2013 IL App (4th) 130500-U

NO. 4-13-0500

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 9, 2013
Carla Bender
4th District Appellate
Court, IL

In re: T.H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Livingston County
v.	)	No. 10JA11
TALIA FONCE,	)	
Respondent-Appellant.	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding that (1) the trial court did not violate the respondent's right to due process by not conducting an *in camera* interview with the respondent's son and (2) the court's best-interest finding was not against the manifest weight of the evidence.

¶ 2 In March 2012, the State filed an amended petition to terminate the parental rights of respondent, Talia Fonce, as to her son, T.H. (born August 18, 2003). Following a March 2013 fitness hearing, the trial court entered a written order finding respondent unfit. Thereafter, the court conducted a best-interest hearing that later resulted in the termination of respondent's parental rights.

¶ 3 Respondent appeals, arguing that (1) the trial court violated her right to due process by denying her motion to conduct an *in camera* interview of T.H. at the best-interest

hearing and (2) the court's best-interest finding was against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Circumstances Preceding the State's Petition To Terminate Respondent's Parental Rights

¶ 6 On July 27, 2010, the State filed a petition for adjudication of wardship pursuant to the Juvenile Court Act of 1987 (705 ILCS 405/1-1 to 18 (West 2010)), alleging that T.H. was a dependent minor in that he was without a parent, guardian, or legal custodian due to respondent's incarceration (705 ILCS 405/2-4(1)(a) (West 2010)). At a shelter-care hearing held that same day, the trial court appointed the Department of Children and Family Services (DCFS) as T.H.'s temporary guardian based on evidence showing that respondent was (1) in jail charged with solicitation to commit murder and (2) not in a financial position to post the $2 million bond imposed. (The record shows that police arrested respondent on July 23, 2010, and DCFS took temporary custody of T.H. the following day.)

¶ 7 At a September 8, 2010, adjudicatory hearing, the trial court accepted respondent's admission that T.H. was a dependent minor. Following a later dispositional hearing, the court adjudicated T.H. a ward of the court and maintained DCFS as his guardian.

¶ 8 B. The State's Petition To Terminate Respondent's Parental Rights

¶ 9 In March 2013, the State filed an amended petition to terminate respondent's parental rights pursuant to the Adoption Act (750 ILCS 50/1 to 24 (West 2010)). Specifically, the State alleged that respondent was an unfit parent in that (1) respondent failed to make reasonable progress toward the return of T.H. to her care within nine months after the trial court's

dependency adjudication (September 8, 2010, to June 8, 2011) (750 ILCS 50/1(D)(m)(ii) (West 2010)); (2) respondent failed to make reasonable progress toward the return of T.H. to her care during any nine-month period after the end of the initial nine-month period following the court's dependency adjudication (after June 8, 2011) (750 ILCS 50/1(D)(m)(iii) (West 2010)); (3) T.H. had been in foster care for at least 15 of the last 22 months, and respondent could not prove by a preponderance of the evidence that it was more likely true than not that it would have been in T.H.'s best interest to be returned to her within six months of March 1, 2013, when the State filed this termination petition (750 ILCS 50/1(D)(m-1) (West 2010); and (4) DCFS had temporary custody of T.H., respondent was incarcerated at the time the State filed the termination petition at issue, respondent had been repeatedly incarcerated as a result of criminal convictions, and respondent's repeated incarcerations prevented respondent from discharging her parental responsibilities (750 ILCS 50/1(D)(s) (West 2010)).

¶ 10 C. Respondent's March 2013 Fitness Hearing

¶ 11 1. *The State's Evidence*

¶ 12 In May 2011, Nicole Meyer, a DCFS contractor, became respondent's caseworker. At that time, respondent was residing at the Dwight Correctional Center (hereinafter, prison). Meyer confirmed that on July 24, 2010, DCFS assumed temporary guardianship of T.H. because a day earlier, police arrested respondent and her paramour after they attempted to hire an undercover police officer to kill the paramour's former wife. Respondent was later found guilty of solicitation of murder for hire (720 ILCS 5/8-1.2(a) (West 2010)) and sentenced to 35 years in prison. (In October 2012, this court affirmed defendant's conviction and sentence. *People v. Fonce*, 2012 IL App (4th) 110457-U (unpublished order under Supreme Court Rule 23). In

January 2013, the Illinois Supreme Court denied respondent's petition for leave to appeal. *People v. Fonce*, No. 115277 982 N.E.2d 771 (Jan. 30, 2013). (At the time of the fitness hearing, respondent was preparing a writ of *certiorari* to the United States Supreme Court to contest her conviction and sentence.)

¶ 13 In July 2011, Meyer evaluated respondent's client service plan, which was initiated by her predecessor six months earlier. Meyer explained that respondent's plan required her to accomplish specific goals to demonstrate adequate parenting of T.H. The overarching intent of the plan was to reunite T.H. with respondent. That client service plan required respondent to (1) undergo a psychological assessment and comply with any resulting recommendations; (2) maintain a lifestyle free from domestic violence; (3) maintain stable and adequate housing; and (4) acquire an appropriate means of income. Meyer rated respondent's progress on completing each of her four goals as unsatisfactory because respondent was incarcerated. In June 2012, Meyer also rated respondent's overall compliance with her subsequent client service plan as unsatisfactory because of her continued incarceration.

¶ 14 Meyer explained that initially, DCFS placed T.H. with different family members, but in August 2012, DCFS placed T.H. with Jarod and Kelly Stogner, a foster family located in Bloomington, Illinois. When asked whether guardianship was ever considered as an option instead of adoption, Meyer responded, as follows:

> "[T.H. is] having a lot of trouble with feeling torn between the two worlds; and he really wants that stable environment; and I'm afraid that guardianship would continue to have him torn between these two worlds where he has this family who he knew

> kind of still had rights and still got to visit but then he also would live with his foster parents at the time. That's why we're seeing that adoption would be [in his] best interest *** so he could have that solid foundation but still maintain contact through the [Stogners]."

Because of T.H.'s feelings, Meyer placed him on a waiting list for counseling.

¶ 15 2. *Respondent's Evidence*

¶ 16 In January 2011, respondent began serving her 35-year prison sentence. Respondent told Meyer she was seeing a prison psychiatrist but could not recall if Meyer asked to see documentation regarding her progress. Respondent could not comply with her domestic violence goal because the prison no longer offered that training. Respondent intended to complete the training once she was transferred from her current location. (Respondent was later transferred to Logan Correctional Center.) Respondent recounted that during her last visit with T.H. at the prison, he stated—in Meyer's presence—that he did not want to be adopted by the Stogners. Respondent estimated that she would be released from prison in April 2040.

¶ 17 3. *The Trial Court's Fitness Finding*

¶ 18 Following presentation of evidence and argument at respondent's fitness hearing, the trial court found that the State had satisfied its clear-and-convincing burden, showing that respondent was an unfit parent based on the four allegations in its termination petition.

¶ 19 D. The Proceedings Following Respondent's Fitness Hearing

¶ 20 1. *Respondent's Motion To Interview*

¶ 21 Immediately following respondent's fitness hearing, the trial court considered a

"motion for the court to interview [T.H.] at [the] best[-]interest hearing," which was tendered by respondent's counsel. Counsel clarified that the motion sought to have the court conduct an *in camera* interview with T.H. to ascertain T.H.'s conflicting thoughts regarding adoption.

¶ 22 In opposition to respondent's motion, the guardian *ad litem* made the following argument to the trial court:

> "I would just briefly in support of my objection state, I guess emphasize that [T.H.] is nine [years old]. Normally, in matters such as this[,] I think the thought can be, well, it's 10 minutes. What's the big deal to it. Be done with it and move on with the case.
>
> But I do think as referred to in some of the cases that this is a traumatic event for [T.H.]. He's not going to move on in 10 minutes. This affects his life, and he is just old enough to misunderstand everything. He's nine years old. I've met with him. He's *** a great little kid; but he cannot possibly understand everything that's happening.
>
> If he comes and testifies, my concern is that if the Court grants the petition[,] then he's going to feel responsibility for that. He didn't stand up for his mom. He didn't do something correct, and that may be with him and I think will be with him for the rest of his life. This is not a matter that's going to be over with for him, and I don't want to put that kind of burden on him[.]"

¶ 23 The trial court took respondent's motion under advisement, opting instead to hear the evidence presented at respondent's best-interest hearing prior to making a ruling.

¶ 24 2. *The Proceedings at the Best-Interest Hearing*

¶ 25 The best-interest hearing occurred over three separate days, ending in April 2013.

¶ 26 a. The State's Evidence

¶ 27 Meyer testified that in July 2010, DCFS placed T.H. with his great-grandmother, Karen Ferguson. In November 2011, Ferguson informed DCFS that she could no longer care for T.H. Thereafter, T.H. lived with his paternal aunt, Denise H., from November 2011 to June 2012. DCFS removed T.H. from Denise H.'s home after she tendered a 14-day notice, stating she could no longer care for him. T.H. briefly returned to Ferguson's residence, but in August 2012, DCFS placed T.H. with the Stogners.

¶ 28 Meyer described the Stogners as caring and nurturing parents who were responsible, had "good jobs," and attended church. The Stogners provided T.H. his own room with all the appropriate amenities in a safe, sanitary environment. Over several visits, Meyer observed that T.H. had developed a "loving bond" with the Stogners. T.H. sought the Stogners' affection and referred to them as "mom" and "dad." Shortly after T.H. was placed with the Stogners, he began taking medication for attention deficit/hyperactivity disorder. T.H.'s teachers reported that his increased focus resulted in T.H. receiving higher grades.

¶ 29 The Stogners intended to adopt T.H. and "keep him connected" to his biological family. T.H. informed Meyer several times that he wanted the Stogners to adopt him. Although T.H. loved respondent, he understood that she was unable to care for him due to her incarceration. Meyer recalled, however, recently informing T.H. that if the Stogners adopted him and they

later believed that visiting his biological family was no longer in his best interest, those visits would not continue. T.H. became emotional because he wanted to continue seeing respondent. Meyer opined that the Stogners would provide T.H. permanency and stability.

¶ 30 Kelly Stogner testified that Jarod and she owned a two-story, four-bedroom home with a fenced-in backyard. In addition to T.H., the Stogners were parents to their 13-year-old biological son and 9-year-old foster daughter. T.H. was active in bible study, church choir, swim team, and basketball. Kelly and Jarod fund and support T.H.'s activities, as well as assist with his schoolwork to maintain his "A" and "B" grades. Kelly anticipated being able to support T.H. at least until he reached the age of maturity and had tendered paperwork confirming her family's intention to adopt T.H. Kelly also intended to permit T.H. to visit his biological family provided it remained a healthy relationship and in his best interest. Kelly opined that it was in T.H.'s best interest to remain in their care. With regard to T.H.'s conflicting thoughts regarding his biological and foster families, Kelly stated, as follows:

> "I just feel that he is torn because he definitely loves his birth family, but I feel like he loves where he is and he feels like he is part of our family. And he is excited about his future. And I feel like it would be beneficial for him to have a secure future to know what that is going to be."

¶ 31 b. The Trial Court's Denial of Respondent's Motion To Interview

¶ 32 Following the presentation of the State's evidence, the trial court denied respondent's motion for an *in camera* interview of T.H.

¶ 33 c. Respondent's Evidence

¶ 34 Respondent testified that at the time of her arrest, T.H. was living in her home with his two older half-brothers from a previous relationship. Respondent testified that she fostered a stable and loving environment, and the resulting bond T.H. developed with his two brothers was one of love and protection. Respondent acknowledged that after her arrest, her relationship with her children changed. (The record shows that T.H.'s half-brothers were placed with their biological father, Rudy Borrego.) Respondent stated that T.H. was not happy about adoption because it represented a permanent situation, and T.H. senses that he may not get to see his brothers or respondent. Respondent elaborated that Kelly informed T.H. that if the Stogners adopted him, she would not be able to take him to see respondent. Respondent lamented that it had been six months since she spoke with or received a letter from T.H., despite sending letters to him.

¶ 35 Respondent opined that it was not in T.H.'s best interest to terminate her parental rights because the strength of their bond was very close, elaborating, as follows:

> "I feel if the [Stogners] love him and they are willing to work through this to provide stability for him, then I don't think it should matter what *** the outcome is. I feel like we can all work through it together, but I don't feel that it's in [T.H.'s] best interests to lose any kind of contact with his immediate family or myself because of the age that he is and what he's already been through. However, I am very thankful that he is stable right now with the [Stogners]; but I'm not comfortable with him possibl[y] not getting to see us because they are not making attempts like *** I feel that

they could *** provide [T.H. a] better relationship or a continued relationship with his brothers as well as encouraging him to possibly come and see me."

Respondent acknowledged that she could not provide T.H. a stable environment.

¶ 36 In addition to respondent's testimony, Ferguson, Borrego, and T.H.'s godmother, Marsha Stalter, testified generally about the strong family bonds among T.H., respondent, and his half-brothers.

¶ 37 d. The Trial Court's Best-Interest Finding

¶ 38 After considering the evidence and counsels' arguments, the trial court found that it was in T.H.'s best interest to terminate respondent's parental rights. In so doing, the court noted, in part, the following:

"There's no doubt that [T.H.] has had contact and enjoyed a good relationship with his biological family; and there's no doubt that he senses a loss and is in limbo for the past three years; and [this court] can't imagine what a little seven[-] eight[-], nine[-] year[-]old is feeling when he's bounced from a home to another home, back to another home *** and sees his mother once a month in a locked facility. That is not stability for a child; and that does not give him the opportunity to grow up in a loving, nurturing, stable environment. The best chance this little boy has is to have a loving home, a permanent home, a mother and a father that can provide him with the things that [respondent] testified that she was

doing before she was incarcerated.

But what you were doing and what you can do now are two very different things; and so the fact that [T.H.] may or may not ultimately have contact with his half[-]brothers, that is for as far as [the court] is concerned[, for] the foster parents to decide.

* * *

So [the court] think[s] it's pretty obvious to everybody that the only shot that [T.H.] has to move past this is to be adopted and placed in a home that can provide him with what he needs."

¶ 39 This appeal followed.

¶ 40 II. THE TERMINATION OF RESPONDENT'S PARENTAL RIGHTS

¶ 41 A. Respondent's Constitutional Claim

¶ 42 Respondent argues that the trial court violated her right to due process by denying her motion to conduct an *in camera* interview of T.H. at the best-interest hearing. We disagree.

¶ 43 Procedures involving the termination of parental rights must meet the requisites of the due-process clause of the fourteenth amendment to the United States Constitution (*In re M.H.*, 196 Ill. 2d 356, 363, 751 N.E.2d 1134, 1140 (2001)), which states, in pertinent part, that no state shall "deprive any person of life, liberty, or property, without due process of law[.]" U.S. Const., amend. XIV, § 1. Allegations concerning deprivations of due process are analyzed under the familiar factors announced in *Mathews v. Eldridge*, 424 U.S. 319 (1976). In *Mathews*, the Supreme Court identified the following three factors a court should consider when addressing due-process claims: (1) the private interest affected by the State's action; (2) the risk of an

erroneous deprivation of the interest through the procedures used, and the probable value, if any, of additional safeguards; and (3) the State's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute safeguards would entail. *Mathews*, 424 U.S. at 335. See *M.H.*, 196 Ill. 2d at 364. 751 N.E.2d at 1141 ("Illinois courts have also applied the *Mathews* factors in determining whether procedures followed in a parental rights termination proceeding satisfied the constitutional requirements of due process").

¶ 44 With regard to the aforementioned factors, respondent contends, as follows: (1) "very little testimony" was solicited that narrowly focused on T.H.'s private interest in a "loving, stable, and safe environment"; (2) "no testimony was elicited" at the best-interest hearing about T.H's current emotional well-being given that he had not seen respondent or his siblings "in some time"; and (3) the trial court made "no effort" to determine whether the Stogners would preserve T.H.'s biological family relationship. As framed, however, respondent's arguments focus on T.H.'s interest in a stable, safe, and permanent environment instead of her interest in maintaining the parent-child relationship. See *In re Darius G.*, 406 Ill. App. 3d 727, 737-38, 941 N.E.2d 192, 200-01 (2010) (acknowledging that although section 1-5(1) of the Juvenile Court Act (Act) (705 ILCS 405/1-5(1) (West 2010)), does not intend adversarial proceedings, the Act contemplates conflicts of interest arising between minors and their parents and accordingly permits, and sometimes requires, courts to appoint guardians *ad litem* to serve the minors' interests).

¶ 45 Regardless, our interpretation of respondent's due-process claim is that she is contending the evidence presented at the best-interest hearing did not provide the trial court an adequate account of the parental and sibling bond that existed before July 23, 2010, when the police arrested respondent. Coupled with T.H.'s feelings for both his biological and foster

families, respondent contends that without T.H.'s *in camera* interview, it was "very difficult" for the court to discern T.H.'s feelings. Thus, by denying her motion to interview T.H. at the best-interest hearing, respondent posits that the court erroneously deprived her of ability to proffer T.H.'s preferences in violation of her due-process right to the care, custody, and control of her children.

¶ 46 We first note that the trial court's denial of respondent's motion to conduct an *in camera* interview of T.H. at the best-interest hearing was an evidentiary ruling, which is afforded great deference and will not be disturbed on appeal unless the ruling was arbitrary, fanciful, or no reasonable person would take the view adopted by the court. *In re A.W., Jr.*, 397 Ill. App. 3d 868, 873, 921 N.E.2d 1275, 1279 (2010).

¶ 47 In this case, the evidence presented by the State at the best-interest hearing clearly showed that T.H., who was nine years old at that time, loved both his biological and foster families and was conflicted by his understanding that his adoption by the Stogners could negatively impact his relationship with his biological family. The trial court succinctly summarized that evidence and provided the following rationale for denying respondent's motion for an *in camera* interview:

> "[T]here is no doubt in [the court's] mind at this point that [T.H.] has formed a relationship with his biological family. *** But he is at an age where he is clearly torn by what's going on based upon the evidence that is presented, particularly the evidence from *** Meyer, who *** is *** an unbiased witness. And [the court] can't imagine putting a nine-year-old child in that position

> to have to tell [the court] anything at all regarding the termination of his biological mother's rights and/or the possible adoption of him by his foster parent. [The court does not] think that would be in his best interest, noting the concerns raised by [the guardian *ad litem*] and his objection."

¶ 48 Here, the trial court denied respondent's motion for an *in camera* interview of T.H. because it was satisfied that it had sufficient and accurate evidence regarding T.H.'s feelings for his biological and foster families. Despite respondent's claims pertaining to the inadequacy of that evidence, we fail to see how T.H.'s testimony could have meaningfully supplemented the court's understanding or how respondent was prejudiced by the court's denial. See *A.W., Jr.*, 397 Ill. App. 3d at 873, 921 N.E.2d at 1280, citing *In re April C.*, 326 Ill. App. 3d 245, 261-62, 760 N.E.2d 101, 114 (2001) ("error in excluding evidence is harmless if there has been no prejudice"). At best, any responses or comments T.H. made to the court would have been cumulative, which negates respondent's due-process claim.

¶ 49 Moreover, we agree with the guardian *ad litem* that the preferences of a nine-year-old minor, conveyed under strained circumstances such as were presented here, were not necessary to resolve this matter and would have only served to negatively impact T.H.'s long-term emotional well-being in contravention of the overarching goal—of all the parties involved—to provide for his best interest.

¶ 50 Accordingly, we conclude that the trial court's denial of respondent's motion does not warrant reversal under our deferential standard of review.

¶ 51 B. Respondent's Statutory Claim

¶ 52 Respondent also argues that the trial court's best-interest finding was against the manifest weight of the evidence. We disagree.

¶ 53 1. *The Standard of Review*

¶ 54 At the best-interest stage of parental termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 55 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 56 2. *Respondent's Claim That the Trial Court's Best-Interest Finding Was Against the Manifest Weight of the Evidence*

¶ 57 Respondent contends that T.H. would have been provided additional protections through guardianship instead of adoption, which severs the biological parent's bond. In support of her contention, respondent, proclaiming her innocence and her pending writ of *certiorari* to the Supreme Court of the United States, insists that despite her incarceration, the court should not have terminated her parental rights because absent incarceration, "the State would have absolutely no grounds to institute termination" proceedings. Essentially, respondent claims that the court should have delayed termination of her parental rights in favor of guardianship because her

writ of *certiorari* was still pending. We are not persuaded.

¶ 58 The question before this court is whether the trial court's judgment regarding T.H.'s best interest was against the manifest weight of the evidence. We conclude it was not.

¶ 59 In this case, the trial court correctly focused on the best interest of T.H. to the exclusion of all other competing interests. See *In re Austin W.*, 214 Ill. 2d 31, 49, 823 N.E.2d 572, 583 (2005) (a minor's best interest is not part of an equation to be balanced against any other interest but must remain inviolate and impregnable from all other factors). In so doing, the court noted that the previous life T.H. had with respondent was forever altered on July 23, 2010, when the police arrested respondent and she was later convicted of a serious crime. Indeed, respondent admitted that after that date, she could no longer provide T.H. stability. Nonetheless, respondent urges this court to reverse the trial court's best-interest finding so that she can maintain her parental relationship with T.H. We decline to do so.

¶ 60 Here, the trial court determined that the Stogners' bond with T.H., coupled with their readiness, willingness, and ability to provide a permanent, safe, loving environment to T.H., was in T.H.'s best interest. We conclude that the evidence presented was more than sufficient to support the court's decision to terminate respondent's parental rights. Accordingly, we disagree with respondent that the facts clearly demonstrated that the court should have reached the opposite result.

¶ 61 III. CONCLUSION

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

¶ 63 Affirmed.