2011 IL App (4th) 110718-U

Filed 11/29/11

NO. 4-11-0718

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: A.M., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 09JA109
SEAN MARSHALL,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Where the evidence showed the minor had lived with her great-grandfather most of her short life and was bonded with him and respondent had spent most of the past 13 years of his life in prison, the trial court's finding it was in the minor's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 In April 2011, the State filed a motion for the termination of the parental rights of respondent, Sean Marshall, as to his minor child, A.M. (born in February 2008). In June 2011, the State filed an amended motion to terminate. At a July 2011 hearing, respondent admitted he was unfit due to depravity. After an August 2011 hearing, the Macon County circuit court concluded it was in A.M.'s best interests to terminate respondent's parental rights.

¶ 3 Respondent appeals, contending the trial court erred by finding termination of his parental rights was in A.M.'s best interests. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In September 2009, the State filed a petition for adjudication of wardship, asserting A.M. was (1) neglected under section 2-3(1)(a) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a) (West Supp. 2009)), in that she was not receiving the proper or necessary care for her well-being; (2) neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West Supp. 2009)), in that her environment was injurious to her welfare; and (3) abused under section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West Supp. 2009)) since her parent or parent's paramour created a substantial risk of physical injury to her by other than accidental means that would likely cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function. The allegations supporting the three counts were A.M.'s mother, Felicia Korando, who had prior indicated reports with the Department of Children and Family Services (Department) for substance abuse, drank alcohol and tested positive for methamphetamine and ecstasy during her last pregnancy and was reported to be involved in domestic violence with the father of A.M.'s half-sibling, Br. H. At a November 2009 adjudicatory hearing, the trial court found A.M. was neglected under section 2-3(1)(a) of the Juvenile Court Act. After the dispositional hearing, the court found respondent and Korando were unfit and unable to care for, protect, train, or discipline A.M. Respondent was unfit and unable to care for A.M. because he had (1) recently been released from prison, (2) an extensive history with the Department, and (3) substance-abuse issues. The court made A.M. a ward of the court and placed her custody and guardianship with the Department.

¶ 6 In April 2011, the State filed a motion to terminate the parental rights of respon-

dent and Korando as to A.M. On June 2, 2011, the trial court held a permanency review hearing, at which respondent appeared and was admonished as to the termination motion. At the hearing, the State moved to file an amended motion to terminate respondent's parental rights, which the court granted. The amended motion asserted respondent was unfit because he (1) failed to maintain a reasonable degree of interest, concern, or responsibility for A.M.'s welfare (750 ILCS 50/1(D)(b) (West 2008)); (2) deserted A.M. for more than three months prior to the unfitness proceeding (750 ILCS 50/1(D)(c) (West 2008)); (3) was depraved since he had nine felony convictions (750 ILCS 50/1(D)(i) (West 2008)); (4) failed to make reasonable efforts to correct the conditions that were the basis for A.M.'s removal from him (750 ILCS 50/1(D)(m)(i) (West 2008)); (5) failed to make reasonable progress toward the return of A.M. within the initial nine months after the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2008)); and (6) failed to make reasonable progress toward the return of A.M. during any nine-month period after the end of the initial nine months following the neglect adjudication (750 ILCS 50/1(D)(m)(iii) (West 2008)). Also, on the day of the hearing, Korando surrendered her parental rights to A.M. At a July 2011 hearing, respondent stipulated he had nine felony convictions, of which two were in the last five years, and admitted he was an unfit parent due to depravity as alleged in the third count of the State's amended motion. The court accepted the admission and stipulation and set the cause for a best-interests hearing.

¶ 7 On August 11, 2011, the trial court held the best-interests hearing. Megan White, the foster-care case manager, testified she had been managing this case since September 2010 when she took over for Tiffany Ramsey. White first had contact with respondent at the June 2011 hearing in this case. From the time she took over the case until June 2011, respondent had

been in prison a majority of that time. While he was in prison, White did not contact respondent or provide him with services or visits. In addition to the June 2011 court date and the July 2011 fitness hearing, White had met respondent once and had received one voice-mail message from him. According to her files, respondent had last visited A.M. in December 2009. Respondent reengaged in services after the July 2011 hearing. His first scheduled monthly visitation with A.M. was set for the day after the best-interests hearing.

¶ 8 According to White, respondent was not close to having A.M. returned to him. She estimated it would take respondent six months to complete all of his services. Respondent had gone to a parenting class and taken an assessment, for which he scored so high he did not need any more classes. Thus, respondent had completed that service. White had been told respondent had a job, a place to live, and his driver's license. Respondent needed to complete a substance-abuse assessment. Respondent also needed a domestic-violence assessment, which was going to be done by his counselor. Moreover, respondent needed to stay out of legal trouble and maintain a stable environment. White agreed respondent had been trying to cooperate and take advantage of services since his release from prison. This was respondent's first chance to engage in his services since Korando decided not to seek the return of A.M.

¶ 9 Additionally, White testified A.M. had lived with her great-grandfather since September 2009 and was doing very well in his care. He was an adoptive resource for A.M. Further, A.M. had bonded with her great-grandfather, and he and his wife were the only people A.M. really knew. They could take care of her needs and provide for her. In her opinion, it was in A.M.'s best interests to stay with the people she knew.

¶ 10 Respondent testified he was released from prison on May 27, 2011. While in

prison, he did not receive anything regarding services from the Department and did not get any visits with A.M. He did receive some paperwork from White about the June 2011 court date. As soon as he got out of prison, he called White but could not reach her and then just waited until the June 2011 hearing to meet her. According to respondent, he then called White five to six times between June 2, 2011, and July 12, 2011, but did not meet her before the July 12, 2011, hearing. He admitted he did not try to contact a case manager while he was in prison.

¶ 11 Since July 12, 2011, he had reengaged in services. He no longer attended parenting classes because he did so well on the test. He had met with a counselor for domestic violence and psychological counseling four times, and his counselor did not think he needed any more sessions. However, White told the counselor respondent needed at least five sessions with him. Moreover, respondent had an appointment for his substance-abuse assessment. Respondent was currently working full-time for a towing and recovery company, making enough money to support himself. He was renting a home with his fiancée.

¶ 12 Respondent admitted that, since he had turned 18 in 1998, he had spent most of his time in prison. His convictions included, *inter alia*, aggravated battery with a weapon, aggravated battery in a public place, burglary, and theft. Respondent testified he had changed because he realized he had to grow up and did not want to be in prison anymore. He had kids and wanted to be a part of their lives. For the first time, respondent had a valid driver's license, and some of his prior convictions had been related to his lack of a license.

¶ 13 Additionally, respondent testified that, when he met with White at the July 2011 hearing, she informed him that he could see A.M. at their meeting. However, when he arrived at the meeting, White advised him her supervisor had stated respondent could not see A.M. until he

demonstrated he was willing to do services.

¶ 14 Adelle Small testified respondent had been her employee for around three months and had been doing a very good job. Respondent was not getting into any trouble, and she foresaw him staying with her company. Small is also a friend of respondent's and had known him for around seven years. Small had witnessed respondent leave a voice-mail message for his caseworker on at least three or four occasions. Small was willing to accommodate respondent in completing any necessary services. According to Small, respondent's home was clean and had food.

¶ 15 During closing arguments, the guardian *ad litem* recommended respondent's rights be terminated to give A.M. permanency in her life. After hearing all of the evidence and the parties' arguments, the trial court found the termination of respondent's parental rights was in A.M.'s best interests.

¶ 16 On the same day as the hearing, respondent filed a notice of appeal from the termination of his parental rights in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency ones). (We note the notice of appeal failed to comply with the special caption provision of Illinois Supreme Court Rule 311(a)(1) (eff. Feb. 26, 2010), but that deficiency does not affect our jurisdiction.) Accordingly, we have jurisdiction over this appeal under Illinois Supreme Court Rules 304(b)(1) (eff. Feb. 26, 2010).

¶ 17 II. ANALYSIS

¶ 18 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West

2010)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2008)). See *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the trial court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the child's best interests that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). Here, respondent only challenges the trial court's best-interests finding.

¶ 19 During the best-interests hearing, the trial court focuses on 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, 784 N.E.2d 304, 309 (2002). In doing so, the court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2010)). See *In re T.A.*, 359 Ill. App. 3d 953, 959-60, 835 N.E.2d 908, 912-13 (2005). This court reviews a trial court's best-interests determination under the manifest-weight-of-the-evidence standard. See *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). A trial court's decision 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, 830 N.E.2d 508, 517 (2005). We give great deference to the trial court's determination because it has the superior opportunity to observe the witnesses and evaluate their credibility. *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 20 While respondent's efforts in turning his life around since getting out of prison are commendable, the best-interests factors of section 1-3(4.05) of the Juvenile Court Act favor termination of his parental rights. A.M. had lived with her great-grandfather for almost two of

her three years of life. His home is the only home she knows, and thus her background, identity, attachment, sense of security, and sense of familiarity are with her great-grandfather. Moreover, it is A.M.'s great-grandfather that has continually shown affection for her, and she is bonded with him and his wife. They desired to adopt her and give her permanency. Respondent had not seen A.M. since she was one year old and is a stranger to her. Even if the Department is to blame for respondent's failure to see A.M. in the summer of 2011, nothing changes the fact respondent did not see her from December 2009 to June 2011 based on his own actions by again going to prison. While he blames the Department for not providing him services and visitation when he was in prison, respondent admitted he did not attempt to contact a case manager during his prison term or make any other effort to be a part of A.M.'s life. Moreover, even though respondent had shown stability and a desire to be a part of A.M.'s life since leaving prison, questions still remain about his ability to maintain stability as he has spent most of his adult life in prison.

¶ 21 Respondent notes "[a] fit parent has a superior right to custody of his or her child, which can only be superseded by a showing of good cause to place custody of the child in a third party." *In re S.S.*, 313 Ill. App. 3d 121, 132, 728 N.E.2d 1165, 1174 (2000). However, respondent stipulated he was an unfit parent, and thus the aforementioned provision does not apply to him. Moreover, the other quote mentioned in respondent's brief addresses our supreme court's reasoning for applying strict-scrutiny analysis to statutes that are employed as part of a procedure to terminate parental rights. See *In re D.W.*, 214 Ill. 2d 289, 311, 827 N.E.2d 466, 481 (2005). Respondent has not challenged any statutes as unconstitutional, and our review of the record indicates the State and the court followed the statutes applicable to the termination of parental rights in this case. The proper application of the governing statutes to the facts of this

case favors termination of respondent's parental rights by a preponderance of the evidence.

Accordingly, we find the trial court's conclusion the termination of respondent's parental rights was in A.M.'s best interests was not against the manifest weight of the evidence.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the Macon County circuit court's judgment.

¶ 24 Affirmed.