2023 IL App (4th) 230379-U

NOS. 4-23-0379, 4-23-0380 cons.

FILED
August 31, 2023
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re E.C. and C.W., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Tazewell County
Plaintiff-Appellee,	)	Nos. 20JA113
v.	)	21JA33
	)	
Jade C.,	)	Honorable
Respondent-Appellant).	)	David A. Brown,
	)	Judge Presiding.

JUSTICE LANNERD delivered the judgment of the court.
Justices Cavanagh and Doherty concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the judgment of the trial court terminating respondent's parental rights, concluding the court's best interest determination was not against the manifest weight of the evidence.

¶ 2 In September 2022, the State filed petitions to terminate the parental rights of respondent, Jade C., as to her minor children, E.C. (born in 2020) and C.W. (born in 2021). In April 2023, the trial court found termination of respondent's parental rights would be in the minors' best interest. E.C.'s father, Auston B., and C.W.'s father, Shane W., are not parties to this appeal.

¶ 3 Respondent timely appeals, arguing the trial court's best interest determination was against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2020, the State filed a petition seeking to adjudicate E.C. neglected under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2020)). The State alleged E.C. was neglected because of, *inter alia*, respondent's ongoing issues with substance abuse and domestic violence. In February 2021, the State filed a petition seeking to adjudicate C.W. neglected under the Juvenile Court Act, alleging he was neglected because respondent was already involved in two other juvenile cases (including E.C.'s case) and those minors were not in her care due to the ongoing issues with substance abuse and domestic violence.

¶ 6 In August 2021, the trial court adjudicated both minors neglected due to being in environments injurious to their welfare as defined in 2-3(1)(b) of the Juvenile Court Act. (705 ILCS 405/2-3(1)(b) (West 2020)). The court adjudged respondent unfit to care for the minors for reasons other than financial circumstances alone, made them wards of the court, and placed their custody and guardianship with the Illinois Department of Children and Family Services (DCFS).

¶ 7 In September 2022, the State filed petitions to terminate respondent's parental rights to both minors. As pertinent to this appeal, the State alleged respondent was unfit because she failed to make reasonable progress toward the return of the minors to her care within nine months after the adjudications of neglect, specifically between August 12, 2021, and May 12, 2022 (750 ILCS 50/1(D)(m)(ii) (West 2022)). In March 2023, after a hearing on the State's petitions, the trial court found respondent unfit as alleged by clear and convincing evidence.

¶ 8 In April 2023, the trial court conducted a best interest hearing. The court accepted the best interest report prepared by Lutheran Social Services of Illinois. The report indicated E.C. had been in her foster placement since September 2021 but, at the time of the report, was spending six nights per week at Auston B.'s home. E.C. was being "consistently cared for" and

having her needs met by Auston. Moreover, E.C. developed "a significant bond with [Auston] and has a strong attachment to him." Maria Peters, the child welfare specialist who wrote the report, noted observing "positive and affectionate interactions between [E.C.] and all household members of the family." Auston indicated he is "able, willing, and committed to providing permanency for [E.C.]" The report indicated C.W. had been in the care of his great aunt, Annette W., since first coming into care. C.W. was being "consistently cared for" and having his needs met by Annette. Peters noted observing "positive and affectionate interactions between [C.W.] and [Annette] as well as other extended family members." Annette indicated she is "able, willing, and committed to providing permanency for [C.W.] through adoption."

¶ 9 The report acknowledged respondent engaged in various services, such as completing "a psychological evaluation, parenting classes, a mental health assessment[,] and [a] substance abuse assessment," and she had "engaged in individual counseling and sporadically completed random toxicology screenings." Nevertheless, "there have been severe concerns throughout [respondent's] visitation with her children and safety concerns." While respondent engaged in parenting classes and had the assistance of a parenting coach, "there has been minimal improvement shown in regards to [her] ability to parent." There were also ongoing concerns about respondent's substance abuse. Peters ultimately recommended respondent's parental rights be terminated as to both minors. Peters concluded, "Though [respondent] has participated in some services, [she] has not been able to apply learned skills to her everyday life and parenting. [She] has not been able to effectively parent the children as evidenced by her interaction with [them]."

¶ 10 At the best interest hearing, Peters testified her best interest recommendations had not changed since the filing of the report. On cross-examination, Peters testified the last time she

supervised a home visit between E.C. and respondent, E.C. was "pretty timid" at the beginning and did not want to interact with respondent until being given juice. E.C. then approached Peters, said, " 'done, done,' " and tried to put her jacket on to leave. After some encouragement from Peters, E.C. eventually gave respondent a hug. Peters acknowledged E.C.'s reluctance to engage with respondent during the visit could be due to respondent not having been in the primary caretaking role for a while.

¶ 11 Annette testified she had been caring for C.W. for over two years. C.W. looked to Annette for his daily needs. Annette provided C.W. food, shelter, and clothing, and she provided for his medical needs. C.W. was "thriving" with Annette and was bonded to other family members. Annette did not work outside the home and, accordingly, was with C.W. all day. Annette and C.W. showed each other love and affection, and Annette wanted to adopt C.W.

¶ 12 The trial court began its oral ruling by noting both minors had been in substitute care for "the vast majority of their lives." The court stated, "because of the length of the cases and the time that they've been in care such factors as the need for permanency, security, familiarity, continuity of affection, and least disruptive placements all weigh heavily in favor of termination." The court continued:

> "Their physical safety and welfare, development of identity and background and ties are also strongly associated with substitute care and/or [Auston].
>
> The—this has been a long haul for these kids and for the parents, and at this point in time, both [Shane] and [respondent] have a great deal of instability in their day-to-day lives and in large part because of

continuing struggles and issues with mental health, substance use, domestic violence, and housing instability.

Those are all contributing factors as to why we're here today, and those have not been resolved. Despite lots of time, effort, and resources provided to—to them, they have not been successful."

¶ 13 The trial court found termination of respondent's parental rights was in the best interest of both minors. The court retained wardship over C.W., named DCFS his guardian with the right to consent to adoption, and changed the goal in his case to adoption. The court closed the case involving E.C. and granted guardianship and custody of her to Auston.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, respondent challenges only the trial court's best interest determination, arguing the finding was against the manifest weight of the evidence.

¶ 17 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2022)), 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 2022)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006).

¶ 18 When a trial court finds a parent unfit, "the court then determines whether it is in the best interests of the minor that parental rights be terminated." *In re D.T.*, 212 Ill. 2d 347, 352, 818 N.E.2d 1214, 1220 (2004). "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *D.T.*, 212 Ill. 2d at 364. The State must prove by a preponderance of the evidence termination of

parental rights is in the minor's best interest. *D.T.*, 212 Ill. 2d at 366. In making the best interest determination, the court must consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2022)). These factors include:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 291 (2009) (citing 705 ILCS 405/1-3(4.05) (West 2008)).

"The court's best interest determination [need not] contain an explicit reference to each of these factors, and a reviewing court need not rely on any basis used by the trial court below in affirming its decision." *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19, 8 N.E.3d 1258. On review, "[w]e will not disturb a court's finding that termination is in the [child's] best interest unless it was against the manifest weight of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 961, 835 N.E.2d 908, 914 (2005). "A finding is against the manifest weight of the evidence only if the evidence clearly calls for the opposite finding [citation], such that no reasonable person could arrive at the circuit court's finding on the basis of the evidence in the record [citation]." (Internal quotation marks omitted.) *In re J.H.*, 2020 IL App (4th) 200150, ¶ 68, 162 N.E.3d 454.

¶ 19 In this case, the evidence demonstrated both minors were doing well in their foster placements and their needs were being met. Both Auston (E.C.'s father) and Annette (C.W.'s great aunt) were able, willing, and committed to providing permanency for the minors. The relationship between E.C. and Auston was described as having a significant bond and strong attachment, and E.C. was spending six nights per week with Auston. By contrast, although E.C. knew respondent, E.C. did not have a comparable bond with her. The relationship between C.W. and Annette, and that Annette facilitated between C.W. and his extended family members, was described as positive and affectionate. The best interest report reflected ongoing concerns with respondent's inability to apply the skills learned in her services to her everyday life and parenting. The court noted respondent's ongoing issues with mental health, substance abuse, domestic violence, and housing instability. The court explained the minors needed permanency, security, familiarity, continuity of affection, development of their identities, familial background and ties, and placements with the least disruption; all these considerations weighed in favor of termination of respondent's parental rights. We cannot say the evidentiary basis in the record "clearly calls for the opposite finding" or is such that "no reasonable person" could find as the court found. (Internal quotation marks omitted.) *J.H.*, 2020 IL App (4th) 200150, ¶ 68.

¶ 20 We note respondent also argues she completed a psychological evaluation, substance abuse assessment, mental health assessment, parenting classes, and "some toxicology screenings," and she engaged in individual counseling. According to respondent, "The fact that she engaged in the foregoing services demonstrates [her] ability to parent in a way that would not endanger the physical safety or welfare of the minors. The trial court erred in finding otherwise." Although respondent attempts to connect her engagement in or completion of various services to the statutory best interest factor pertaining to "the physical safety and welfare of the child,

including food, shelter, health, and clothing" (705 ILCS 405/1-3(4.05)(a) (West 2022)), this is evidence germane to her *fitness*. Despite respondent's reference to the trial court's unfitness and best interest determinations at the bottom of her notice of appeal, in her brief, respondent only challenged the best interest determination and *not* the court's unfitness determination. Moreover, respondent did not include a separate statement of this issue in her brief as required by Illinois Supreme Court Rule 341(h)(3) (eff. Oct 1, 2020). In fact, the only issue statement provided posed "[w]hether the trial court's finding that it was in the best interest of the minor children that [respondent's] parental rights be terminated was against the manifest weight of the evidence." Additionally, respondent did not include the required "concise statement of the applicable standard of review" as to the issue of unfitness. Ill. S. Ct. R. 341(h)(3) (eff. Oct. 1, 2020). Accordingly, due to respondent's failure to comply with Rule 341, any argument the court erred in finding her unfit that can be implied from her reference to her participation in various services is forfeited and need not be considered by this court. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020).

¶ 21 Respondent also argues, in light of the testimony at the best interest hearing that the minors only visit with each other once per week, "termination of parental rights and eventual adoption of the children into separate households enhances the risk of disruption to their sibling relationship." According to respondent, the trial court "erred when it overlooked the possible disruption to each minor's continuity of sibling affection." However, the court was presented with evidence not only of the sibling visitation, but of both minors being integrated as members of the overall family.

¶ 22 In sum, considering all the evidence at the best interest hearing and the relevant statutory factors, we conclude the trial court's finding termination of respondent's parental rights was in the minors' best interest was not against the manifest weight of the evidence.

¶ 23 III. CONCLUSION

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

¶ 25 Affirmed.