2013 IL App (5th) 130129-U

NO. 5-13-0129

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re J.E. and A.C., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Clinton County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	Nos. 10-JA-6 & 10-JA-7
	)	
Beth E.,	)	Honorable
	)	Dennis E. Middendorff,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Stewart and Cates concurred in the judgment.

ORDER

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

¶ 2 The respondent, Beth E., appeals the circuit court's order determining that it was in the best interests of her two minor children, J.E. and A.C., that her parental rights be terminated. The parental rights of the fathers of J.E. and A.C. have been terminated, and they take no part in this appeal. Based upon the following, we affirm.

¶ 3 BACKGROUND

¶ 4 J.E. was born on August 29, 2003, and A.C. was born on March 26, 2006. On April 13, 2010, the State filed petitions for adjudication of wardship in regard to both J.E. and

A.C., pursuant to section 2-1 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-1 (West 2010)). The petitions alleged that the children were neglected, pursuant to section 2-3 of the Act (705 ILCS 405/2-3 (West 2010)), in that they were subject to an injurious environment due to the fact that Beth E. was, during the month of April 2010, having "nightly alcohol parties *** while the minor [was] present," she had "failed to undergo a drug and alcohol evaluation" pursuant to court order, or "engage in treatment," and she had been diagnosed as bipolar yet had "discontinued her medications without consulting her psychiatrist." On May 27, 2010, the court found in favor of the State on both petitions. J.E. and A.C. were made wards of the court on June 24, 2010. On March 26, 2012, the State filed petitions, pursuant to section 2-13 of the Act (705 ILCS 405/2-13 (West 2010)), to terminate the parental rights of Beth E. with regard to both minors, alleging, *inter alia*, that she was an unfit person as defined by section 1 of the Adoption Act (750 ILCS 50/1 (West 2010)) because she had failed to make reasonable progress toward the return of her children. Beth E. admitted that she had failed to make reasonable progress toward the return of her children, and the court set the matter for a best-interests hearing. The best-interests hearing began on February 28, 2013, and continued on March 6, 2013.

¶ 5 At the hearing, Beth E. testified that she is the mother of J.E. and A.C. She advised that during the four months leading up to the hearing, she had not had a service plan. She testified that "Erin" from the Department of Children and Family Services (DCFS) told her that she would not have a service plan. She advised that she had applied for Supplemental Security Income (SSI) and had an appointment the next day, but would not be able to make the appointment. She testified that she had previously applied for SSI but was denied. She testified that she did not appeal that denial. She advised that she was unemployed. She said she had last applied for employment "a few months ago" at some fast food restaurants; however, she did not recall which ones specifically or the dates.

¶ 6 Beth E. testified that she believes she last visited her children in October of 2012. Those visits were facilitated by a transporter from DCFS who took Beth E. to Altamont to meet the children. She advised that she had not visited them since then because her new caseworker had not responded to her calls and messages. She said she had called "quite a few times up until recently" when the phone "got broken and [she] lost the number." Specifically, she estimated that she had called approximately 30 times. She advised that she left messages during most, but not all, of the 30 calls she made to her new caseworker, Danielle Groom. She advised that since October of 2012, she had not had contact with any caseworkers, DCFS, or any other agency.

¶ 7 Beth E. testified that her children, rather than DCFS or Christian Social Services, had advised her that they would be placed in a different foster home in November. She advised that she was not aware of any requirement that she confirm visits with the children beforehand. She further advised that since October, she had not worked on her service plan because she was waiting for a new one.

¶ 8 Beth E. testified that, on August 30, 2012, when she was last in court, she did not take the drug test which the court ordered her to take because had she taken the test, her ride would have left without her and she would have had to walk home. She advised that she "made a big mistake" in not taking the test. The respondent testified that, at some point, she realized there was a warrant out for her arrest, but that she decided to wait to come into court until she had a ride on the date of the permanency hearing.

¶ 9 Beth E. testified that she currently lives with her mother in Centralia. She advised that their source of income is her mother's SSI, which she testified amounts to about $700 per month. She stated that they are "not financially in a bind" because her mother owns the trailer and car, leaving the power and water bills as the only monthly bills. She testified that she is bipolar and that she received her initial diagnosis at age 17. She stated that she is not

currently taking medication, nor has she taken medication since she was 17 years old. Beth E. testified that she had begun counseling as recommended for her bipolar disorder, attending for one hour per week for six months, but that she quit because it "became un-useful." She advised that she realized that she was required to undergo counseling as part of her service plan but that she quit after six months because her understanding was that six months was the requirement.

¶ 10 Danielle Groom testified that she is a foster care case manager with Christian Social Services. She advised that she had been the caseworker for A.C. and J.E. since November 1, 2012. Groom testified that the children had been with David and Renee B. since November 2, 2012. She testified that she had visited the children in that home once a month and three or four times during their first month in the home. Groom advised that A.C. had bonded quickly to both caregivers and that he said he wants to be adopted and have the last name of his caregivers. She said that both children seem happy and healthy where they are, and that the home is a potential adoptive placement. She said they are doing well in school. She also acknowledged minor issues like the boys throwing tantrums when they do not get their way.

¶ 11 Groom testified that the adoption process cannot start until six months after placement in a home, but that the foster parents could nonetheless commit to adoption before that period of time. She testified that the foster parents had not yet committed to adopting A.C. or J.E.

¶ 12 Groom testified that she last spoke with Beth E. by telephone on November 26, 2012. She said that, on that date, Beth E. called her and left a voicemail, and then Groom called her back. Groom testified that she advised Beth E. that they "would need to meet for what's called a child and family team meeting" and that they would then "go over her service plan." She advised that they "discussed that the visitation would take place on Saturdays because

it was convenient for her [Beth E.][1] and that they would take place at the Centralia public library because it was within walking distance from her house." She advised that visitation was set up through the case aide but that Beth E. "never confirmed for any of the visits." Groom testified that she told Beth E. that she would have to call to confirm visits 24 hours before they were to occur. She also stated that she informed Beth E. that the case aide was Cody Stroff and provided her with his number. She advised Beth E. that she would receive a call from the case aide. Groom testified that after November 26, 2012, she was not contacted by Beth E. again. She advised that the visiting records show that her last visit was November 1, 2012.

¶ 13 Groom testified that, to her knowledge, Beth E. had not engaged in any services since November 2012. She advised that since Beth E. had failed to confirm visitation, Groom had tried to contact her by phone three or four times with no response and no opportunity to leave a message as the voicemail was not set up. Groom advised that she had told Beth E. that the children were being placed in a different home and that is why Christian Social Services was taking over the case. She advised that the last visit attended by Beth E. was set up by Erin Schaub of DCFS. Groom testified that she told Beth E. the address of her office but that Beth E. never called to ask how A.C. and J.E. were doing.

¶ 14 Cody Stroff testified that he was a case assistant supervisor at Christian Social Services. He testified that he was responsible for contacting Beth E. to set up visitation. He testified that he called and asked for Beth E. on December 26, 2012. He said that someone answered the phone, he asked for Beth E., and then another person came to the phone. He

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[1]Groom also testified that she told Beth E. that visitation would continue "as long as it didn't interfere with the children's school," which tends to indicate that the day chosen for visitation was convenient not only to Beth E., but also to avoiding any interruption in school attendance.

could not recall if that person identified herself as Beth E. Stroff testified that he advised Beth E. that he was calling to set up visitation with her children. He said that he explained that "the way it works is she would have 24 hours before a visit to call and confirm." He testified that he advised, "If you do not call and confirm, you will not–will not have a visit." He advised that he gave Beth E. his phone number and "told her to call 24 hours in advance." He said that he "asked her to *** put a note in her wallet, write down my number, put it on the fridge, program it into your phone, whatever you have to do to call me."

¶ 15 Stroff testified that during the phone conversation with Beth E., they set up visitation for three days later on December 29, 2012; however, he advised that Beth E. did not call to confirm, and therefore, the visitation did not occur. Stroff testified that he did not contact Beth E. after her failure to confirm because as he had explained to her during the phone conversation, "if I do not hear from you for two weeks straight, no call, no confirmation, it's standard protocol we take you off the visiting record." He testified that he had also advised her that, at that point, she would have "to contact [her] caseworker to get set up back on the visiting record." Stroff said that he was never contacted by Beth E. and did not speak to her subsequent to the initial call.

¶ 16 Erin Schaub testified that she is a child welfare specialist with DCFS and that she was the caseworker for Beth E. between February 2012 and the beginning of November 2012 at which time she turned the case over to Christian Social Services. She testified that between August 30, 2012, and November 1, 2012, she had "minimum monthly contact with Beth usually in her home," and that during that time, Beth E. was visiting the children "twice monthly." She advised that during that time, the "children were in a home in Altamont and the visitation specialist would pick Beth up in Centralia and drive her to Altamont where they did the visit and drive her back home." Schaub testified that she believes that Beth E. "was visiting pretty regularly during that time period."

¶ 17 Schaub testified that in October 2012 she prepared a client service plan for Beth E. She advised that Beth E. missed the initial case review on October 25, 2012, but that Schaub met with Beth E. the next day at Beth E.'s home. Schaub said that during that meeting, she went over the client service plan with Beth E. Schaub testified that on that day, they spoke on the front porch but that she "had been in the home several times previously and it is always so filled with smoke that it gives me a headache." Schaub said that both Beth E. and her mother smoke. She testified that she "would imagine that [the smoke] would [a]ffect the children too."

¶ 18 Schaub testified that she also made a visit to Beth E.'s home on October 23, 2012. During the visit, Schaub said that she discussed employment with Beth E., as Beth E. was still unemployed, along with counseling, as she had still "not engaged in counseling." She also testified that she suggested that Beth E. obtain a GED to improve her employment prospects but that Beth E. "was not willing to–she said she didn't want to sit through that." Schaub also testified that Beth E. "was not open to engaging" in group therapy as had been recommended because she wondered what she was "going to gain" from it.

¶ 19 Schaub testified that she stressed to Beth E. that "the most important thing for [her] was to engage in the services on her service plan." Schaub was asked whether Beth E. had done anything on the service plan other than the visitation, and she testified that Beth E. obtained a photo identification card, which was not a part of the service plan, but was necessary to obtain employment. Schaub testified that she advised Beth E. that A.C. and J.E. were going to be placed in a new home in late October.

¶ 20 Schaub testified that during her visits to the home of Beth E., she observed "old food left out on the table" and "a human shaped hole with a head and shoulders in one of the bedroom doors in the bedroom that would have been the boys'." She also testified that "[t]here was a hole in the wall with I believe a beam and some insulation exposed." Schaub

testified that she did not know whether the holes had been repaired.

¶ 21 Schaub testified that Beth E. called her in November and that Schaub gave Beth E. the number for Christian Social Services along with advising her that the case had been transferred to that agency. Schaub said that she did not receive any calls or messages from Beth E. after Christmas 2012.

¶ 22 ANALYSIS

¶ 23 We first address the State's position that the respondent has waived all issues she raises by failing to submit a proper brief in compliance with Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013). We agree that the respondent's brief is sorely lacking, as we cannot find a solitary citation to the record therein, but for the following reasons, we choose to address this appeal on the merits.

¶ 24 "This court is not a depository in which the burden of argument and research may be dumped." *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 80 (citing *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010); *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991)). Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013) requires that both the fact and argument sections of an appellant's brief contain references to the appropriate pages of the record. Our supreme court's rules are "mandatory rules of procedure, not mere suggestions." *Menard v. Illinois Workers' Compensation Comm'n*, 405 Ill. App. 3d 235, 238 (2010) (citing *People v. Garstecki*, 382 Ill. App. 3d 802, 811 (2008)). Failure to abide by the rule "may result in waiver." *Id.* (citing *Gomez v. The Finishing Co.*, 369 Ill. App. 3d 711, 723 (2006); *Elder v. Bryant*, 324 Ill. App. 3d 526, 533 (2001); *McDuffee v. Industrial Comm'n*, 222 Ill. App. 3d 105, 111 (1991)). "This court has the discretion to strike an appellant's brief and dismiss an appeal for failure to comply with Rule 341." *Yorath*, 2013 IL App (1st) 110287, ¶ 77 (citing *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001); *Buckner v. Causey*, 311 Ill. App. 3d 139, 142 (1999)). Nonetheless, "Rule 341 is an admonishment to the

parties" rather than "a limitation upon this court's jurisdiction." *In re A.H.*, 215 Ill. App. 3d 522, 529 (1991) (citing *Wilson v. Illinois Benedictine College*, 112 Ill. App. 3d 932 (1983)).

¶ 25 In *In re A.H.*, 215 Ill. App. 3d 522 (1991), the Fourth District chose not to strike the brief of *pro se* appellants appealing the termination of their parental rights due to "the serious nature of the[ ] proceedings." *Id.* at 530.[2] We note that this is not a *pro se* appeal. We also note that counsel, despite a pervasive failure to cite to the record, does present cohesive arguments. Since this case is about the best interests of the children involved, we will not strike the respondent's brief, but rather, will consider the merits of the respondent's arguments.

¶ 26 In a proceeding to terminate parental rights, the State must first show by clear and convincing evidence that the parent is unfit. *In re Brandon A.*, 395 Ill. App. 3d 224, 238 (2009) (quoting *In re Richard H.*, 376 Ill. App. 3d 162, 164-65 (2007)). After a parent is found unfit, the State must show that termination of parental rights is in the child's best interests. *Id.* at 239 (quoting *In re M.M.*, 156 Ill. 2d 53, 61 (1993)). The State must make such showing by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). In determining whether termination is in the best interests of the child, "the following factors shall be considered in the context of the child's age and developmental needs:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;

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[2]The court noted that "courts will not apply a more lenient standard" to *pro se* respondents "because of [their] *pro se* status." *In re A.H.*, 215 Ill. App. 3d at 529-30 (citing *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 451 (1983)). In deciding to address the merits, the court's focus was on the "serious nature of the proceedings" rather than the *pro se* status of the respondents. *Id.*

(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 2010).

"Other important considerations include the nature and length of the child's relationship with his present caretakers and the effect that a change of placement would have upon the emotional and psychological well-being of the child." *In re Brandon A.*, 395 Ill. App. 3d at 240 (citing *In re Austin W.*, 214 Ill. 2d 31, 50 (2005)).

¶ 27 We will not reverse the circuit court's best-interest determination " 'unless it is against the manifest weight of the evidence.' " *Id.* at 240 (quoting *In re Veronica J.*, 371 Ill. App. 3d 822, 831-32 (2007)). A decision " 'is against the manifest weight of the evidence only if

the opposite conclusion is clearly evident.' " *In re Joshua K.*, 947 N.E.2d 280, 292 (2010) (quoting *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004)). "[T]he trial court need not articulate any specific rationale for its decision," and we "may affirm the trial court's decision without relying on any basis used by the trial court." *In re Tiffany M.*, 353 Ill. App. 3d 883, 893 (2004) (citing *In re Jaron Z.*, 348 Ill. App. 3d 239, 263 (2004)).

¶ 28 Beth E. argues that no evidence was presented regarding the nature and length of the children's relationship with their present caretakers and the effect that the change in placement would have upon their emotional health. We disagree. Admittedly, the evidence in this regard was limited. However, as the trial court noted, A.C. has bonded with his caretakers and stated that he wants to be adopted and share the last name of his present caretakers. Also, Danielle Groom testified that both children seem happy and healthy where they are and that they are doing well in school. Additionally, as the trial court noted, the lack of visitation on the part of Beth E., along with the corresponding lack of bonding between her and the children, diminishes the impact on the children of terminating the parental rights of Beth E.

¶ 29 The respondent cites *In re B.B.*, 386 Ill. App. 3d 686 (2008), for the proposition that termination is improper where the mother is unfit and unlikely to provide long-term stability where, after the children were removed from the mother's care, there was frequent contact between the mother and her children, a professional counselor indicated that there was a healthy parent-child bond, and the original foster placement was "both seriously flawed and unstable." The respondent argues that "no testimony was had which would suggest that the children had bonded with another, as a parent; similarly, there was no evidence concerning the lack of a bond between Beth and the children." The respondent also asserts that "[n]o evidence relative to the sense of security of the children, affection of the children, their long term wishes or goals, or their feeling of love and security with any party was put forth."

Again, we disagree. The testimony revealed that A.C. said that he wanted to be adopted and take the name of his present caretakers. The testimony also showed that A.C. refers to his present caretakers as "mom" and "dad." Additionally, Groom testified that both children appear happy and healthy in their current placement. Also, this case is glaringly distinguishable from that cited by the respondent. In the present case, Beth E. ceased all visitation, and there was no evidence of a bond between her and the children.

¶ 30 Beth E. argues that the court was "distracted by the criminal issues Beth was encountering" and by Beth's bipolar disorder. We cannot understand how the criminal issues and mental disorder of Beth E. are not relevant to the best interests of the children, especially given that Beth E. refuses to take medication and refuses to continue attending counseling. In any event, the court did not mention Beth E.'s criminal issues or bipolar disorder in reaching its conclusion at the close of the hearing, but rather, focused on the lack of bonding between the children and Beth E. as evidenced by the lack of visitation, along with the wishes of the children and their need for stability.

¶ 31 With regard to the physical safety and welfare of the children, the State points out that the holes in the walls of Beth E.'s residence, the pervasive cigarette smoke, and the limited income of Beth E. weigh in favor of termination. We agree that the circuit court could have properly considered these factors in reaching its conclusion.

¶ 32 While the State did not present an overwhelming case that termination is in the best interests of the children, based upon the evidence presented regarding the lack of visitation on the part of Beth E., the conditions at Beth E.'s residence, how the children were doing in the foster placement, along with their wishes and need for permanency, we cannot say that the circuit court's order finding that termination is in the best interest of the children by a preponderance of the evidence was against the manifest weight of the evidence.

¶ 33 CONCLUSION

¶ 34 The judgment of the circuit court is affirmed.

¶ 35 Affirmed.