2022 IL App (4th) 220595-U

NOS. 4-22-0595, 4-22-0596 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 29, 2022
Carla Bender
4th District Appellate
Court, IL

In re K.D. and A.D., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Tazewell County
Petitioner-Appellee,	)	Nos. 19JA27
v.	)	19JA28
James D.,	)	
Respondent-Appellant).	)	Honorable
	)	David A. Brown,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices DeArmond and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, holding the trial court's finding the termination of respondent's parental rights was in the minors' best interests did not violate respondent's due-process rights.

¶ 2 Respondent, James D., is the father of twin girls, K.D. and A.D., born on December 20, 2018. The minors were adjudicated neglected and subsequently made wards of the court. Thereafter, the State filed a petition to terminate respondent's parental rights. The trial court found respondent to be unfit and further found it was in the minors' best interests to terminate his parental rights. Respondent appeals, claiming the court relied on information not in evidence when making its best-interests determination, depriving him of due process. He otherwise does not challenge the court's fitness or best-interests determination. We affirm.

¶ 3 I. BACKGROUND

¶ 4 When the minors were born prematurely at 29 weeks gestation on December 20, 2018, the family was already involved with the Department of Children and Family Services (DCFS) due to physical abuse by the mother, Kimberly J., upon the minors' siblings and due to the mother's violation of conditions related to an intact case. Namely, DCFS had advised the mother that respondent was not to be alone with her children due to a previous domestic violence incident perpetrated by respondent. However, it was discovered respondent babysat for the mother prior to the twins' birth. The mother, whose parental rights to these minors were also terminated , is not a party to this appeal.

¶ 5 The minors were placed together in a traditional foster placement upon their release from the hospital and remained in that home for the life of the case. In October 2019, the trial court entered an adjudicatory order, finding the minors were neglected, and a dispositional order finding the parents unfit and making the minors wards of the court.

¶ 6 In June 2021, the State filed a petition to terminate both parents' parental rights. The State alleged respondent was unfit due to his failure to make reasonable progress toward the return of the minors to his care during any nine-month period after the end of the initial nine-month period following adjudication, namely between August 28, 2020, and May 28, 2021. See 750 ILCS 50/1(D)(m)(ii) (West 2020).

¶ 7 On May 4, 2022, the trial court conducted a fitness hearing. The mother was defaulted, and respondent failed to appear. The caseworker from The Center for Youth and Family Solutions, Lela Keyes, testified that, during the relevant timeframe, respondent was to complete a drug and alcohol assessment, participate in drug drops, and engage in visitation with the minors. She said one of respondent's "main issues" was addressing his substance abuse. According to

Keyes, during his assessment, respondent denied any issues with substances. However, between the relevant dates, defendant missed half of his drug drops and missed 8 of 30 visits. Keyes testified she was also concerned respondent was still in a relationship and living with the mother, who, even though she had been criminally convicted of the physical abuse of her child, had not accepted responsibility for the harm caused.

¶ 8 Keyes also testified that, during respondent's assessment following the nine-month period, respondent advised he had been drinking a half pint of whiskey every day for the past four years.

¶ 9 The trial court found the State had proved by clear and convincing evidence that respondent was unfit as alleged.

¶ 10 On July 13, 2022, the trial court conducted the best-interests hearing. Keyes again testified she had learned in December 2021 respondent had been untruthful about his drinking throughout the life of the case. He was admitted to inpatient treatment at that point and acknowledged he had been drinking alcohol in excess every day for the last four years.

¶ 11 The minors' foster father testified he had the minors in his care for four years, since their birth. He described the bond the minors had with he and his wife, as well as the bond with their extended family. The minors were well-cared for, happy, secure, and loved. They were in a permanent placement, as the family was "absolutely" willing to adopt them.

¶ 12 The trial court determined it was in the best interests of the minors to terminate respondent's parental rights. When announcing its decision, the court specifically stated it was basing its ruling on the testimony presented at the hearing, the submitted best-interests reports, the history of the case as reflected by the various orders entered throughout, and the arguments of

counsel. The court recited each of the statutory best-interests factors and advised respondent it was these "factors [the court was] instructed or required by law to evaluate." The court then stated:

> "Dad, you feel like you've overcome your addiction. You feel like you can be a good parent in the future. That's good. What about [K.D.] and [A.D.], how they feel?
>
> Now this isn't part of the record, and so I can't base my rulings on it, but I've been to enough substance abuse classes and instructional sessions and everything else to know that an alcoholic's brain doesn't revert back to normal for three to five years after they stop using alcohol. Should [A.D.] and [K.D.] have to wait for another two and a half to four and a half years?
>
> But like I said that wasn't part of the record so my ruling is not based upon that, but as I look at all these statutory factors[,] *** every one weighs heavily in favor of terminating the parental rights of [respondent]. I can't find one that I would tend to persuade me that I need to go and continue to pursue the goal of a return to a parent."

¶ 13 The trial court found the State had carried its burden of proving by a preponderance of the evidence termination was in the minors' best interests.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, respondent claims the trial court violated his due-process rights by relying upon information outside the record when determining it was in the minors' best interests to terminate his parental rights. Specifically, respondent claims the court considered information from its own personal research and experience in the field of alcoholism to support termination.

He challenges the court's statement that it had "been to enough substance abuse classes and instructional sessions and everything else to know that an alcoholic's brain doesn't revert back to normal for three to five years after they stop using alcohol." Respondent claims the court's statement was neither based on evidence nor subject to any kind of adversarial testing.

¶ 17 Initially, we note the State argues respondent forfeited review of this issue by failing to object during the termination hearing. In his reply brief, respondent acknowledges he did not preserve this argument, but he asks we review the issue pursuant to the plain-error doctrine. Under that doctrine, a reviewing court may consider an unpreserved error if the alleged error was a clear or obvious error and (1) the evidence is closely balanced or (2) the error was so serious respondent was denied a fair hearing. Ill. S. Ct. R. 615(a) (eff. Feb. 6, 2013); *People v. Sebby* 2017 IL 119445, ¶ 48. Respondent suggests the second prong applies here. The first step in a plain-error analysis is to determine whether a clear or obvious error occurred. *Id.* ¶ 49.

¶ 18 Our supreme court has stated: "A determination made by the trial judge based upon a private investigation by the court or based upon private knowledge of the court, untested by cross-examination, or any of the rules of evidence constitutes a denial of due process of law." *People v. Wallenberg*, 24 Ill. 2d 350, 354 (1962). "Due process does not permit [the trial court] to go outside the record, except for matters of which a court may take judicial notice, or conduct a private investigation in a search for aids to help him make up his mind about the sufficiency of the evidence." *People v. Yarbrough*, 93 Ill. 2d 421, 429 (1982). However, it is important to remember "[a] trial judge does not operate in a bubble; [he] may take into account [his] own life and experience in ruling on the evidence." *People v. Thomas,* 377 Ill. App. 3d 950, 963 (2007).

¶ 19 It is clear from the totality of the trial court's ruling that it did not base its decision to terminate respondent's parental rights on anything other than the testimony presented, the

best-interests reports, the statutory best-interests factors, and arguments of counsel. The court systematically went through each factor and applied each to the circumstances of the case. The court noted the length of time the minors had been in care—"a month short of four years." The minors knew no other home except for their foster home, as they were placed there upon release from the hospital after their birth. They were safe, secure, well-cared-for, loved, and bonded. They were in a permanent placement. The court found "every one [of the statutory factors] weigh[ed] heavily in favor of terminating the parental rights of [respondent.]"

¶ 20 It does not appear from the record the trial court engaged in a private investigation of the time it typically takes for an "alcoholic's brain" to revert "back to normal" after they stop using alcohol. Instead, the court made the benign comment based on its general knowledge. The court made no indication this timeframe had any impact on its decision. Rather, the court noted the overwhelming evidence supported termination. Viewing the complained-of remark within the context of the entirety of the court's ruling, we find the remark played no part as a basis for the court's decision. The record does not establish the court engaged in any independent investigation or made any material factual findings based on some private knowledge of a fact not introduced as evidence. As such, we find no clear or obvious error occurred and we must honor respondent's procedural default.

¶ 21 III. CONCLUSION

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

¶ 23 Affirmed.