2013 IL App (4th) 130190-U

NO. 4-13-0190

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 25, 2013
Carla Bender
4th District Appellate
Court, IL

In re: G.C., L.C., and K.C., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellant,	)	McLean County
v.	)	No. 11JA61
ANNA CROWELL,	)	
Respondent-Appellee.	)	Honorable
	)	Kevin P. Fitzgerald,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justice Knecht concurred in the judgment.
Justice Pope dissented.

ORDER

¶ 1 *Held*: This court found (1) we have jurisdiction over this appeal pursuant to Supreme Court Rule 306(a)(5) and (2) the trial court's decision that it was in the minor's best interest that respondent's parental rights not be terminated was not against the manifest weight of the evidence.

¶ 2 In May 2011, the State filed a petition for adjudication of wardship with respect to G.C., L.C., and K.C., the minor children of respondent, Anna Crowell. In September 2012, the State filed a petition to terminate respondent's parental rights. In November 2012, the trial court found respondent unfit. In January 2013, respondent executed direct surrenders as to G.C. and K.C. At the best-interest hearing, the court found it was not in L.C.'s best interest to terminate respondent's parental rights.

¶ 3 On appeal, the State argues the trial court's determination that it was in L.C.'s best

interest not to terminate respondent's parental rights was against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In May 2011, the State filed a petition for adjudication of wardship with respect to G.C., born in February 2011; L.C., born in August 2009; and K.C., born in December 2007, the minor children of respondent. Joshua Crowell was the father of G.C. and K.C. Russell Webb is the father of L.C. The petition alleged the minors were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2010)) in that their environment was injurious to their welfare because respondent and Joshua had unresolved issues of domestic violence and/or anger management that created risk of harm to the minors. The petition also alleged the minors were neglected in that their environment was injurious to their welfare if in the care of Joshua, as he had a pending criminal charge of aggravated criminal sexual assault of a minor and had been indicated by the Department of Children and Family Services (DCFS) for risk of sexual harm to the minors. The trial court found probable cause to believe the minors were neglected and placed temporary custody of them with DCFS.

¶ 6 In November 2011, the trial court found the minors were neglected based on an injurious environment due to unresolved issues of domestic violence and anger management. The court noted the neglect was inflicted by respondent and Joshua. In its November 2011 disposition order, the court found respondent unfit to care for, protect, train, educate, supervise, or discipline the minors and placement with her would be contrary to their health, safety, and best interests because she needs domestic-violence treatment, possible mental-health counseling, parenting classes, appropriate employment, and safe housing. The court also found Joshua was

unfit and Russell was fit.

¶ 7 The permanency goal for L.C. was to remain home with Russell. The permanency goal for G.C. and K.C. was to return home within 12 months. The trial court found it in the minors' best interest that they be made wards of the court. In February 2012, it was reported that Joshua had committed suicide.

¶ 8 In April 2012, the trial court entered a permanency order, setting the permanency goal for L.C. as remain home with Russell. The court also restored custody of L.C. to his father. The court found respondent had not made substantial progress as she had not maintained a substance-free lifestyle and she did not have appropriate employment or stable housing. The court indicated respondent needed to demonstrate an understanding of the danger she presents to the minors when she possesses and conceals child pornography, which had been documented.

¶ 9 In September 2012, the State filed a petition to terminate respondent's parental rights. The State alleged respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (count I) (750 ILCS 50/1(D)(b) (West 2012)); (2) make reasonable efforts to correct the conditions that were the basis for the removal of the children from her (count II) (750 ILCS 50/1(D)(m)(i) (West 2012)); and (3) make reasonable progress toward the return of the minors to her within the initial nine months after the adjudication of neglect (count III) (750 ILCS 50/1(D)(m)(ii) (West 2012)). In November 2012, the trial court found respondent unfit on count III following her voluntary admission.

¶ 10 Luke Dalfiume, a licensed clinical psychologist, filed a psychological assessment report with the trial court. His evaluation found, in part, as follows:

"[Respondent's] history is one of a person who has not had a long-

> term, safe, stable, and secure life, going back to her childhood. Her marriage to a man later accused of sexually offending against a minor and her involvement in prostitution with a man whose picture of sexual abuse of a child was on her phone suggest her judgment and dependency serve to seriously impair her judgment. Her ability to provide adequate care and protection of her children must thus be seriously questioned.
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> ***
>
> [Respondent] has a long-term history of personal turmoil and disruption, which appears to be currently manifesting as a Generalized Anxiety Disorder. This serves to undermine her ability to cope effectively with life. *** [Respondent] is likely to continue to make poor choices such as those she has in the past. These poor choices are likely to endanger her children, either exposing them to sexual offenders or to the ongoing chaotic, unstable nature of [respondent's] life."

¶ 11 A best-interest report involving G.C. and K.C. indicated respondent was living with a paramour "that has had a lengthy criminal history." Respondent completed substance-abuse treatment in December 2012 and has been attending counseling. She has had visitation once a month since the termination petition was filed, and the report indicated the "visits have gone well." G.C. and K.C. have had sibling visits with L.C., and Russell indicated he would continue the visits.

¶ 12 On January 31, 2013, respondent executed direct surrenders as to G.C. and K.C. The surrenders applied to the adoption of G.C. and K.C. by Dawn and Everett Crowell. The trial court entered an order terminating respondent's parental rights to these two minors.

¶ 13 Also on January 31, 2013, the trial court conducted the best-interest hearing pertaining to L.C. Helen Jones, a foster-care-family worker, testified she was assigned to L.C.'s case in June 2011. The case remained open until April 2012, when guardianship of L.C. was restored to his father, Russell. She visited Russell's home and never had any concerns about L.C.'s physical needs being met.

¶ 14 Russell and his wife Kristen live in a four-bedroom house. At the time she closed the case, Jones stated three other children lived in the home, a 10-year-old girl, a 5-year-old boy, and a 4-year-old girl. The three minors were the children of Russell's wife and he was not the father. Jones stated L.C. played well with the other children. Further, he called Russell "daddy" and Kristen "mom." Jones believed the adoption of L.C. by the Webb family would give him permanency and stability.

¶ 15 Jones also stated she was respondent's caseworker since June 2011. At that time, respondent was living on Roosevelt in Bloomington. She moved to Rainbow Court in July 2011 and lived with friends. In September 2011, she moved to another apartment to live with friends. Near the end of January 2012, she moved to a motel. She moved back to the residence on Roosevelt in June 2012.

¶ 16 To have unsupervised contact with L.C., Jones stated respondent would have to have a stable home and a legal means of income. She would need to have "a good two years" of not having any negative contact with the police. She would also need to make better choices in

the selection of her paramours and those with whom she resides. Jones stated Russell had mentioned allowing respondent to visit with L.C., but never on an unsupervised basis.

¶ 17 Russell testified he was L.C.'s biological father and L.C. was placed in his care in November 2011. Russell stated his wife was "all for it" when he discussed L.C. coming to live with them. She was unable to make the hearing because of her employment. If L.C. was freed for adoption, Russell stated Kristen was "more than willing to adopt him." Russell stated he had been allowing contact between L.C. and respondent. He stated he was "not going to deny [L.C.] that" but he "would like to have it supervised."

¶ 18 On cross-examination, Russell stated he worked as a technician at an auto dealership in Clinton. He had health insurance for the children. He had been in a relationship with Kristen for over two years, and she passed a DCFS background check. On examination by the trial court, Russell stated his health was "very good." When respondent had visitation with L.C., Russell supervised.

¶ 19 Following closing arguments, the trial court noted the "unusual factual situation" in this case, stating termination of parental rights is usually necessary to achieve permanency for the minor. Here, however, L.C. had achieved permanency as he had been placed with his father. The court believed it should not "be in the business of terminating parental rights unless there's really a reason that benefits the child." The court found the statutory factors were neutral in this case and concluded it was not in L.C.'s best interest that respondent's parental rights be terminated.

¶ 20 In February 2013, Russell filed a motion to reconsider, arguing the trial court erred in not terminating respondent's parental rights. At the hearing on the motion, Russell's

counsel called Kristen as part of an offer of proof. Kristen testified she worked for Royal Publishing and could not make the previous hearing because of work-related duties.

¶ 21 The trial judge stated he had not done a good job of articulating the reasons for his previous decision at the best-interest hearing but felt it unnecessary since he was not terminating respondent's parental rights. The judge then went on to state, in part, as follows:

> "I note and noted at the time that there—I believe there is a bond between [L.C.] and Ms. Crowell. The last permanency report that involved [L.C.] was in April of 2012 because we restored custody and guardianship to Mr. Webb at that point. We retained wardship. But that last report indicated that in general the visitations go fairly well. Mom gives the kids hugs and kisses. Ms. Crowell loves her children and gives them attention during the visits. She plays with them on the floor and they bring her toys to play with. I also note that Mr. Webb testified, as did the other foster parents, that they are going to continue to allow Ms. Crowell to have visitation and contact with the kids. So I think that speaks of a bond there, and I don't believe that they would be allowing her continued contact if they felt that was not in the best interest of their children. Particularly Mr. Webb would not allow continued contact with [L.C.] if he felt that was not in his best interest, because he certainly could preclude that if he decided to do so.
>
> So, as I look at the factors, and I—I think you do approach

this differently. I mean, there's been some reference to the psychological report and Mom's deficiencies, and certainly she has some, but we are not looking at her as being a custodial parent or a return parent, and I think we need to look at what are the circumstances now with [L.C.] being in this home. And I think the factors in 705 [ILCS] 405/1-3, I'm going to go through them individually:

The physical safety and welfare of the child including food, shelter, health and clothing. I think the suggestion that Mom can't or would not be able to provide that is misplaced. [L.C.] is with his father who has the ability to provide that for him. That's why I think that's a neutral factor. It's not going to change if we terminate. It's not going to change if we don't terminate. Mr. Webb is providing that for him and doing a good job at it.

The development of the child's identity is not going to change by terminating. That's a neutral factor.

The child's background and ties, including familial, cultural and religious. I think that's largely neutral. That may favor non-termination slightly if we are cutting out maternal familial background and ties.

The child's sense of attachment including where the child actually feels love, attachment and a sense of being valued. I believe that slightly favors non-termination, because to eliminate

Mom would eliminate an actual feeling of love that he has for her.

I think the child's sense of security, he's in a safe, secure place. I don't think termination or non-termination changes that. I think that's a neutral factor.

The child's sense of familiarity I don't believe is affected by termination or non-termination. I think that's a neutral factor. The continuity of affection for the child I think slightly favors non-termination because it may affect Mom's continuity of affection for him.

The least disruptive placement alternative for the child, I believe that's neutral because I don't believe termination is affected—would affect that at all. I think that's a neutral or a non-factor.

I believe the child's wishes and long-term goals given his age and having heard no evidence of that is a non-factor.

The community ties, including church, school and friends in a non-factor.

Permanence for the child, in my opinion, in this case [is] a non-factor because he has achieved permanency with his father.

The uniqueness of every family and child is not involved here.

The risk attendant to entering and being in substitute care is

not a factor.

The preferences of the persons available to care for the child. I always look at that, and I guess I'm not exactly sure what that says. If it means persons available to care for the child, that's only Mr. Webb because I don't think Mom is available to care for him. She's not capable of caring for him on an ongoing permanent basis. So I would suggest that that factor slightly favors termination.

So, we look at what—I look at what's the benefit of termination for [L.C.]? And the only benefit that I see is that it might provide a little more permanency if something would happen to Mr. Webb and perhaps his wife. Although I believe—and I haven't given this a lot of thought, but I don't—I think Mr. Webb, if something would happen to him, and there's no suggestion that he's got a health issue. In fact, I think he testified he's very healthy. And the likelihood of him dying before [L.C.] achieves majority is—it's there but it's—I think it's remote. He could still nominate his wife as guardian if something happened to her—to him only, or they could nominate someone as guardian. I think under the circumstances, if Mom's situation didn't improve, there would be no way that she would be given custody, and that if they nominate a guardian the same permanency could be achieved under that possibility.

The talk about the adoption of—by Mr. Webb of his wife's children, my—I don't think that's a factor really in this case. My recollection of the evidence is that there was testimony that one of the dads was very involved in the life, one of the other dads paid child support and one dad was not involved at all. So the likelihood of him being able to adopt two of the kids probably is pretty remote. There was no suggestion of unfitness. And had they been able to adopt the other children and [L.C.] being then maybe the odd man out, not being adopted by this new nuclear family, that to me might favor termination, but I don't see that as a possibility based on what I heard that they are going to be adopted into this new nuclear family. So I don't believe that really is a factor one way or the other.

So I believe there's a bond that exists between Mom and [L.C.], and I think there is some detriment to him to remove that bond. And there's always the possibility that Mom could achieve—or get some services completed, turn her life around and be a more important person in his life. But she can still be there to some extent. And if she made a turnaround and was able to get employment, she could be ordered to pay some child support and that might help the family a little bit. Now I'm not suggesting that that's a big factor. It's a relatively small factor because, based on

> what we know, the likelihood of her obtaining substantial employment is probably not great. But it's out there. Probably not more remote than the chance of Mr. Webb dying.
>
> But, in any event, as I said, I don't see [L.C.] being in any different position than most of the kids that we have in this courtroom to get returned to a fit parent when one of the other parents is unfit. I don't believe it's in his best interest that her parental rights be terminated, and the Motion to Reconsider is denied."

The State then filed a notice of appeal.

¶ 22 II. ANALYSIS

¶ 23 A. Jurisdiction

¶ 24 Initially, the State raises whether this court has jurisdiction to hear its appeal pursuant to Supreme Court Rules 301, 303, 304(b)(1), and 660. In *In re A.H.*, 207 Ill. 2d 590, 593, 802 N.E.2d 215, 217 (2003), the trial court held it was not in the minors' best interests to terminate parental rights. The court ordered subsidized guardianship, continued the matter for a permanency hearing, and admonished the parents that they still risked termination of their parental rights. *A.H.*, 207 Ill. 2d at 593, 802 N.E.2d at 217. The State appealed, but the appellate court held it lacked jurisdiction to consider the appeal because the trial court's order was not a final or appealable order. *A.H.*, 207 Ill. 2d at 593, 802 N.E.2d at 217.

¶ 25 In that case, our supreme court held the denial of a petition to terminate parental rights was not a final order for purposes of appeal "because it did not end the litigation of the parties on the issue of termination of parental rights and did not 'set or fix' the rights of the parties

on either side of the controversy." *A.H.*, 207 Ill. 2d at 594, 802 N.E.2d at 218. Further, in noting the order was not final, the court pointed out the possibility existed that parental rights could be terminated in the future. *A.H.*, 207 Ill. 2d at 594, 802 N.E.2d at 218.

¶ 26 The State argues this case is distinguishable from *A.H.* and contends the trial court's decision to terminate parental rights was final for purposes of this appeal. However, we need not make that determination as the State has also requested that this court grant review pursuant to Supreme Court Rule 306(a)(5) (eff. Feb. 16, 2011). See *In re Alexis H.*, 335 Ill. App. 3d 1009, 1014, 783 N.E.2d 158, 163 (2002) (stating "the appellate brief is viewed as the petition itself"). Our supreme court noted "the appellate court retains the discretion to review an appeal from the denial of a termination petition under Rule 306(a)(5), which permits appeals 'from interlocutory orders affecting the care and custody of unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules.' " *A.H.*, 207 Ill. 2d 596, 802 N.E.2d at 218 (quoting 166 Ill. 2d R. 306(a)(5)). Given the importance of parental rights involved in this case as well as considering the best interests of L.C., we exercise our discretion and take jurisdiction of this appeal.

¶ 27 B. The Trial Court's Decision Denying Termination of Parental Rights

¶ 28 The State argues the trial court's determination that it was in L.C.'s best interest not to terminate respondent's parental rights was against the manifest weight of the evidence. We disagree.

¶ 29 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, 1139-40 (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 2012). 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) to (4.05)(j) (West 2012). Further, the likelihood of adoption may be considered at the best-interest hearing. *In re Tashika F.*, 333 Ill. App. 3d 165, 170, 775 N.E.2d 304, 308 (2002).

¶ 30 A trial court's best-interest determination is reviewed under the manifest-weight-of-the-evidence standard. *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). 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).

¶ 31 In the case *sub judice*, L.C., born in August 2009, was placed in his father's care in November 2011. The trial court returned custody and guardianship of L.C. to Russell in April 2012. At the best-interest hearing, Russell testified he was married to Kristen, who had three children of her own. They lived in a four-bedroom house, and Jones had no concerns about L.C.'s physical needs being met. Both Russell and Kristen worked, and the children had health insurance through his employment. Although she did not testify at the hearing because she had to work, Russell stated Kristen was "more than willing" to adopt L.C.

¶ 32 Respondent stipulated to one ground of unfitness. At the best-interest hearing, Jones testified that respondent had not maintained a stable residence or a legal means of income. Jones noted respondent needed to make better decisions in the selection of her paramours. The record showed that respondent had a bond with her children, gave them attention during visits, and played with them on the floor.

¶ 33 Taken from the transcript of the hearing on the motion to reconsider, we quoted extensively from the trial court's recitation of the best-interest factors and the reasoning for its decision not to terminate respondent's parental rights. The State focuses its argument on four main factors, including (1) permanence and the likelihood of adoption, (2) L.C.'s sense of attachments, (3) his physical safety and welfare, and (4) his sense of security.

¶ 34 In terms of permanence, the trial court noted it had been achieved because L.C. was living with his father. The State, however, contends the court failed to consider the benefits

that termination and an ensuing adoption by Kristen would have on L.C.'s need for permanence. The State posits adoption by Kristen would provide another person who would be legally obligated to provide for L.C.'s needs in the event of Russell's death. Moreover, adoption would demonstrate her commitment to L.C., which would enhance his feeling of permanence.

¶ 35 We find the evidence on the possibility of L.C.'s adoption by Kristen lacking in this case. She did not testify at the best-interest hearing, granted she was unable to attend due to her employment. Kristen had three children with three different men, and two of those men were still involved in their children's lives. Thus, as the court found, L.C. would not be "the odd man out" in this combined nuclear family because the evidence indicated Russell would not be able to adopt two of Kristen's children.

¶ 36 As to the other three factors, the State argued L.C. was treated as family in Russell's home, his visits with respondent were supervised and sporadic, respondent would not be able to provide for L.C.'s needs, and L.C. could be exposed to respondent's chaotic and unstable lifestyle. We find the evidence on these factors failed to support termination in this case.

¶ 37 The trial court found respondent had a bond with L.C. and termination would cause "some detriment" to that bond. Further, no evidence indicated L.C. would be harmed by having continued contact with his mother. Russell himself stated he did not want to deny L.C. the opportunity to visit with respondent, so long as the visits are supervised. If Russell seriously considered respondent a threat to L.C.'s physical safety or welfare, he likely would not have been willing to facilitate visitation. Moreover, we trust Russell will only allow visitation at appropriate times and in appropriate places.

¶ 38 After carefully reviewing the record and the transcripts of the best-interest hearing, we find the trial court's decision was not against the manifest weight of the evidence. Living with his father will give L.C. the permanence he needs during his tender years. From what we can deduce from the record, he will be safe and well taken care of in his father's home. At the same time, there is a young boy who has a bond with his mother. While visits may have been sporadic and in need of supervision, the relationship bonds between mother and son should not be broken until such time as it can be shown it would be in L.C.'s best interest. The court decided that time had not come, and we do not find the opposite conclusion was clearly evident.

¶ 39 III. CONCLUSION

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

¶ 41 Affirmed.

¶ 42 JUSTICE POPE, dissenting.

¶ 43 I respectfully dissent because I believe the trial court's decision not to terminate respondent's parental rights to L.C. is clearly against the manifest weight of the evidence and compellingly not in the best interest of L.C.

¶ 44 Respondent is a prostitute who engaged in relationships with child sex offenders, including her husband who was the father of her two children, G.C. and K.C. One of the child sex offenders with whom respondent engaged in acts of prostitution had photographs taken of him with his penis in the mouth of a five-year-old girl who was known to respondent. After receiving this and other pornographic pictures of the five-year-old, respondent's husband told her to delete them from her phone because she could get in trouble for possessing them. Rather than report the perpetrator to the authorities, respondent transferred the photographs to her email account and deleted them from her phone. She never sought help for the five-year-old. After her husband was charged with the aggravated criminal sexual assault of their 13-year-old babysitter, he committed suicide.

¶ 45 As the majority notes, respondent agreed to the termination of her parental rights to G.C. and K.C. and gave consent for them to be adopted by their paternal grandparents. L.C. was born between the births of K.C. and G.C. but does not share the same father. Respondent has a fourth child by a third man. That child was in child-protective services in the State of Oklahoma.

¶ 46 The majority accurately quotes from respondent's current psychological assessment at ¶ 10 of its decision. The psychologist found respondent's poor choices were likely to expose her children to child sex offenders and/or to the ongoing chaotic, unstable nature of

respondent's life.

¶ 47 Respondent's instability is characterized by her moving five times between June 2011 and June 2012 and her current choice to live with a married paramour who has a lengthy criminal history. Respondent has a history of drug abuse, including methamphetamine, cannabis, Xanax, and bath salts.

¶ 48 L.C. has been living with his father, Russell, and his stepmother, Kristen, since he was two years old. L.C. will be four years old in August. Kristen's three children, ages 10, 5, and 4, also live in the home. L.C. calls Kristen "mom" and has been fully integrated into this family. Both Russell and Kristen have stable employment and stable housing. Kristen's mother provides day care for the children, including L.C.

¶ 49 Testimony at the best-interest hearing showed Kristen had inquired about and is more than willing to adopt L.C. Kristen did not attend the best-interest hearing. The trial judge questioned her commitment to L.C. because she did not attend the best-interest hearing. Later, at the hearing on the motion to reconsider, Kristen testified, pursuant to an offer of proof, the date of the best-interest hearing had been changed on short notice. Consequently, she was unable to give the two-weeks' notice for a day off required by her employer. The court's docket sheet reflects the hearing was originally scheduled for January 30, 2013, but was actually held January 31, 2013.

¶ 50 L.C.'s guardian *ad litem*, attorney Don Bernardi, recommended termination of respondent's parental rights. He, the State, and Russell's attorney all argued the best-interest factors all weighed in favor of termination.

¶ 51 While the trial judge found a bond existed between respondent and L.C., the

evidence showed otherwise. Russell testified respondent's visits were sporadic since L.C. had been living with him. She would tell Russell she "didn't have a vehicle" or "couldn't get a ride." Despite having the opportunity to call her children on Wednesday and Sunday evenings, she had only called them about three times between September 25, 2012, and January 31, 2013. The trial court noted Russell was allowing respondent to visit L.C. and felt he would not be doing so if he did not feel visits were in L.C.'s best interests. However, respondent's rights to L.C. had not yet been terminated. To penalize L.C. and Russell because Russell was trying to cooperate with the agency's suggestions of once-a-month visits for respondent is simply wrong. Russell was not in a position to deny respondent visitation during the pendency of the proceedings.

¶ 52 When commenting on the physical safety and welfare of the child, including food, shelter, and clothing, the trial court did not look at this factor as it applied to respondent. Because Russell could provide for L.C.'s physical safety and welfare, the court found this to be a neutral factor. Again, the court is simply mistaken. This factor counts against respondent. All of the evidence showed respondent was not able to care for L.C.'s physical needs nor would he be safe with her. At the best-interest hearing, respondent's own attorney stated, "It's hard to imagine a scenario where L.C. would be placed back into mom's custody."

¶ 53 The trial court found the child's sense of security to be a neutral factor. Again, the court did not look at how this factor applied to respondent. Clearly, L.C.'s sense of security would be negatively impacted by respondent. Why should Russell be saddled with having to supervise respondent's visits under these circumstances, where (1) respondent has not called or visited L.C. regularly, (2) L.C. has been living with Russell since the age of two, (3) Kristen has expressed a willingness to adopt L.C., and (4) respondent should not have unsupervised visits for

the foreseeable future?

¶ 54 The trial court found the least disruptive placement alternative to be a neutral factor because L.C. is with Russell. However, there is great potential for disruption of L.C.'s life by respondent in the future. Nothing stops respondent from seeking visitation or custody in the future. Why should L.C. be put through that potentially tortuous process? Why should Russell be in the position of having to expend resources that could otherwise be used for his family's benefit to hire an attorney to resist such efforts in the future? Respondent's continued involvement has grave disruptive potential down the road.

¶ 55 Two other factors strongly weighed in favor of termination. First is the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings. L.C. considers Kristen his mom. He is living with Kristen's three children as his siblings. If respondent's rights are not terminated, Kristen is not free to adopt L.C. and give him the same standing in the household her other three children have. As the children grow older, they will become acutely aware of L.C.'s difference—their mother is not his mother. Likewise, L.C. will become acutely aware Kristen is not his "real" mother.

¶ 56 Second, the trial court is to consider the preferences of the person available to care for the child. Here, that person is Russell. His preference is to have his wife adopt L.C. His preference is not a neutral factor; it favors termination. Should something happen to Russell, should he be killed in a car accident or acquire a terminal illness, Kristen would have a difficult time keeping L.C. in her household. Her custody of L.C. would be subject to challenge. This is clearly not in L.C.'s best interest.

¶ 57 Frankly, not a single factor militates against termination of respondent's rights to

L.C. Most factors support termination. Respondent did not present *any* evidence whatsoever at the best-interest hearing.

¶ 58 Unlike the majority, I believe it is clearly evident the opposite conclusion should have been reached by the trial court, and its decision not to terminate respondent's parental rights was against the manifest weight of the evidence. Indeed, I have never seen such one-sided evidence. There was virtually no evidence to support the decision not to terminate respondent's rights. Therefore, I must dissent.