2-29(2) (West 2016); *In re C.W.*, 199 Ill. 2d at 210. However, the best interests of the child cannot be considered when the court is determining fitness. *In re Adoption of Syck*, 138 Ill. 2d 255, 276 (1990).

¶ 25 As noted, in the case at bar, respondent does not challenge the juvenile court's finding that he was unfit under sections 1(D)(b) or 1(D)(m) of the Adoption Act. Accordingly, we proceed to the second step of the analysis, the best interest determination. Once a parent has

been found unfit, "the parent's rights must yield to the best interests of the child." *In re M.F.*, 326 Ill. App. 3d 1110, 1115 (2002). The State has the burden of proving that it is in the child's best interest to terminate parental rights by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 366 (2004).

¶ 26 Section 1-3 of the Juvenile Court Act enumerates a number of factors that must be considered when determining whether termination of parental rights is in the minor's best interest:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments, including:
>
> (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of bring valued);
>
> (ii) the child's sense of security;
>
> (iii) the child's sense of familiarity;
>
> (iv) continuity of affection for the child;
>
> (v) the least disruptive placement alternative for the child;
>
> (e) the child's wishes and long-term goals;
>
> (f) the child's community ties, including church, school, and friends;

(g) 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;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2016).

¶ 27 "Additionally, the court may consider the nature and length of the child's relationship with her present caretaker and the effect that a change in placement would have upon her emotional and psychological well-being." *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19. "The [juvenile] court's best interest determination need not contain an explicit reference to each of these factors, and a reviewing court need not rely on any basis used by the [juvenile] court below in affirming its decision." *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19. Upon review, a lower court's determination that the State has met its burden will not be reversed unless it was against the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31, 51-52 (2005). As noted, a finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *In re Gwynne P.*, 215 Ill. 2d at 354.

¶ 28 In the case at bar, the juvenile court found that the State had demonstrated by a preponderance of the evidence that it was in the minors' best interest to terminate respondent's parental rights, and we cannot find that this finding was against the manifest weight of the evidence. Respondent points to the testimony at the hearing showing that he and his family had been consistently visiting the minors and that respondent's visits with the

minors were safe, appropriate, and warm. He argues that the minors would feel a sense of loss should these visits cease and that there was no showing that terminating his parental rights would help, rather than harm, the minors. We do not find this argument persuasive.

¶ 29 First, we note that the foster father testified that he and his wife feel that maintaining a relationship with the minors' biological parents is important and that they had established a "Google Voice" line to facilitate communication. While respondent correctly notes that there is no guarantee that they will follow through with maintaining such a relationship, these representations were entitled to weight by the court and, hopefully, will come to pass. Additionally, despite respondent's arguments to the contrary, there was evidence presented showing the positive effects of the minors' current placement. They had been living with their foster parents for their entire lives, having been taken to their home upon being discharged from the hospital after their birth—this is the only home the children know. The caseworker testified that the foster home was safe and appropriate, and the foster father testified to the foster parents' love for the minors. The foster father also testified to his attempts to address the cultural differences between the minors and the foster parents, and was seeking out experiences that would give the minors strong positive African-American role models. While respondent clearly loves his children and the minors would undoubtedly feel a sense of loss if their visits with respondent and his family ceased, the juvenile court was entitled to weigh this positive evidence in its determination.

¶ 30 Furthermore, the juvenile court was also entitled to weigh the evidence that respondent had not taken any significant steps to reunite with his children until a year after he had been warned that he was in danger of his parental rights being terminated. As the juvenile court noted, it had warned respondent in June 2016 that the permanency goal would be changed if

there was no progress, and respondent nevertheless failed to make such progress; respondent did not begin attending substance abuse and domestic violence programs until a year and a half later. While respondent did consistently visit, his prior noncompliance with services was also properly considered by the court.

¶ 31 Finally, respondent argues that the juvenile court only "briefly and summarily" mentioned the statutory factors, without any elaboration. However, as noted, the juvenile court is not required to explicitly refer to each statutory factor in its best interest determination. *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19. Indeed, "the [juvenile] court need not articulate any specific rationale for its decision, and a reviewing court need not rely on any basis used by a trial court below in affirming its decision." *In re Deandre D.*, 405 Ill. App. 3d 945, 954-55 (2010) (citing *In re Jaron Z.*, 348 Ill. App. 3d 239, 262-63 (2004)). Here, the evidence before the juvenile court established that the physical and emotional welfare of the minors was best served by terminating respondent's parental rights and permitting the foster parents to adopt them, and we cannot find that the juvenile court's finding to that effect to be against the manifest weight of the evidence.

¶ 32 CONCLUSION

¶ 33 For the reasons set forth above, we affirm the juvenile court's finding that it was in the best interest of the minors to terminate respondent's parental rights.

¶ 34 Affirmed.