2011 IL App (4th) 110696-U

Filed 12/16/11

NO. 4-11-0696

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Adoption of H.L.V., a Minor, THOMAS C. POCKLINGTON and SALLY S. POCKLINGTON, Petitioners-Appellees, v. MATTHEW VanVOLKENBURG, STEPHANIE N. BRIDGEMAN, and H.L.V., a Minor, Respondents-Appellants.	)))))))	Appeal from Circuit Court of Macon County No. 10AD59 Honorable Thomas E. Little, Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Cook concurred in the judgment.

ORDER

¶ 1 *Held*: Where respondent was unfit and it was in the minor's best interest that respondent's parental rights be terminated, the trial court's unfitness finding and its ultimate decision on termination were not against the manifest weight of the evidence.

¶ 2 In December 2010, the petitioners, Thomas C. Pocklington and Sally S. Pocklington, filed a petition for adoption of H.L.V., the minor child of respondents, Matthew VanVolkenburg and Stephanie N. Bridgeman. In May 2011, the trial court found respondent father unfit. In August 2011, the court found it in the minor's best interest that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in terminating his parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In December 2010, petitioners filed a petition for adoption of H.L.V., born in April 2003. The petitioners are the maternal grandparents of H.L.V. and are her guardians. Although Bridgeman is not a party to this appeal, the petition alleged she was unfit and she had or would execute a consent to adoption. The petition also alleged respondent father was unfit because he (1) abandoned the child (750 ILCS 50/1(D)(a) (West 2010)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare (750 ILCS 50/1(D)(b) (West 2010)); (3) deserted the child for more than three months next preceding the commencement of the adoption proceeding (750 ILCS 50/1(D)(c) (West 2010)); and (4) has repeatedly and continuously failed to provide the child with adequate food, clothing, and shelter though physically and financially able (750 ILCS 50/1(D)(o) (West 2010)).

¶ 6 In April 2011, the trial court conducted the fitness hearing. Stephanie Bridgeman testified respondent was sentenced to prison in 1997. After his release, they started living together. After H.L.V. was born, respondent did not have a full-time job but worked odd jobs with his mother. Bridgeman stated she paid the rent and utilities and bought groceries after H.L.V. was born. She stated respondent did not contribute any funds. In 2003, Bridgeman and H.L.V. moved in with her parents. She stated respondent had a problem with crack cocaine at the time. She stated he bought the crack with money from odd jobs and from stealing items out of their apartment and selling them. In the course of their relationship, Bridgeman recalled four televisions being stolen, along with two Play Station consoles, two surround sound systems, an electric griddle, a microwave, an electric can opener, a portable dishwasher, two digital video disk (DVD) players, and numerous DVD movies.

¶ 7 After living with her parents for approximately a month, she moved into an

apartment in Mt. Zion. Respondent moved in as well. At the time, he was "painting with his mother." Respondent never gave Bridgeman any money. Bridgeman and respondent separated in April 2004, and respondent was still using drugs at that time. She stated she "had done what [she] could," including taking respondent to rehab nine times. Between April 2004 and March 2005, respondent had two weekend visitations with H.L.V.

¶ 8 Sally Pocklington, Bridgeman's mother, testified she was appointed as guardian of H.L.V. in November 2005 after having custody since March 2005. Between March and August 2005, respondent contacted Sally about seeing his daughter on Father's Day. Respondent went to prison in August 2005. Respondent sent a letter to Sally in October 2008 and one to H.L.V. in November 2008. He sent correspondence to H.L.V. until October 2010. On cross-examination, Sally stated respondent sent approximately 10 letters to H.L.V., 2 books, and a Christmas gift.

¶ 9 Respondent testified he was presently in the custody of the Department of Corrections. His projected release date is April 2013. After H.L.V.'s birth, respondent stated he was employed as a maintenance man at Jensen Properties. He stated he received approximately $300 per week and used it to pay rent and utilities. Respondent acknowledged his substance-abuse problem and stated he was successfully discharged from rehab on three occasions. Because of his problem, he would steal household items and sell them.

¶ 10 Respondent stated he visited H.L.V. approximately eight times in 2005 prior to entering the Department of Corrections. While in prison, respondent wrote letters to H.L.V. "once a month." He participated in a program where he recorded a book on tape to send to H.L.V. and sent her a Christmas gift. He stated he filed for visitation while he was in prison. Respondent makes $28.80 per month in prison and had not sent any money to the Pocklingtons

because he had to buy soap and laundry detergent. While in prison, respondent has obtained his general equivalency diploma, taken college courses in food service and custodial maintenance, obtained his food safety and sanitation licence, and was successfully discharged from a substance-abuse program. On cross-examination, respondent testified his drug problem began in 2003. He stated he went to rehab on four occasions.

¶ 11 The trial court took judicial notice of respondent's four felony convictions. In May 2011, the court issued its written order. The court found petitioners failed to present clear and convincing evidence that respondent abandoned H.L.V. The court, however, did find respondent unfit based on (1) his failure to maintain a reasonable degree of responsibility as to the child's welfare, (2) his desertion of the child for more than three months next preceding the commencement of the adoption proceeding, and (3) his repeated failure to provide the child with adequate food, clothing, and shelter though physically and financially able to do so.

¶ 12 In August 2011, the trial court conducted the best-interest hearing. Sally Pocklington testified she was 51 years old, and H.L.V. has lived in her home for over six years. H.L.V. is eight years old, attends third grade, and has received straight A's. Sally stated she and her husband have sufficient income to provide for H.L.V. and they have health insurance through Tom's employer. Tom Pocklington testified he worked at Capital Ready Mix in Decatur.

¶ 13 Respondent testified his out-date from prison is April 2013. He last saw H.L.V. on Father's Day of 2005. He has attempted to write her but does not know how successful those attempts have been. He stated he loves H.L.V. very much and understands he has made mistakes in his life. He was glad H.L.V. was living with the Pocklingtons but he wanted an opportunity to be a part of her life.

¶ 14 The trial court found it in the minor's best interest that respondent's parental rights be terminated. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 A. Unfitness Finding

¶ 17 Respondent argues the trial court erred in finding him unfit. We disagree.

¶ 18 The Adoption Act sets forth the method by which a party may petition to adopt a child who is either related or unrelated to the petitioner. *In re A.S.B.*, 381 Ill. App. 3d 220, 223, 887 N.E.2d 445, 448 (2008). "Section 8(a)(1) of the Adoption Act provides that a parent's consent to adoption is not required when, among other reasons, the parent is found by the court to be an unfit person." *A.S.B.*, 381 Ill. App. 3d at 223, 887 N.E.2d at 449; 750 ILCS 50/8(a)(1) (West 2010). If the trial court finds the parent unfit, the second issue is whether the adoption is in the minor's best interest. *In re Adoption of G.L.G.*, 307 Ill. App. 3d 953, 963, 718 N.E.2d 360, 368 (1999).

¶ 19 Because termination of parental rights is a serious matter, those petitioning for adoption must prove unfitness by clear and convincing evidence. *In re Adoption of L.T.M.*, 214 Ill. 2d 60, 67-68, 824 N.E.2d 221, 226 (2005). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Adoption of C.A.P.*, 373 Ill. App. 3d 423, 427, 869 N.E.2d 214, 218 (2007). "As the grounds for unfitness are independ-

ent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003).

¶ 20 In the case *sub judice*, the trial court found respondent unfit, *inter alia*, based on his failure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare. 750 ILCS 50/1(D)(b) (West 2010). Before finding a parent unfit on this ground, the court must "examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." *In re Adoption of Syck*, 138 Ill. 2d 255, 278, 562 N.E.2d 174, 185 (1990). Circumstances to consider may include the parent's difficulty in obtaining transportation to the child's residence, the parent's poverty, the actions or statements of others hindering or discouraging visitation, "and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child [Citation]." *Syck*, 138 Ill. 2d at 279, 562 N.E.2d at 185. The trial court must " 'examine the parent's efforts to communicate with and show interest in the child, not the success of those efforts.' " *L.T.M.*, 214 Ill. 2d at 68, 824 N.E.2d at 226 (quoting *Syck*, 138 Ill. 2d at 279, 562 N.E.2d at 185). "[T]he issue is whether a parent maintained concern, interest and responsibility as to his or her child's welfare that, under the circumstances, was of a *reasonable* degree." (Emphasis in original.) *Syck*, 138 Ill. 2d at 280, 562 N.E.2d at 185. The parent may be found unfit for failing to maintain either interest, or concern, or responsibility; proof of all three is not required. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 124-25 (2004).

¶ 21 Here, the trial court found respondent maintained some degree of interest and

concern for H.L.V. but found the evidence indicated he failed to maintain any reasonable degree of responsibility for her welfare. The evidence supports the court's conclusion. H.L.V. was born in 2003. Although respondent worked odd jobs, Bridgeman stated she was the one who paid the rent and utilities and bought the groceries. She stated respondent did not contribute any funds. Sally Pocklington testified respondent did not bring over diapers or food or provide money to use in the care of H.L.V. The evidence indicated the money respondent did receive from working was spent on crack cocaine and alcohol. Moreover, he sold household items to purchase drugs.

¶ 22 Respondent currently resides in prison and is not expected to be released until 2013. While in prison, respondent has sent some letters, books on tape, and a Christmas gift to H.L.V. Although respondent receives a small amount of pay in prison, he has not sent any of it to help support H.L.V.

¶ 23 The trial court found the testimony from Bridgeman and Sally Pocklington to be credible and respondent's testimony not credible. Although respondent has showed some interest and concern for H.L.V., he has failed to show a reasonable degree of responsibility as to her welfare. The court's finding of unfitness on this ground was not against the manifest weight of the evidence. Because of our conclusion on this ground, we need not analyze the court's findings on the remaining grounds of unfitness.

¶ 24 B. Best-Interests Findings

¶ 25 Respondent argues the trial court erred in terminating his parental rights. We disagree.

¶ 26 Courts will not lightly terminate parental rights because of the fundamental

importance inherent in those rights. *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001). Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2010). These include 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, 1072, 859 N.E.2d 123, 141 (2006).

See also 705 ILCS 405/1-3(4.05)(a) through (4.05)(j) (West 2010).

¶ 27 The trial court's finding that termination of parental rights is in a child's best interest will not be reversed on appeal 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 in cases "where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008).

¶ 28 The evidence indicated H.L.V., eight years old at the time of the best-interest hearing, had lived with the Pocklingtons for over six years. She was doing well in school, and petitioners had the means to provide for her. The guardian *ad litem* indicated petitioners had provided a stable living environment for H.L.V. and was satisfied they could provide food, shelter, clothing, medical care, and an education for her. The guardian *ad litem* also stated H.L.V. was in favor of petitioners being allowed to adopt her.

¶ 29 The evidence also indicated respondent had been in prison since 2005 and he would remain incarcerated until 2013. It is clear that H.L.V. has adapted well to her environment with petitioners, who have provided her the stability that she needs as a growing child. Respondent, however, cannot provide that stability she needs for the foreseeable future. Based on the evidence presented, we find the trial court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the trial court's judgment.

¶ 32 Affirmed.