2017 IL App (3d) 170202-U

Order filed June 30, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

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| *In re* B.Z., | ) | Appeal from the Circuit Court |
| | ) | of the 12th Judicial Circuit, |
| a Minor, | ) | Will County, Illinois, |
| | ) | |
| (The People of the State of Illinois, | ) | |
| | ) | |
| Petitioner-Appellee, | ) | Appeal No. 3-17-0202 |
| | ) | Circuit No. 15-JA-39 |
| v. | ) | |
| | ) | |
| Tanya A., | ) | |
| | ) | Honorable Paula A. Gomora, |
| Respondent-Appellant). | ) | Judge, Presiding. |

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JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Holdridge and Justice Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held*: The trial court properly found mother was an unfit parent and the best interests of her child supported the termination of mother's parental rights by court order.

¶ 2 On March 6, 2017, the trial court found that mother was an unfit parent. On the same date, the court found it was in the best interest of the minor to terminate mother's parental rights. Mother appeals the trial court's decision terminating her parental rights. We affirm.

¶ 3 FACTS

¶ 4 On March 12, 2015, the State filed a petition pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2014)) alleging that B.Z., born in August 2007, was neglected due to an environment injurious to his welfare and naming his mother, Tanya A., and his father, Peter Z., as respondents. Following a shelter care hearing, on March 13, 2015, the trial court placed B.Z. in the temporary custody of the Department of Children and Family Services (DCFS) on the basis that his "parents were using controlled substances and were engaged in domestic violence."

¶ 5 On June 1, 2015, the trial court conducted an adjudicatory hearing, but B.Z.'s parents failed to appear after receiving notice of the hearing. Following the adjudicatory hearing, the trial court entered an order finding B.Z. was neglected because the minor's environment was injurious to his welfare. The court order also indicated that B.Z.'s parents had ongoing domestic violence problems and both were using illegal substances.

¶ 6 On June 30, 2015, B.Z.'s parents appeared in court for the first time. After appointing attorneys for both parents, the court continued the matter for a dispositional hearing.

¶ 7 On August 3, 2015, both parents appeared for the dispositional hearing. During the hearing, the trial court warned B.Z.'s parents that they must each comply with the terms of the service plan created by DCFS and correct the conditions as required by the service plan. The court also explained that if the parents failed to comply with the service plan, such a failure would create a risk of the termination of their parental rights in the future. The trial court found both parents to be unfit and ordered custody and guardianship of B.Z. to remain with DCFS. The August 3, 2015, court order set a permanency goal to return B.Z. to his parents within the next 12 months.

¶ 8 One year later, the State filed a motion to terminate the parental rights of B.Z.'s parents on August 19, 2016. The motion alleged that the parents were unfit because each parent failed to maintain a reasonable degree of interest, concern, and responsibility concerning B.Z.'s welfare pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2016)).

¶ 9 On December 14, 2016, the State filed an amended motion to terminate the parents' parental rights. The amended motion included two additional statutory grounds for the termination of parental rights. Specifically, the amended motion alleged that both parents: (1) failed to make reasonable efforts to correct the conditions which were the basis for the removal of B.Z. under section (D)(m)(i) of the Adoption Act (750 ILCS 50/1(D)(m)(i) (West 2016)) during the time period from June 1, 2015, through March 2016; and (2) failed to make reasonable progress towards the return of the child within nine months after an adjudication of neglect pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)) during the time period from June 1, 2015, through March 2016.

¶ 10 I. Parental Fitness

¶ 11 On February 2, 2017, the trial court held an evidentiary hearing on the State's amended motion to terminate the parents' parental rights. Ashley Culhane, a caseworker with Guardian Angel Home, testified that this case came to the attention of DCFS in March 2015. At that time, B.Z. witnessed an incident of domestic violence between his mother and father. B.Z. described seeing his father hit his mother in the ear and witnessed his mother's eardrum bleeding. Following this incident, the court placed B.Z. with his maternal grandmother, Theresa Lovell. Culhane testified that mother visited B.Z. consistently until August 23, 2015, and then did not visit B.Z. ever again. According to Culhane, mother also did not have any contact with the agency or B.Z. from August 2015 through June 2016.

¶ 12 Culhane testified regarding People's exhibit No. 6, a DCFS service plan, which outlined tasks mother was required to complete during the period from March 2015 through August 2015, including completing a domestic violence assessment, parenting education classes, and drug treatment and random drug screens. Mother failed to satisfactorily complete each of the required tasks for this service plan after losing touch with the agency in August 2015. Culhane testified that if mother had come forward for visitation, mother would have been potentially allowed to visit B.Z. once a week. However, mother did not attend any visits with B.Z. after August 23, 2015. Mother also did not send B.Z. letters, cards, gifts, or anything else from August 2015 through February 2016.

¶ 13 Culhane also testified regarding People's exhibit No. 5, which was the DCFS service plan from August 2015 through February 2016. Again, mother did not satisfactorily complete any of the tasks required under this plan, including maintaining contact with the agency, completing a domestic violence assessment and parenting education classes, and drug treatment and random drug screens. Culhane also testified that during the time period between June 1, 2015, and March 2016, mother did not make any progress towards the goal of returning B.Z. to her care.

¶ 14 Culhane testified that mother was incarcerated from March 2016 through August 15, 2016, for retail theft. Culhane had a conversation with mother while mother was in jail and mother said that "[s]he felt overwhelmed" and "like she couldn't do it any more [sic]." Mother reported to Culhane that mother lost her car but would like to participate in services to be reunited with B.Z. Culhane testified that in August 2016, mother entered an inpatient care center, South Suburban Council.

¶ 15 On cross-examination, Culhane testified that in March 2016, mother received mental health services while incarcerated. Mother began having phone calls with B.Z. after her release

from custody in August 2016. Mother also attended domestic violence groups after her release from custody in August 2016 and participated in counseling at Palos Community Hospital, starting in September 2016. Mother began medication management for her heroin addiction and started attending Alcoholics Anonymous/Narcotics Anonymous meetings in November 2016.

¶ 16 Mother did not testify, but offered six exhibits in support of her claim that her parental rights should not be terminated. These exhibits showed that mother had engaged in services after her release from custody in August 2016 through December 2016, including substance abuse treatment, mental health treatment, and domestic violence education. One exhibit from a social worker at Palos Community Hospital indicated mother relapsed in November 2016, but was able "to get back on track and remain clean."

¶ 17 On March 6, 2017, the trial court announced its findings with respect to mother's fitness for purposes of the termination proceeding. The trial court found the State presented clear and convincing evidence that mother was unfit because mother failed to maintain a reasonable degree of interest, concern, or responsibility as to B.Z.'s welfare. The trial court noted the evidence established mother did not have any contact with the agency and failed to engage in any visitation with the minor from August 2015 through June 2016.

¶ 18 In addition, the trial court found that mother failed to make reasonable efforts to correct the conditions resulting in the removal of the child during the time period alleged in the State's petition, June 1, 2015 through March 2016. The trial court also found that mother failed to make reasonable progress towards the return of the minor to mother's care following adjudication, during the relevant time period, June 1, 2015, through March 2016.

¶ 19 The trial court observed that during the relevant time period for the service plans, mother failed to satisfactorily complete the required tasks. The trial court acknowledged mother's

exhibits documented mother had participated in outpatient substance abuse treatment, but the court concluded her efforts were "too little too late." The court stated, "[a]lthough the [c]ourt will commend the mother in engaging in services that are required, it doesn't fall within the subject time period that the Court needed you to complete the services in order to regain custody of [B.Z.]."

¶ 20 II. Best Interests

¶ 21 On March 6, 2017, the trial court also considered the minor's best interests. Culhane testified that B.Z. was placed with his maternal grandmother, Theresa Lovell, for the previous two years. Culhane visited B.Z. twice a month at Lovell's home and testified that B.Z. appeared to be very happy there. According to Culhane, B.Z. received straight A's in school. B.Z. also made friends in the neighborhood and took karate lessons.

¶ 22 Culhane testified that B.Z. was in counseling to help resolve his anger towards his parents. Lovell provided for all of B.Z.'s needs. Culhane explained Lovell is healthy and under age 60. According to Culhane, Lovell had a strained relationship with B.Z.'s mother, but was willing to have a relationship with her daughter so long as her daughter remained drug-free. Culhane testified that B.Z. had recently begun phone contact with his mother and spoke to her twice per month. Culhane also testified that there were other relatives in the area that were a part of B.Z.'s life. During her testimony, Culhane stated she did not have any concerns regarding Lovell's desire to adopt B.Z.

¶ 23 Kaitlin Nolan, an advocate supervisor with CASA Will County, testified that CASA is the guardian *ad litem* for B.Z. Nolan testified that CASA's position is that it is in B.Z.'s best interest to be adopted by his grandmother. Nolan also testified that B.Z. was doing well and was happy at his grandmother's home.

¶ 24 Following this testimony, the trial court judge stated:

> "It's always difficult to terminate parental rights especially when parents eventually start to engage in services and turn their lives around, but if you can only imagine in [B.Z.'s] short life he has seen quite a bit. I certainly don't want to see you fall off the wagon and return to your old ways because the anger that [B.Z.] feels obviously he must be willing to repair what relationship he has had with you so that he can further have a relationship as well as your mother who wants you to be a part of the family and be a part of his life. They are not trying to push you away. From the Court's perspective, there was a period of time where services needed to take place, and although it doesn't seem like a long time, in a child's life those time periods are significant and they are very long. It's still so important for you to remain engaged in the substance abuse treatment that you are in and to remain compliant with it so that you can build on the relationship that you desperately now want to have with [B.Z.] because you realize how important he is. In using drugs you don't really realize how important they are because the addiction takes over. It's hard to separate it. You still have so much time with him to build a wonderful relationship, but at this point it is in his best interest that rights be terminated, and I need to go through the findings, but I did want to tell you that I am really proud that you have made progress and that you have been clean and sober for months now, that you are actively engaged in treatment ***."

¶ 25 On March 6, 2017, the trial court issued an order finding by clear and convincing evidence that mother was an unfit parent on all three statutory grounds alleged in the State's amended motion to terminate parental rights. In addition, the trial court found that it was in the

best interests of the minor and the public that the residual parental rights of Tanya A. with respect to B.Z. be terminated. The trial court appointed a guardian for B.Z. with the authority to consent to the adoption of the minor.

¶ 26 On March 22, 2017, mother filed a timely notice of appeal.

¶ 27 ANALYSIS

¶ 28 In this appeal, mother argues that the trial court's findings of unfitness were against the manifest weight of the evidence. Mother also raises a constitutional challenge to section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2016)) on the ground the statute violates due process and equal protection guarantees of the Illinois and United States Constitutions. The guardian *ad litem* of the minor has filed a brief on appeal and makes arguments that mirror mother's contentions of error and the constitutional challenge to the statute.

¶ 29 In response, the State contends the trial court's findings are not contrary to the manifest weight of the evidence. The State addresses the constitutional issue by first pointing out that mother forfeited the issue by failing to raise this argument in the trial court. Alternatively, the State asserts section 1(D)(m) of the Adoption Act is constitutional.

¶ 30 Lastly, mother argues that the trial court erred by finding the termination of her parental rights would be in the best interest of B.Z. Additionally, the guardian *ad litem* now contends the minor's best interests would be well served by allowing mother to successfully complete treatment in order to give mother an opportunity regain custody of her son in the future. The State responds that the trial court's findings were well supported by the evidence.

¶ 31 In Illinois, the court's power to terminate parental rights is derived from the Adoption Act (750 ILCS 50/0 *et seq.* (West 2016)) and the Juvenile Act (705 ILCS 405/1-1 *et seq.* (West 2016)). *In re E.B.*, 231 Ill. 2d 459, 463 (2008). The involuntary termination of parental rights

involves a two-step process. First, the State must establish that the parent is "unfit" under one or more of the grounds set forth in section 1(D) of the Adoption Act by clear and convincing evidence. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004); *In re D.T.*, 212 Ill. 2d 347, 352 (2004). The case law provides that proof of any one of the statutory grounds for unfitness enumerated in section 1(D) of the Adoption Act is sufficient to support a finding of unfitness. *In re Tiffany M.*, 353 Ill. App. 3d at 889. After finding a parent unfit, the court then determines whether it is in the best interests of the minor that parental rights be terminated. *In re D.T.*, 212 Ill. 2d at 352; 705 ILCS 405/2-29(2) (West 2016)).

¶ 32 The trial court is in the best position to make the factual findings and credibility assessments required for the determination of parental unfitness. *In re A.B.*, 308 Ill. App. 3d 227, 240 (1999). Therefore, a reviewing court will defer to the trial court's factual findings and will not reverse the court's decision unless the findings are against the manifest weight of the evidence. *In re Tiffany M.*, 353 Ill. App. 3d at 890. "A factual finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the determination is unreasonable, arbitrary, and not based on the evidence." *Id.*

¶ 33 I. Unfitness Finding

¶ 34 A. Section 1(D)(b) of the Adoption Act

¶ 35 We begin by examining whether the trial court erred by finding that mother was unfit due to her failure to maintain a reasonable degree of interest, concern, and responsibility as to B.Z.'s welfare pursuant to section 1(D)(b) of the Adoption Act. When applying section 1(D)(b) of the Adoption Act, a court may examine the parent's efforts to visit and maintain contact with the child, as well as other indicia of interest, such as inquiries into the child's welfare. *Id.* "Evidence that a parent's compliance with a service plan were 'very sporadic' or that she failed to

participate in a service plan and was unfit, are sufficient to show that she failed to maintain a reasonable degree of interest, concern, or responsibility for the welfare of her children." *In Interest of L.M.*, 189 Ill. App. 3d 392, 400 (1989).

¶ 36 Relying on *In re M.J.*, 314 Ill. App. 3d 649, 656 (2000), mother argues the trial court erroneously failed to consider the reasonableness of her past efforts to regain custody of her son in light of the circumstances she faced in 2015, including drug addiction. In addition, mother submits the court then compounded the error by failing to appreciate her most recent efforts at rehabilitation that began in March 2016 and continued until the date of the fitness hearing in February 2017.

¶ 37 Every termination proceeding is unique. In this particular situation, it is undisputed that mother last visited B.Z. in August 2015 and had not exercised any opportunity for visitation before her incarceration in March 2016. Further, Mother did not send B.Z. written correspondence such as letters or cards from August 2015 until the date of her incarceration. Based on this evidence, we cannot conclude that mother's failure to maintain some degree of parental interest and responsibility for her child was objectively reasonable, even taking into account her ongoing addiction and other difficulties she faced. We decline to adopt mother's view that her drug addiction excused her lack of interest in her child for an extended period of time before her incarceration.

¶ 38 The court carefully considered and commended mother for her progress that began with her incarceration in jail from March 2016 until August 2016. The court complimented mother on her efforts to reestablish communication with her son by telephone and a renewed interest in her own sobriety. Yet, the court labeled mother's efforts that began in 2016 as "too little too late." The court's finding that mother's efforts to become a better parent were not reasonable due to

mother's failure to timely comply with the service plans covering the time period beginning in August 2015 through February 2016 is wholly supported by the undisputed facts of record. See *In Interest of L.M.*, 189 Ill. App. 3d at 400.

¶ 39 Mother argues that her exhibits Nos. 1 through 6 demonstrate that she was fully engaged in services during the period from August 2016 through December 2016, was staying clean and sober, and expressed a willingness and a desire to reunite with B.Z. To the contrary, we conclude these exhibits show mother's conduct involved addiction-based behavior for an extended period of time in spite of her son's removal from her home and her son's ongoing needs. A reasonably interested and responsible parent would have immediately begun treatment after losing custody, as required by the service plans beginning in August 2015. Instead, in this case, the triggering event for mother's motivation to begin rehabilitation was not the loss of custody of her young son, but rather the loss of her freedom due to her incarceration in March of 2016. Thus, based on our careful review of the record, we conclude that the trial court's finding that mother failed to maintain a reasonable degree of interest, concern, or responsibility as to B.Z.'s welfare was not against the manifest weight of the evidence.

¶ 40 B. Time Limits

¶ 41 On appeal, mother also argues that the trial judge erroneously placed a time limit on her assessment of fitness pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2016)). We disagree. The trial court heard testimony and examined evidence related to all events that occurred following the filing of the neglect petition in March 2015 until the date of the hearing in February 2017. However, as discussed above, this evidence did not factually support mother's position that she maintained a reasonable degree of interest, concern, or

responsibility as to B.Z.'s welfare during this extended time period beginning in March of 2015 and ending in 2017.

¶ 42 We conclude the trial court's finding that the State's evidence established mother failed to exercise a reasonable degree of interest, concern, and responsibility as to B.Z.'s welfare, as required by section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2016)), is not contrary to the manifest weight of the evidence. We affirm the trial court's finding of unfitness on this basis.

¶ 43 When parental rights are terminated based on clear and convincing evidence of a single ground of unfitness, a reviewing court need not consider any additional grounds for unfitness relied upon by the trial court. *In re Tiffany M.*, 353 Ill. App. 3d at 891; see also *In re A.B.*, 308 Ill. App. 3d at 240. Consequently, we need not consider whether the trial court erred in finding that mother was unfit under the remaining two statutory grounds set forth in the amended motion to terminate parental rights based on sections 1(D)(m)(i) and 1(D)(m)(ii) of the Adoption Act.

¶ 44 C. Constitutionality of Section 1(D)(m) of the Adoption Act

¶ 45 In addition, mother asserts that section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2016)) is unconstitutional because it violates her due process and equal protection rights. Specifically, mother argues that this section is unconstitutional because the law allows the State to choose any nine-month period following an adjudication of neglect in which the court must use to assess the parents' efforts, which permits the State to tailor the State's case in a more favorable light to the government than to the respondent parents. Mother contends that her most serious efforts occurred outside the nine-month period chosen by the State and therefore, did not count for the fitness portion of the termination proceedings. The guardian *ad litem*'s arguments on appeal mirror these arguments.

¶ 46 Our supreme court has "repeatedly stated that cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort." *In re E.H.*, 224 Ill. 2d 172, 178 (2006). Since we have concluded that the trial court properly found that mother was unfit pursuant to section 1(D)(b) of the Adoption Act, we need not consider the constitutionality of section 1(D)(m) of the Adoption Act as the resolution of this issue would have no impact on the result in this case. *In re Tiffany M.*, 353 Ill. App. 3d at 891; see also *In re A.B.*, 308 Ill. App. 3d at 240.

¶ 47 II. Best Interests Finding

¶ 48 Next, mother argues the trial court's finding that it was in the best interest of B.Z. and the public that her parental rights be terminated was against the manifest weight of the evidence. Mother argues that based on the exhibits she presented to the trial court, she was clearly making progress on her sobriety, her mental and emotional health, and the relationship with her son. Again, the guardian *ad litem*'s position on appeal mirrors mother's position. The State argues that the trial court's best interest determination was well supported by the record and should be upheld.

¶ 49 Following a finding of parental unfitness, a trial court shifts its focus to the child and determines whether in the child's best interest, parental rights should be terminated. *In re D.T.*, 212 Ill. 2d at 364. At this stage in the proceeding, once a parent is found unfit, the child's best interest takes precedence over the parent's rights. *In re Tashika F.*, 333 Ill. App. 3d 165, 170 (2002). In other words, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d at 364. The State has a burden of providing by a preponderance of the evidence that termination is in the child's best interest. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 45. In making a best interest determination,

the trial court should consider the factors listed in section 1-3(4.05) of the Juvenile Act (705 ILCS 405/1-3(4.05) (West 2016)). These factors include: (1) the physical safety and welfare of the child, including food, shelter, health, and clothing; (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, continuity of affection, and the least disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school and friends; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and with siblings and other relatives; (8) the uniqueness of every family and child; (9) the risks related to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. *Id*.

¶ 50 On review, we will not substitute our judgment for that of the trial court on questions concerning witnesses' credibility and the inferences to be drawn from their testimony. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 45. The trial court's decision regarding the best interest of the child will not be reversed unless it is against the manifest weight of the evidence. *Id.*

¶ 51 We have reviewed the briefs on appeal and the record in this case, and we find no basis to conclude that the trial court's order terminating mother's parental rights in this case was contrary to the manifest weight of the evidence. The record reveals B.Z. has been in the care of his maternal grandmother for nearly two years. By all accounts, B.Z. is very happy and is thriving in his grandmother's care.

¶ 52 In spite of mother's recent successful efforts, her recovery is far from certain. In fact, a letter from a social worker at Palos Community Hospital indicated that mother relapsed in November 2016, a few months before the hearing in February 2017. After several years of

uncertainty resulting, in part, from mother's poor choices, B.Z. is entitled to permanence and stability provided by a sober primary caregiver. We also note that B.Z.'s grandmother is willing to allow her daughter to continue to build a relationship with B.Z. so long as mother stays sober.

¶ 53 Therefore, we reject mother's and B.Z.'s request to give mother additional time to resolve her addiction and repair her relationship with her son by reversing the trial court's best interests ruling. Based on the foregoing, we hold that the trial court's decision that it was in B.Z.'s best interest to terminate mother's parental rights was not against the manifest weight of the evidence.

¶ 54 CONCLUSION

¶ 55 The judgment of the circuit court of Will County is affirmed.

¶ 56 Affirmed.