2017 IL App (4th) 160734-U

NO. 4-16-0734

FILED
February 14, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Ch. H., Jo. H., Ad. H., and Ca. H., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 14JA26
JOYCE HAWORTH,	)	
Respondent-Appellant.	)	Honorable
	)	Brett N. Olmstead,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's finding it was in three of the minor children's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 In February 2016, the State filed a motion for the termination of the parental rights of respondent, Joyce Haworth, as to her minor children, Ch. H. (born in 2001), Jo. H. (born in 2003), Ad. H. (born in 2004), and Ca. H. (born in 2012). After a September 2016 hearing, the Champaign County circuit court found respondent unfit. In October 2016, the court concluded it was in Jo. H.'s, Ad. H.'s, and Ca. H.'s best interest to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the circuit court erred by finding it was in Jo. H.'s, Ad. H.'s, and Ca. H.'s best interest to terminate respondent's parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2014, the State filed a petition for the adjudication of wardship of the minor children, which alleged they were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2014)), in that their environment was injurious to their welfare when they resided with respondent because the environment exposed them to (1) contact with a registered sex offender, (2) risk of sexual abuse, and (3) inadequate supervision. At the May 2014 adjudicatory hearing, respondent stipulated the minor children were neglected based on their injurious environment that exposed them to sexual abuse, and the circuit court found the minor children neglected. After a June 2014 dispositional hearing, the court (1) found respondent unfit and unable to care for, protect, train, educate, supervise, or discipline the minor children; (2) made the minor children wards of the court; and (3) placed their custody and guardianship with the Department of Children and Family Services (DCFS). Additionally, the court found Ca. H.'s father, William Wilson, was unable and unwilling to care for him. Wilson later surrendered his parental rights to Ca. H. The father of Ch. H., Jo. H., and Ad. H. was deceased.

¶ 6 In July 2016, the State filed a motion to terminate respondent's parental rights to the minor children. The motion asserted respondent was unfit because she failed to (1) make reasonable progress toward the minor children's return during any nine-month period after the neglect adjudication, specifically October 20, 2015, to July 20, 2016 (750 ILCS 50/1(D)(m)(ii) (West Supp. 2015)); and (2) maintain a reasonable degree of interest, concern, or responsibility as to the minor children's welfare (750 ILCS 50/1(D)(b) (West Supp. 2015)).

¶ 7 At the September 2016 fitness hearing, the State presented the testimony of Robin Strauss, the DCFS child welfare specialist who had been the caseworker since April 2014. The State also presented counseling reports for respondent, a letter regarding respondent's parenting

classes, and a parenting capacity assessment for respondent. Additionally, the State asked the circuit court to take judicial notice of the prior orders in this case, which it did. Respondent did not present any evidence. At the conclusion of the hearing, the circuit court found respondent was unfit based on her failure to (1) make reasonable progress toward the minor children's return during the period of October 20, 2015, to July 20, 2016; and (2) maintain a reasonable degree of responsibility as to the minor children's welfare.

¶ 8 DCFS's October 6, 2016, best interest report recommended the termination of respondent's parental rights to all four minor children. The report noted respondent had cut off contact with DCFS. She was evicted from her apartment in May 2016 and had lived in various hotels since then. In September 2016, respondent reported working at the Quality Inn. Respondent had not met with her counselor since August 22, 2016. In 2016, respondent had been evaluated by two psychologists, and both of them believed respondent would not be able to parent the minor children. Respondent had completed a parenting program, but the instructor noted concerns about respondent's ability to juggle her own schedule and questioned how she would be able to juggle the minor children's schedules. Over time, respondent's visitation had decreased in frequency, and she had limited interaction with the minor children during their visits. It was reported respondent constantly checked her phone during visits and did not ask the minor children about their day or schooling.

¶ 9 As to the minor children, the report noted they had been in care for 2 1/2 years. Ch. H. was 15 years old and had been diagnosed with, *inter alia*, autism, down syndrome, and cerebral palsy. He resided in a special care center that met his medical and educational needs. Jo. H. and Ad. H. resided in the same foster home with two other children, but the foster parent had only signed a permanency commitment for Jo. H. Additionally, relatives of the minor

children had shown an interest in adopting Ad. H. and Jo. H., but each could only take one child. Jo. H. was 13 years old and doing well in school. She enjoyed being in her foster home and did a class project about her foster parent being her hero. Ad. H. was 12 years old and had some learning disabilities. His foster parent was frustrated by the need to remind him to use the bathroom, brush his teeth, shower, and complete other tasks of daily living. Ad. H. had limited interests and friends but was very good at playing with the younger children in his foster home. Ca. H. was four years old and lived in a different foster home. He was closely bonded with his foster parent and was attached to the other children in his foster home. His foster parent had signed a permanency commitment for him. Ca. H. was doing well in preschool.

¶ 10 On October 13, 2016, the circuit court held the best interest hearing. In addition to the best interest report, a stack of reports from different counselors was presented to the court. It was also put on the record that respondent had visited Ch. H. throughout the life of the case. Ca. H.'s counselor's report indicated Ca. H. enjoyed spending time with his biological family and enjoyed living with his foster family. He explained he had "two mommies." According to his counselor, he viewed his foster home as his home, identified more with his foster family, and seemed very content with his living arrangement. The counselor had discharged Ca. H. from counseling in September 2016 after 20 sessions. Jo. H. had also been discharged from counseling. She had a good relationship with both respondent and her foster mother and was torn about what was the best living situation for her. The report noted she was thriving in school, with lots of friends, good grades, and involvement in sports. She had a hard time with the news that respondent wanted to move away to Springfield, Illinois. Ad. H.'s counselor found he was still in need of counseling as he had "a hard time being fully transparent with his emotions" and needed to work on being more social. Ad. H. was making progress in counseling and enjoyed

life despite his circumstances. Respondent's counselor noted her attendance from June 2016 to October 2016 had been sporadic and respondent had no contact with the counselor since September 12, 2016. Before the lack of contact, respondent had been more actively engaged in her DCFS relapse prevention plan. Her counselor recommended respondent continue with counseling.

¶ 11 After hearing the parties' arguments, the circuit court found it was in Jo. H.'s, Ad. H.'s, and Ca. H.'s best interest to terminate respondent's parental rights. The court did not terminate respondent's parental rights as to Ch. H. On the same day as the hearing, the court entered its written termination order.

¶ 12 On October 13, 2016, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). 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 cases). Thus, this court has jurisdiction of this appeal pursuant to Illinois Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016).

¶ 13 II. ANALYSIS

¶ 14 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2014)), 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 Supp. 2015)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the circuit court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the minor children's best interest that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818

N.E.2d 1214, 1228 (2004). In this case, respondent only challenges the circuit court's best interest finding as to Jo. H., Ad. H., and Ca. H.

¶ 15 Since the circuit court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). Further, in matters involving minors, the circuit court has broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a reviewing court will not disturb a circuit court's best interest determination unless it is contrary to the manifest weight of the evidence. See *In re J.L.*, 236 Ill. 2d 329, 344, 924 N.E.2d 961, 970 (2010). A circuit 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) (fitness finding).

¶ 16 During the best interest hearing, the circuit court focuses on "the child[ren]'s welfare and whether termination would improve the child[ren]'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 Supp. 2015)) in the context of the children's age and developmental needs. See *In re T.A.*, 359 Ill. App. 3d 953, 959-60, 835 N.E.2d 908, 912-13 (2005). Those factors include the following: the children's physical safety and welfare; the development of the children's identity; the children's family, cultural, and religious background and ties; the children's sense of attachments, including continuity of affection for the children, the children's feelings of love, being valued, and security, and taking into account the least disruptive placement for the children; the children's own wishes and long-term goals; the

children's community ties, including church, school, and friends; the children's need for permanence, which includes the children's need for stability and continuity of relationships with parent figures and with siblings and other relatives; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the wishes of the persons available to care for the children. 705 ILCS 405/1-3(4.05) (West Supp. 2015).

¶ 17 We note a parent's unfitness to have custody of his or her children does not automatically result in the termination of the parent's legal relationship with the children. *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). As stated, the State must prove by a preponderance of the evidence the termination of parental rights is in the minor child's best interest. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006).

¶ 18 All three minor children at issue had been in care for around 2 1/2 years and had been in their current placements since coming into care. Jo. H. and Ad. H. were in the same foster home, and Ca. H. was in a different one. Ca. H. was four years old and closely bonded with his foster family. He identified more with his foster family and viewed his foster mother as his mother. He was doing well in preschool and played soccer. Ca. H. had been discharged from counseling. Ca. H.'s foster parent had signed a permanency commitment for him. Jo. H. was 13 years old and thriving in her foster home. She was doing well in school and involved in sports. Jo. H. enjoyed being in her foster home, which included two other children, aged three and six. Jo. H.'s foster parent had signed a permanency commitment for Jo. H. but not for Ad. H. Ad. H. was 12 years old and was doing relatively well. He had some learning disabilities but was earning good grades. His foster mother had expressed concerns about his speech and mobility,

which were being addressed. He was also in counseling to address social issues and was making progress. Ad. H. got along well with the other children in his foster home. While his foster parent did not sign a permanency commitment for him, relatives were interested in adopting Ad. H.

¶ 19 Respondent recognizes she is currently unable to provide for the minor children's physical safety and welfare but points out the lack of a common placement for all three minor children. She argues the fact all three children will be permanently separated does not promote the children's family ties and their sense of attachments. As the circuit court recognized, the separation of the three minor children is not "an ideal situation." However, a single placement for all three minor children had not been discovered in 2 1/2 years, and the evidence indicated respondent would likely not reach a point where she would be able to have the minor children returned to her. Courts cannot create an ideal situation when one is not available. They must work with the given circumstances. Moreover, maintaining sibling relationships is just one of many factors the court must consider in making a best interest determination.

¶ 20 The minor children deserve permanency, and Ca. H. and Jo. H. were thriving with their respective foster parents, who desired to give them permanency. They had strong ties to their current placement, school, and community. The best interest factors clearly favor the termination of respondent's parental rights as to Ca. H. and Jo. H. While Ad. H.'s current, long-term placement must be disrupted to provide him permanency, he had a relationship with the relatives who desired to adopt him. The relatives would provide some family background, identity, and ties for Ad. H. We find the best interest factors also favor the termination of respondent's parental rights to Ad. H.

¶ 21 Accordingly, we find the circuit court's conclusion it was in Jo. H.'s, Ad. H.'s,

and Ca. H.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 22 III. CONCLUSION

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

¶ 24 Affirmed.