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No. 3--10--0731
(Consolidated with No. 3--10--0732)

Order filed January 28, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2011

<i>In re</i> GUARDIANSHIP OF I.M.R.,)	Appeal from the Circuit Court
K.V.R., and C.M.,)	of the 13th Judicial Circuit,
)	La Salle County, Illinois,
Minors)	
)	
(Tracy M.,)	
)	
Petitioner-Appellee,)	Nos. 05--P--84 and 07--P--112
)	
v.)	
)	
Audrey M.,)	Honorable
)	Eugene P. Daugherty,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Schmidt and Lytton concur in the judgment.

ORDER

Held: A trial court order terminating the guardianship of minors was based on both the existing legal standard and the standard taking effect on January 1, 2011. Because the mother (1) showed that she was a fit parent in that she was competent to conduct her own business and to make day-to-day decisions for her children and (2) presented evidence of changed circumstances that was not overcome by clear and convincing evidence that it

was in the minors' best interest to remain with the guardian, both standards were met and the trial court's order is affirmed.

Respondent, Audrey M., appeals a trial court order terminating her guardianship of the minors, I.M.R., K.V.R., and C.M., upon the motion of petitioner, Tracy M., the mother of the minors. Audrey contends that the trial court erred in terminating her guardianship because it applied the wrong legal standard. Alternatively, if this court finds that the trial court applied the correct legal standard, Audrey contends that the trial court still erred in terminating the guardianship. We affirm.

FACTS

On April 5, 2005, the maternal grandmother of I.M.R. and K.V.R. filed a petition for guardianship of those minors, who were three and two years old, respectively. The petition alleged that both parents were unable or unwilling to care for the minors. Tracy consented to the guardianship, and the trial court appointed the grandmother as the guardian. The minor C.M. was born on August 10, 2006, and Tracy filed a petition for the guardianship of C.M., alleging that she was being sent to prison. The trial court granted the petition, and appointed Audrey, Tracy's sister, the guardian of C.M.

On June 20, 2008, Audrey filed a petition to be appointed guardian of I.M.R. and K.V.R. Tracy and the grandmother both

consented to the change of guardianship, and the trial court granted the petition.

On August 14, 2009, Tracy filed a petition to terminate the guardianship of all three minors. At a hearing on the petition, Tracy testified that she asked her mother to take guardianship of I.M.R. and K.V.R. because she had a drug addiction and related legal problems. However, at the time of the hearing on the petition to terminate, Tracy was no longer using heroin, she had successfully completed her parole, and she was renting a home for which she was paying the utilities.

At the close of Tracy's case, Audrey's counsel made a motion for a directed verdict. The trial court denied the motion, relying on section 11--7 of the Probate Act of 1975 (Act) (755 ILCS 5/11--7 (West 2008)) and *In re R.L.S.*, 218 Ill. 2d 428 (2006), and finding that Tracy had made a showing that she was fit.

At the conclusion of the hearing, the trial court granted Tracy's petition to terminate the guardianship, reiterating its reliance on section 11--7 of the Act and *R.L.S.* It found that Tracy was a fit parent within the Act because she was able to conduct business for herself and make day-to-day decisions for her children. The trial court found that Tracy consented to the guardianship of the minors at a time when she was unfit to parent her children, primarily due to incarceration and heroin

addiction. Tracy brought the petition after she was discharged from the Department of Corrections and no longer using heroin.

The trial court also found that if it applied the statutory standard that will go into effect on January 1, 2011 (Pub. Act 96--1338 (eff. Jan. 1, 2011) (amending 755 ILCS 5/11--14.1 (West 2008))), which is the same standard applied in *In re Estate of K.E.S.*, 347 Ill. App. 3d 452 (2004), it would still grant the petition. The trial court stated that the same things that it discussed in finding Tracy fit to transact business also would show a material change in circumstances. Also, there was not a clear showing that it was in the best interest of the minors to remain with the guardian. Audrey appealed.

ANALYSIS

Audrey argues that the trial court erred in applying the standard from *R.L.S.* in terminating the guardianship of the minors. Audrey also argues that, even if the trial court did apply the correct legal standard, it still erred in terminating the guardianship.

Our supreme court, in deciding *R.L.S.*, stated that section 11--7 of the Act was to be applied as written: "fit parents are entitled to custody." *R.L.S.*, 218 Ill. 2d at 447. A fit parent is one who is competent to transact her own business and make day-to-day childcare decisions. *R.L.S.*, 218 Ill. 2d 428; 755 ILCS 5/11--7 (West 2008). Section 11--7 of the Act is the

codification of the superior rights doctrine established in *In re Custody of Townsend*, 86 Ill. 2d 502 (1981), which is a presumption in favor of a natural parent of a child against a third party. *R.L.S.*, however, was an initial guardianship case, not a petition to terminate guardianship.

Prior to January 1, 2011, there was no statutory provision for the termination of a guardianship, except when a child reaches the age of majority. 755 ILCS 5/11--14.1 (West 2008); Pub. Act 96--1338 (eff. Jan. 1, 2011) (repealing 755 ILCS 5/11--7 and amending 755 ILCS 5/11--14.1 (West 2008)). As of January 1, the standard for terminating a guardianship upon a petition of a minor's parent is the standard applied in *K.E.S.* and discussed approvingly as *dicta* in *In re Guardianship of Jordan M.C.-M.*, 351 Ill. App. 3d 700 (2004). Specifically, a trial court will terminate the guardianship upon the petition of a parent if the parent establishes by a preponderance of the evidence a change in circumstances, unless the guardian establishes by clear and convincing evidence that the revocation will not be in the best interest of the minor. Pub. Act 96--1338 (eff. Jan. 1, 2011) (amending 755 ILCS 5/11--14.1 (West 2008)); *K.E.S.*, 347 Ill. App. 3d 452.

The trial court found that Tracy was able to transact her own business and make day-to-day decisions for the minors, and was therefore a fit person under section 11--7 of the Act. The

trial court also found, however, that Tracy had established a change in circumstances and there was not clear and convincing evidence that continuing the guardianship was in the best interest of the minors.

We find it unnecessary to decide which standard should have been applied in this case. Going forward, the standard will be dictated by the new statutory provisions. The trial court applied both tests, and we find no error in the decision that the guardianship be terminated under either test. Our review of the trial court's determination is whether it was against the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31 (2005).

The evidence presented at the hearing on the motion to terminate established that Tracy was able to transact her own business and make decisions for the minors, making her a fit parent under section 11--7 of the Act. Alternatively, Tracy presented evidence of changed circumstances in that she could conduct her own business, was no longer incarcerated, and was no longer using heroin. The trial court's finding that there was not clear and convincing evidence that it was in the best interest of the minors to remain with the guardian was not manifestly erroneous.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court

of La Salle County is affirmed.

Affirmed.