

NOTICE

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2017 IL App (4th) 170074-U

NO. 4-17-0074

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 20, 2017

Carla Bender

4th District Appellate
Court, IL

In re: S.S., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 15JA46
KATHLEEN EBLE,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's best interest finding to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 In January 2017, the trial court terminated the parental rights of respondent, Kathleen Eble, to her minor child, S.S. (born August 16, 2015). Respondent appeals, arguing the court's best interest determination was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Prior to the birth of S.S., Kathleen had two children with Joseph Steerman, both of whom have been adopted by other families following the termination of respondent's and Joseph's parental rights. On August 16, 2015, Kathleen gave birth to another child with Joseph, S.S. The following day, the Department of Children and Family Services (DCFS) placed S.S. in

protective custody. Upon discharge from the hospital, S.S. was placed in a traditional foster home in Danville, Illinois.

¶ 5 On August 18, 2015, the Champaign County State's Attorney filed a petition for adjudication of neglect and shelter care pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2014)). The petition alleged neglect relating to Kathleen's and Joseph's failure to correct the conditions resulting in prior adjudications of parental unfitness as to S.S.'s two older siblings. The trial court appointed the Champaign County court-appointed special advocate (CASA) as guardian *ad litem* of S.S., awarded temporary custody of S.S. to DCFS, and set a permanency goal to return S.S. to Kathleen's and Joseph's custody within 12 months. The trial court provided Kathleen and Joseph supervised visitation with S.S., overseen by either DCFS or S.S.'s foster parents.

¶ 6 In December 2015, DCFS filed a court-ordered dispositional report, which included interviews with Kathleen and Joseph. According to the dispositional report, Kathleen's "engagement in the family services plan, toward reunification with her older children, has been sporadic, which she explained as because services are boring." In 2012, DCFS found Kathleen to have "a history of mental health issues and was previously diagnosed with [m]oderate [m]ental [r]etardation." After the birth of S.S., Kathleen continued to reside with Joseph, who "reported a history of domestic violence in his current and past relationships" and had been arrested in 2013 for domestic violence against Kathleen. Joseph had also undergone sex offender treatment, and he was "incarcerated on a warrant for child support while [Kathleen] was in labor with [S.S.]" Kathleen told DCFS she sleeps approximately 16 hours per day, has been unemployed since approximately 2003, and receives \$500 per month in supplemental security income and \$194 per month in food stamps from Link.

¶ 7 The dispositional report also documented Kathleen's weekly supervised visits with S.S. Kathleen only missed one visit and arrived to the supervised visits with "a diaper bag filled with wipes, diapers, and formula for [S.S.]." She would hold and feed S.S. and change her diapers. DCFS observed that Kathleen "require[d] some redirection and assistance" in taking care of S.S., and "when [Kathleen] is frustrated or not sure of what to do in a situation, she looks to the worker supervising the visit for direction."

¶ 8 In December 2015, the trial court entered a dispositional order finding S.S. neglected and placing her in the custody and guardianship of DCFS. It further ordered Kathleen to successfully complete DCFS's recommended counseling and parenting education curriculum and to attend scheduled supervised visitation with S.S.

¶ 9 In March 2016, the trial court held a permanency hearing and entered a permanency order (705 ILCS 405/2-28 (West 2016)) finding that, while Kathleen "has made reasonable efforts," she "has made reasonable but not substantial progress toward returning [S.S.] home." The trial court continued custody and guardianship of S.S. with DCFS.

¶ 10 In July 2016, Kathleen underwent a court-ordered psychological evaluation by a licensed psychologist, Susan Minyard, Ph.D. The psychological evaluation concluded, "It is highly unlikely that [Kathleen] will ever be capable of parenting independently." Dr. Minyard further stated that Kathleen "will need services to assist her with developing practical, basic adaptive living skills, to the extent that she is capable, including managing her anger better and interacting more productively with others." Dr. Minyard expressed concern about Kathleen residing with Joseph, "particularly in light of their history of domestic violence."

¶ 11 In July 2016, the trial court entered a permanency order continuing custody and guardianship of S.S. with DCFS. In its order, the court stated, "[Kathleen's] parenting ability is

still very limited, even after lengthy application of services." The permanency order stated Kathleen had made reasonable efforts but had not made reasonable and substantial progress toward being fit to parent S.S.

¶ 12 In August 2016, the State's Attorney filed a petition seeking a finding of unfitness and termination of parental rights against Kathleen and Joseph. The State's petition alleged Kathleen and Joseph were unfit under the Adoption Act (750 ILCS 50/1(D) (West 2016)) because (1) Joseph failed to make reasonable efforts to correct the conditions leading to the neglect finding (count I), (2) Kathleen and Joseph failed to make reasonable progress toward the return of S.S. to their custody (count II), and (3) Kathleen and Joseph "have failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare" of S.S. (count III).

¶ 13 In November 2016, the trial court held a hearing on the State's motion. It heard testimony from two individuals who worked with Kathleen at the Center for Youth and Family Solutions (Center): (1) Karie Kaufman, lead foster care case manager, and (2) Renee Eifert, a therapist and parent educator.

¶ 14 Kaufman testified Kathleen was already involved in counseling, parenting, and domestic violence services with the Center when S.S. was placed into protective custody. While Kathleen would make an effort to participate in services at the Center, Kaufman stated Joseph never participated in any parenting services, and his visitation with S.S. was suspended in October 2015, after he missed 10 scheduled visits. She observed that the initial supervised visitations including both S.S. and an older sibling overwhelmed Kathleen, who needed assistance in overseeing S.S.'s safety. For instance, Kathleen needed direction to ensure that S.S. would not "roll off of the couch." Although Kathleen had been cooperative in services, Kaufman opined S.S. should not be in Kathleen's custody because of safety concerns.

¶ 15 Eifert testified she engaged with Kathleen in "scheduled weekly therapy in combination with *** individualized parenting classes." Kathleen attended her scheduled visits with Eifert "maybe 60 percent of the time." In therapy, Kathleen refused to discuss the issues Eifert found important, such as safety and family relationships. Kathleen denied to Eifert issues with domestic violence and denied the need for services. Eifert testified Kathleen has an intelligence quotient of 63 and "she has mental illness in that she—she has problems and issues with explosive anger issues." Eifert opined that it would not be appropriate to allow Kathleen to have unsupervised visits with S.S., even though Kathleen "always listened very carefully" in individualized parenting classes.

¶ 16 At the conclusion of the hearing, the trial court found Kathleen unfit for failure to make reasonable progress under count II and found Joseph unfit under counts I, II, and III of the State's petition. The trial court cited Dr. Minyard's concerns about Kathleen making "poor and potentially dangerous choices," and it noted how Kathleen could not safely parent during her visitations with S.S. In November 2016, the trial court entered an adjudicatory order finding Kathleen and Joseph unfit under the Adoption Act by clear and convincing evidence.

¶ 17 In January 2017, both the Center and the CASA prepared best interest reports recommending the trial court change the permanency goal to adoption. The best interest report by the Center found:

"[S.S.] is a happy, healthy sixteen-month-old girl. She has done well adjusting to the licensed foster home where she is placed. Although she was not placed in the same foster home as her two biological brothers who were adopted, the families have a close relationship and maintain [a] sibling bond."

The best interest report prepared by the CASA further noted Kathleen "does not have the mental capacity to provide for the safety and well being of a child."

¶ 18 At a best interest hearing in January 2017, the State's Attorney requested the termination of Kathleen's and Joseph's parental rights. Kathleen's attorney conceded "some deficits in ability on the part of my client," but she stressed that Kathleen loves, and has shown an interest in parenting S.S. In terminating Kathleen's parental rights, the trial court quoted from Dr. Minyard's report, stating, "[Kathleen] is quite low-functioning, is unlikely to be able to learn to parent independently, regardless of any service that may be provided." The court reasoned that Kathleen's unfitness to parent "relate[d] to all of the—the best interest[] factors, the safety, security, [and] permanence [of S.S.]," and S.S.'s "strong bond" with her foster parents favored termination. The trial court entered an order finding it was in S.S.'s best interest that Kathleen's parental rights be terminated, awarding guardianship of S.S. to DCFS and changing the permanency goal to adoption.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Kathleen does not challenge the trial court's finding of unfitness under the Adoption Act. Instead, she challenges only the trial court's best interest finding.

¶ 22 In an involuntary termination proceeding, after a parent is found unfit under section 1(D) of the Adoption Act, the trial court next determines whether it is in the best interest of the minor child to terminate parental rights under section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2016)). The burden is on the State to prove by a preponderance of the evidence that termination is in the minor child's best interest. *In re M.R.*, 393 Ill. App. 3d 609, 617, 912 N.E.2d 337, 345 (2009). The court's determination will only be reversed if it is

against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

¶ 23 Section 1-3(4.05) of the Juvenile Court Act provides various factors the trial court must consider in making a best interest determination. Factors must be "considered in the context of the child's age and developmental needs," and include the following:

- "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

- (b) the development of the child's identity;

- (c) the child's background and ties including familial, cultural, and religious;

- (d) the child's sense of attachments, including;

- (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

- (ii) the child's sense of security;

- (iii) the child's sense of familiarity;

- (iv) continuity of affection for the child;

- (v) the least disruptive placement alternative for the child;

- (e) the child's wishes and long-term goals;

- (f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2016).

In considering these factors, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004).

¶ 24 On appeal, Kathleen concedes that "[f]actor (a) weighs in favor of termination, even if slightly." She argues the trial court placed too much emphasis on physical safety and welfare and did not sufficiently account for other factors. According to Kathleen, the trial court engaged in "speculation" in its consideration of factors (b) through (j) "at this early stage of [S.S.]'s life." She further claims factors (h) and (i) weigh in her favor. The State counters that the trial court carefully considered all of the factors under the Juvenile Court Act and "[t]he trial court's determination was amply supported by the evidence." We agree with the State.

¶ 25 The trial court's best interest determination is supported by the manifest weight of the evidence. According to the best interest report by the CASA, Kathleen "does not have the mental capacity to provide for the safety and well being of a child." In referencing Dr. Minyard's psychological evaluation of Kathleen, the trial court stated:

"[Kathleen's] ability to care for herself is certainly in question. Her ability to care for a child is not in question; that she does not unfortunately, have that ability.

And that really just relates to all of the—the best interests factors, the safety, security, permanence, and as the case developed then, the child's sense of attachment with the potential adoptive parents, the strong bond there."

According to the trial court, Kathleen "hampered her progress in this case" by maintaining her relationship with Joseph, who "has not demonstrated any willingness or ability to parent [S.S.]" Kathleen's relationship with Joseph was characterized by the trial court as "dangerous" and "potentially destructive in the future" in that Joseph posed a risk of exposing S.S. to domestic violence. Karie Kaufman testified Kathleen demonstrated inadequate supervision of S.S. during visitation and that Kathleen should not have custody of S.S. because of safety concerns, whereas the best interest report by the Center indicated S.S. "has done well adjusting to the licensed foster home where she is placed." The trial court observed that S.S.'s "foster parents are committed to maintaining [a] relationship between [S.S. and her] siblings if allowed to adopt S.S." and that "[t]he ability to maintain contact with these siblings would be greatly hampered if respondent's parental rights were not terminated or if [S.S.] was ever returned to [Kathleen]."

¶ 26 In summary, we find the trial court's best interest determination was not against the manifest weight of the evidence.

27 III. CONCLUSION

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

¶ 29 Affirmed.