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2016 IL App (3d) 150795-U

Order filed March 9, 2016

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2016

<i>In re</i> M.A.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Tazewell County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-15-0795
	)	Circuit No. 13-JA-35
v.	)	
	)	
K.F.,	)	
	)	
Respondent-Appellant).	)	Honorable Richard D. McCoy,
	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Carter and Wright concurred in the judgment.

## ORDER

¶ 1 *Held:* The trial court's termination of respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 Respondent, K.F., appeals from the trial court's termination of her parental rights.

Respondent's sole argument on appeal is that the court's best interest finding was against the manifest weight of the evidence. We affirm.

¶ 3

## FACTS

¶ 4

On June 5, 2013, the State filed a petition for adjudication of neglect, alleging that respondent's minor son, M.A. (born January 30, 2012), was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2012)), in that his environment was injurious to his welfare. The petition specifically alleged: (1) that respondent and M.A.'s father, Michael A., were arrested for committing retail theft on two occasions; (2) that both parents admitted to being on heroin and prescription medication that was not prescribed to them to help with heroin withdrawal at the time of the offenses; and (3) that M.A. was present for both offenses. Michael A., while a party to the proceedings below, is not a party to this appeal.

¶ 5

On July 19, 2013, respondent stipulated that the State could prove the petition by a preponderance of the evidence. That same day, the trial court adjudicated M.A. neglected and granted the Department of Children and Family Services (DCFS) guardianship with the right to place the minor.

¶ 6

At a dispositional hearing on August 29, 2013, the trial court found respondent unfit due to unresolved drug abuse issues. The court ordered respondent to cooperate fully with DCFS, obtain a drug and alcohol assessment and follow any recommended treatment, perform three directly supervised random drug drops per month, participate in and successfully complete counseling, obtain and maintain stable housing, visit with M.A. at times and places set by DCFS, and complete medical follow-up to address issues of hyperthyroidism.

¶ 7

A permanency review report, dated March 13, 2014, indicated respondent successfully completed inpatient drug treatment on November 16, 2013, and had completed 11 posttreatment drug drops, all of which tested negative for illegal substances. Respondent had procured

employment, and was living with Michael A. at her uncle's residence. Respondent had entered counseling but was making "unhurried" progress. Respondent gave the impression of being distracted, and her prognosis for completing therapy was marginal due to her "lethargic commitment and sporadic participation." However, respondent's visits with M.A. were going well, and the report maintained a permanency goal of "Return Home Within 12 Months."

¶ 8 A second permanency review report, dated September 4, 2014, indicated respondent missed 14 drug drops between March 14, 2014, and July 30, 2014. She also tested positive for opiates on three occasions and spent one week in jail in July 2014 for violating her probation. As a result of her incarceration, respondent lost her job. Respondent had been discharged from counseling for too many absences, and had missed two visits with M.A. The September 4, 2014, permanency review report indicated that the permanency goal of "Return Home Within 12 Months" was no longer appropriate and set the new goal to "Return Home Pending Status."

¶ 9 On December 31, 2014, the State filed a petition for termination of respondent's parental rights. The petition alleged that respondent had failed to make reasonable progress toward the return of M.A. to her care within nine months after the adjudication of neglect, or July 19, 2013, through April 19, 2014. Respondent filed an answer on February 6, 2015, denying the allegations.

¶ 10 A permanency review report, dated February 10, 2015, indicated respondent had been arrested on January 27, 2015, on an outstanding warrant for retail theft. Respondent continued to refuse to complete random drug drops through December 2014. The February 10, 2015, permanency review report indicated an alternative permanency goal was necessary, and set the new goal to "Substitute Care Pending Termination of Parental Rights."

¶ 11 On February 25, 2015, the State filed an amended petition for termination of respondent's parental rights. The amended petition alleged that respondent had failed to make reasonable progress toward the return of M.A. to her care within any nine-month period after the end of the initial nine-month period following the adjudication of neglect, or May 22, 2014, through February 22, 2015. On March 20, 2015, respondent filed an answer to the State's amended petition in which she admitted she was unfit as alleged, but denied it was in M.A.'s best interest to terminate her parental rights.

¶ 12 At the best interest hearing on October 16, 2015, the trial court considered two best interest reports written by M.A.'s caseworker, Sara Higgins. Higgins' first report, submitted on April 7, 2015, indicated that DCFS had placed M.A. with his maternal grandmother, H.P., on June 5, 2013, and that M.A. had been residing with H.P. and her husband, Tim (M.A.'s maternal step-grandfather), since that date.

¶ 13 M.A. attends preschool Monday through Friday and is doing very well. He has a strong relationship with his foster parents and considers their house his home. M.A. is always hugging H.P. and wanting to sit on her lap, and he refers to Tim as his "best friend." H.P. and Tim love M.A. and see him as if he were their own child. M.A. also visits with his maternal grandfather and step-grandmother in Bloomington, Illinois, every other weekend.

¶ 14 M.A.'s foster parents have continued to meet all of his needs and have provided him with a safe, stable, and nurturing environment. They give him nightly breathing treatments and are very diligent at ensuring he has recommended medical exams. M.A.'s sense of security and familiarity lie within his foster family. M.A. has met or exceeded developmental milestones while living with his foster parents and they are willing and able to adopt him.

¶ 15 With regard to respondent, Higgins' first best-interest report indicated that she had enrolled in the Outpatient Suboxone Freedom drug treatment program through the Human Services Center on December 12, 2014, but was unsuccessfully discharged on January 22, 2015, due to lack of attendance and participation. During the reporting period, respondent refused to complete several drug drops, and those that were completed tested positive for opiates.

¶ 16 DCFS suspended respondent's visits with M.A. after respondent missed three consecutive appointments, which were considered a "no call, no show." While it was evident that M.A. loves respondent very much, respondent's continued drug use and criminal activity caused her attendance at visits to be inconsistent. When respondent visited with M.A. regularly, M.A. had no behavioral issues. However, when respondent's visits became sporadic, M.A. began acting out during the visits. Higgins' first report concluded that respondent had failed to correct the conditions that brought M.A. into foster care, despite having had 21 months to do so. She recommended that the trial court terminate respondent's parental rights.

¶ 17 Higgins' second report, submitted on October 6, 2015, indicated respondent had enrolled in a drug treatment program and had been attending therapy. Respondent did not visit with M.A. between March 2015 and June 2015 due to a period of incarceration for retail theft. At the time of the report, respondent was visiting with M.A. once per month under H.P.'s supervision. H.P. informed Higgins that the visits were going well and M.A.'s behavioral problems had decreased. Despite respondent's recent improvement, Higgins' second report recommended that the trial court terminate respondent's parental rights.

¶ 18 Higgins' testimony at the best interest hearing was mainly consistent with her written reports. H.P. provides care for M.A. "above and beyond" what he needs. M.A. has a great relationship with H.P. and is very attached to her. M.A. also has a great relationship with H.P.'s

husband and their two children. M.A. does not need anything more than what his foster parents give him. In Higgins' opinion, M.A.'s bond with his foster family is stronger than his bond with respondent, due largely to the amount of time they have been his primary caretakers. While respondent's interactions with M.A. are loving and nurturing, respondent struggles with heroin addiction and occasionally goes "MIA" by not showing up for scheduled visits or completing required services.

¶ 19 H.P. testified M.A. has been in her care for over two years. M.A. has a special bond with her family and calls their house his home. M.A. currently has a makeshift bedroom in the living room, but she and Tim are in the process of constructing an extra bedroom in the basement so M.A. will have his own room. Respondent's visits with M.A. have been going well since H.P. began supervising them. Respondent and M.A. are very loving with each other and respondent even brought gifts for M.A. on a few occasions. M.A. is even able to recognize his mother's voice over the phone.

¶ 20 H.P. is very proud of respondent for getting back into treatment, but she still has concerns about respondent's ability to remain sober given her history of relapse. H.P. explained that there has been some violence in respondent's ongoing relationship with Michael A., and H.P. considers him to be a trigger for respondent. "Never in a million years" would H.P. want respondent to lose her son, but she would be willing to adopt M.A. if the court found it was in his best interest.

¶ 21 Respondent testified on her own behalf. At the time of the hearing, respondent was living with M.A.'s paternal grandfather (Michael A.'s father), who she admitted has a history of domestic violence. Respondent testified she was planning to move in with two friends from church in less than a week. Respondent is actively involved in Level II outpatient treatment, and

she regularly attends both alcoholics and narcotics anonymous meetings. At the time of the best interest hearing, respondent had maintained her sobriety for seven consecutive months.

Respondent had also recently secured employment and purchased a vehicle. With regard to a pending criminal charge in Peoria County, respondent anticipated entering a guilty plea in exchange for the county's drug court program. She had already arranged her drug court schedule with her employer so that she could maintain her employment.

¶ 22 Respondent wishes she could see her son more often and testified he is always excited to see her and play with her when she visits. During a recent shopping trip, respondent purchased three new outfits, a pair of pants, and a winter jacket for M.A. While respondent admitted to skipping a few visits with M.A., she explained she did so because she was using drugs at the time. Respondent is also still in a relationship with Michael A., despite his current incarceration. Although Michael A. is not currently one of respondent's relapse triggers, respondent admitted that he might be "depending on how he's doing when he gets out."

¶ 23 Following argument, the trial judge noted he was impressed with respondent's recent progress, but explained that the point of the hearing was to determine what was in M.A.'s best interest, not what was in respondent's best interest. After reviewing the statutory factors, the trial court found it was in M.A.'s best interest to terminate respondent's parental rights.

¶ 24 Respondent appealed.

¶ 25 ANALYSIS

¶ 26 Respondent's sole argument on appeal is that the trial court's determination that it was in M.A.'s best interest to terminate her parental rights was against the manifest weight of the evidence.

¶ 27 A petition to terminate parental rights is filed pursuant to section 2-29 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-29 (West 2014)). That section delineates a two-step process in seeking involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2014); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). First, the court must find, by “clear and convincing evidence, that a parent is an unfit person as defined in Section 1 of the Adoption Act.” 705 ILCS 405/2-29(2), (4) (West 2014); 750 ILCS 50/1(D) (West 2014); *In re E.B.*, 231 Ill. 2d 459, 472 (2008). Second, once the court makes a finding of parental unfitness, it then considers the “best interests” of the child and determines whether to terminate parental rights. 705 ILCS 405/2-29(2) (West 2014); *In re J.L.*, 236 Ill. 2d at 337.

¶ 28 Given that respondent does not challenge the trial court’s finding of unfitness, we go straight to the best interest step of the two-step termination process. At the best-interest stage, the parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life. See *In re D. T.*, 212 Ill. 2d 347, 364 (2004). The court focuses upon the child’s welfare and whether termination would improve the child’s future financial, social and emotional atmosphere. *In re D.M.*, 336 Ill. App. 3d 766, 772 (2002). The State bears the burden of proving by a preponderance of the evidence that termination is in the minor child’s best interest. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071 (2009).

“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 at 1071 (citing 705 ILCS 405/1-3(4.05) (West 2008)).

We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence. *Id.* A decision is against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072 (2006).

¶ 29 Respondent concedes that she is unfit to be a custodial parent at the present time, but she contends several of the factors listed in section 1-3(4.05) of the Juvenile Court Act do not "so clearly favor the foster parent as to warrant termination" of her parental rights. Respondent argues that it is in M.A.'s best interest to consider her recent successes as "an avenue to providing permanence that is nearly present." She claims she has never been as stable as she is currently and places emphasis on the fact that she has maintained her sobriety for seven consecutive months.

¶ 30 While we recognize and commend respondent for her recent triumphs, the trial court was correct in noting that purpose of a best interest hearing is to determine what is in the child's, not respondent's, best interest. Respondent had over two years to correct the conditions that led to

DCFS placing M.A. in foster care before the trial court terminated her parental rights. During that time, she tested positive for opiates, skipped visits with M.A., and spent time in jail. While respondent has shown some recent improvement, she also concedes that she is not fit to be the minor's custodial parent at the present time and that her relationship with Michael A. may become an issue "depending on how he's doing when he gets out." Respondent testified that she planned to move in with some friends from church, but as of present, she was still living with Michael A.'s father, who, according to her own testimony, has a history of domestic violence. To allow respondent to retain her parental rights indefinitely while she attempts to achieve stability would frustrate the purpose of the Juvenile Court Act and its effort to establish permanent homes for children in need. See 705 ILCS 405/1-2(1) (West 2014).

¶ 31 H.P. and Tim have provided a safe, stable, and nurturing environment for M.A. for the majority of his life—so much so that Higgins opined that M.A.'s bond is stronger with his foster family than it is with respondent. M.A. has developed a healthy routine and has met or exceeded all developmental milestones while in H.P.'s care. M.A.'s sense of security and familiarity lie within his foster family, and he considers their house his home. H.P. and Tim love M.A. as if he were their own child, and they are willing and able to adopt him. Given the record before us, we cannot say that the trial court's determination that it was in M.A.'s best interest to terminate respondent's parental rights was against the manifest weight of the evidence.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, we affirm the judgment of the circuit court of Tazewell County.

¶ 34 Affirmed.